

Force Policy Document Misconduct – Police Officers

Summary

The purpose of this policy and procedural guide is to ensure a fair, open and proportionate method of dealing with the alleged misconduct of police officers and members of the Special Constabulary, and to encourage a culture of learning and development for individuals and/or the organisation.

Student Officers: The Chief Constable has the discretion to decide whether to use these procedures or the procedures set out in Regulation 13 of the Police Regulations 2003 (discharge of probationer).

Senior Officers: This policy applies to officers up to and including Chief Superintendents. See Appendix B for guidance for Misconduct Meetings and Misconduct Hearings for officers above the rank of Chief Superintendent.



If you are unsure about the validity of the content of this policy please refer to the Policy Owner

Policy owner	Deputy Chief Constable
Policy holder	Head of Professional Standards
Author	Implementation Officer - PSD

FPD no.	123
GPS Group	Professional Standards

Approved by

Legal Services	<input checked="" type="checkbox"/>
Policy owner	<input checked="" type="checkbox"/>

Implementation date	16.03.10.
Review date	02.03.13.

Note: Please send the final FPD with both signatures on it to the Force Policy Officer for the audit trail.

i Please note that if the FPD still has the word *DRAFT* in the footer when asked for production, it is not taken as the definitive FPD policy.

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INDEX**Legal Basis**

(Please list below the relevant legislation which is the legal basis for this policy document).
You must update this list with changes in legislation that are relevant to this policy document.

Legislation specific to the subject of this policy document

Section	Act (title and year)
	Police (Conduct) Regulations 2008
	Police (Performance) Regulations 2008
	Police Appeals Tribunal Rules 2008
	Police (Complaints and Misconduct (Amendment))Regulations 2008
	Schedule 3 of the Criminal Justice and Immigration Act 2008
	Police (Conduct) Regulations 2004
	Police (Complaints and Misconduct) Regulations 2004
	Police Regulations 2003
	Police Reform Act 2002
	Police Act 1996

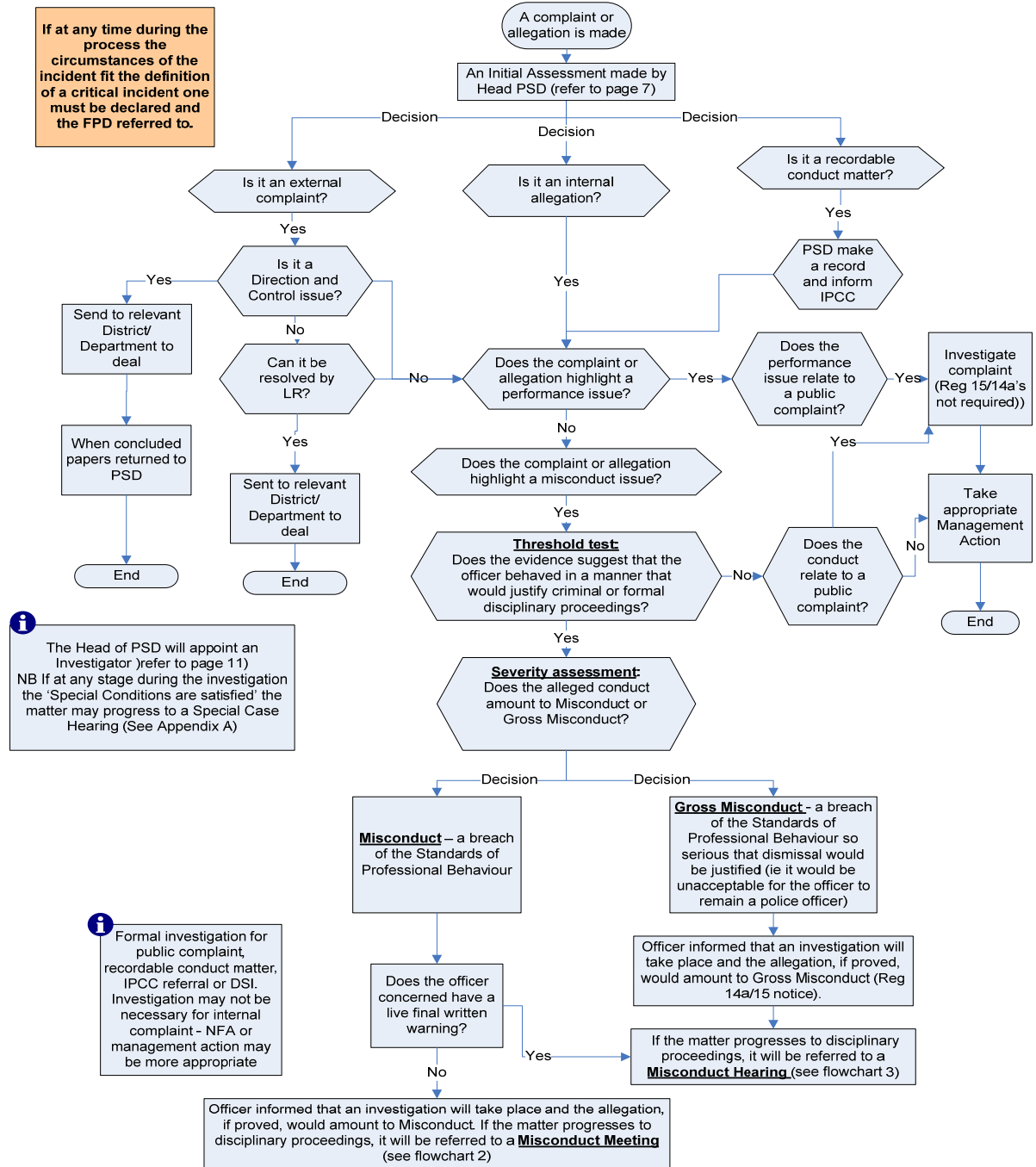
Other legislation which you must check this document against

Act (title and year)
Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
Diversity Race Relations Amendment Act 2000
Crime and Disorder Act
H&S legislation
Data Protection Act 1998
Freedom Of Information Act 2000

[‘Performance, Conduct and Standards of Professional Behaviour’ on NCALT](#)

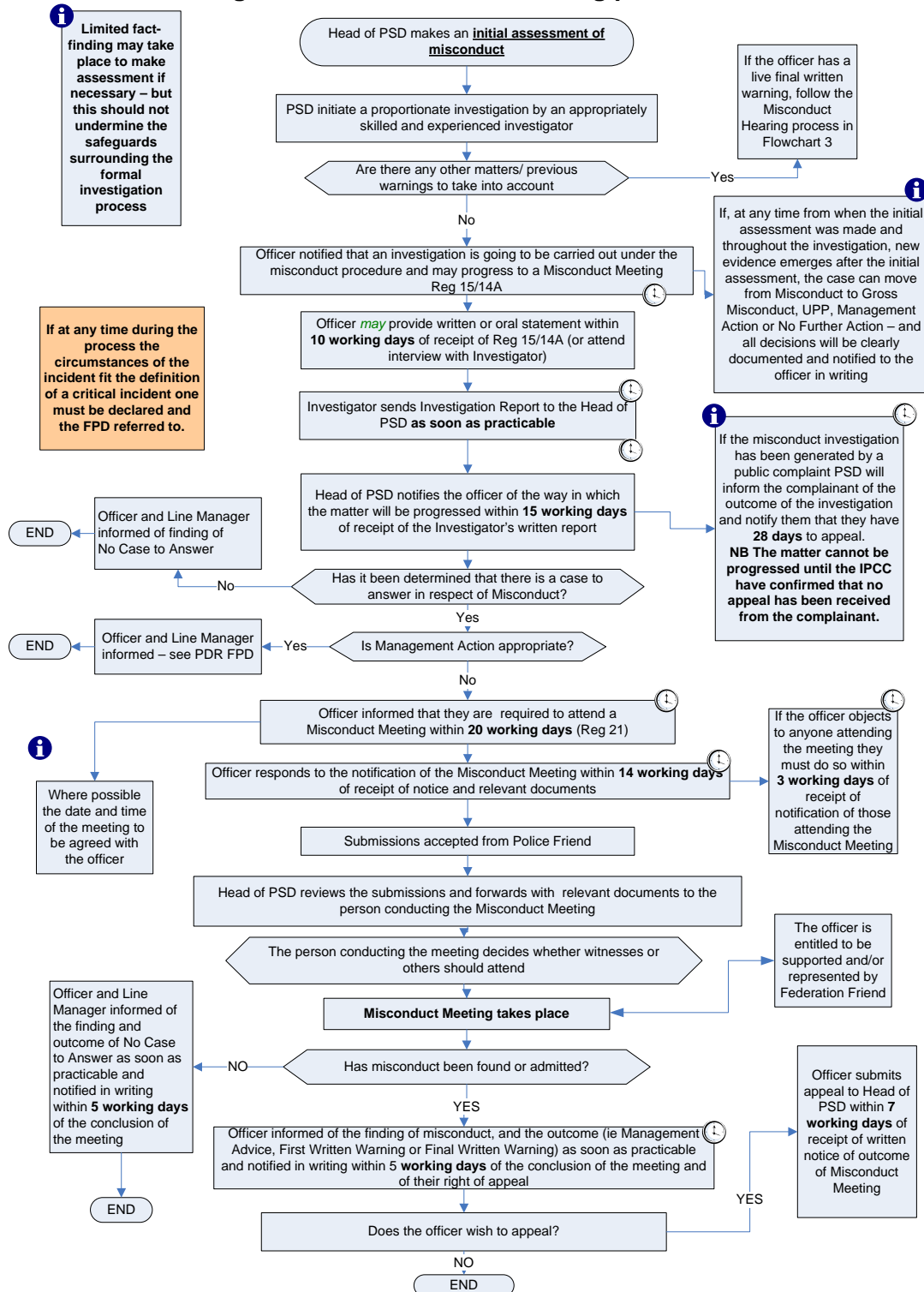
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Flowchart 1: Overview of process when a complaint or allegation is made



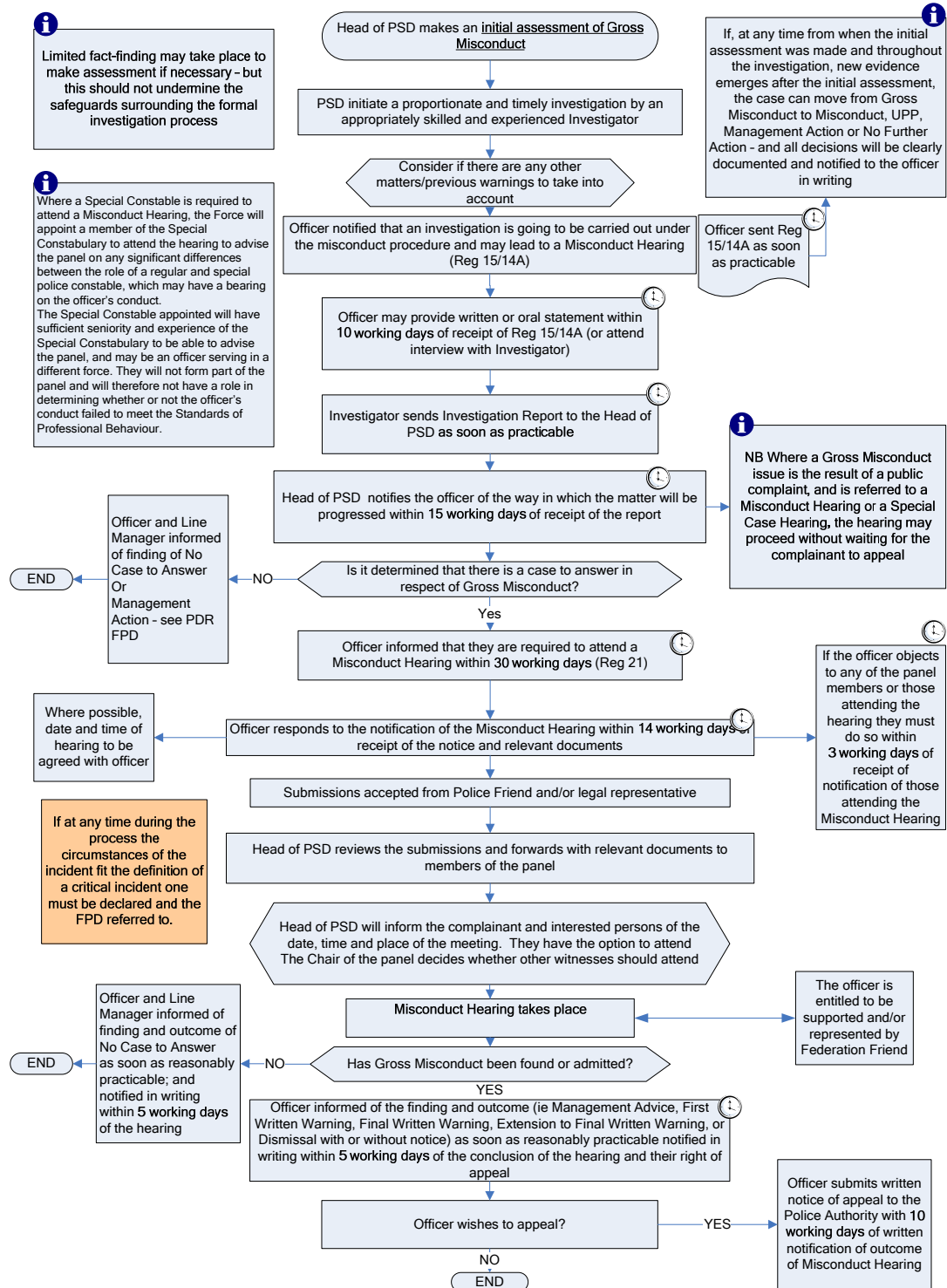
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Flowchart 2: Investigation and Misconduct Meeting process



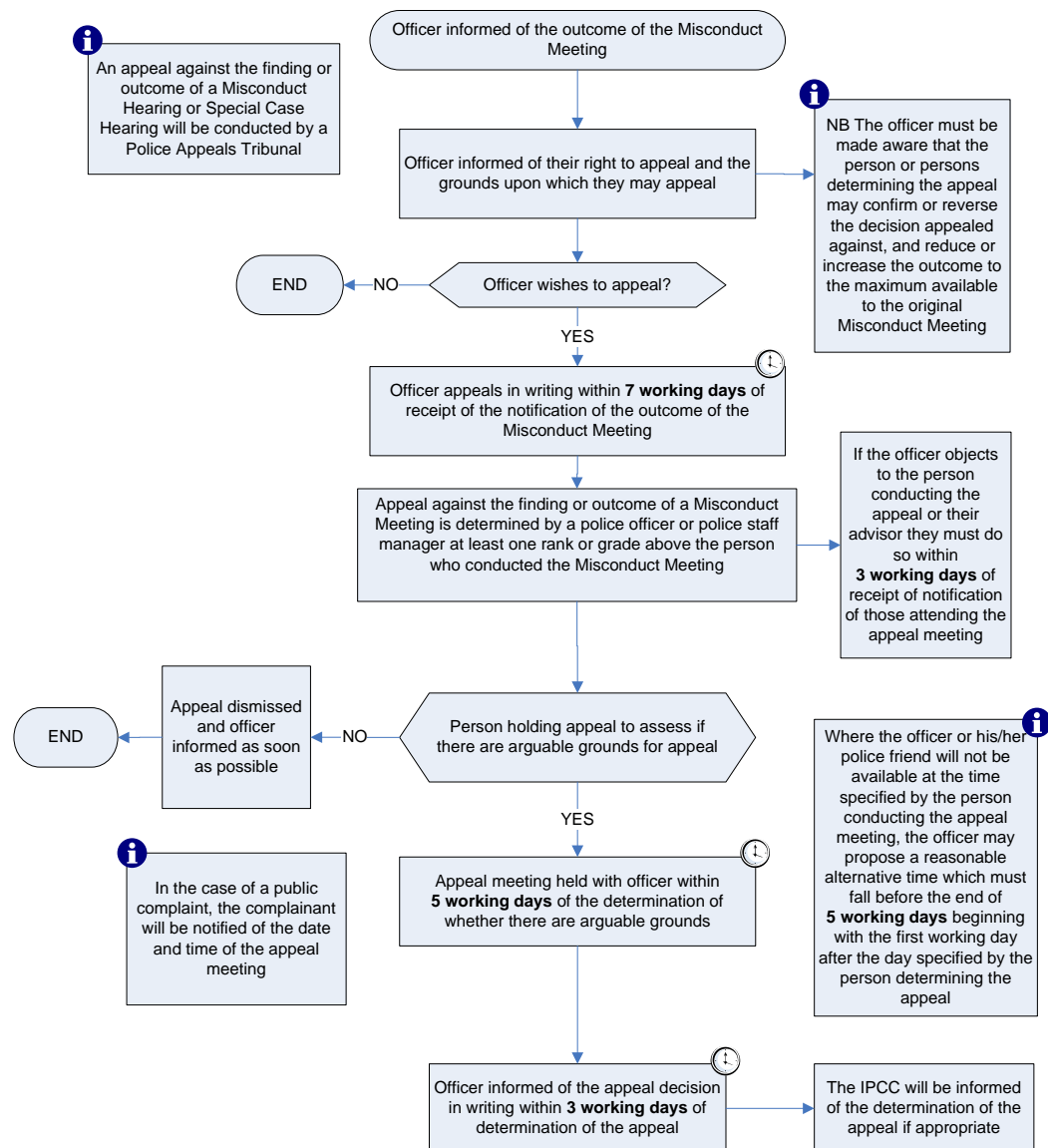
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Flowchart 3: Investigation and Misconduct Hearing process



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Flowchart 4: The appeal process (following Misconduct Meeting)



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Please note: These procedures will take effect from 1st December 2008, and any matters being dealt with under formal misconduct procedures prior to that date, or any public complaints raised before that date, will be dealt with under the Police (Conduct) Regulations 2004.

[Where this policy or other guidance conflicts with the Regulations, the Police \(Conduct\) Regulations 2008 will prevail.](#)

Standards of Professional Behaviour

A police officer's conduct must meet the [Standards of Professional Behaviour](#). These standards reflect the expectations that the police service and the public have of how police officers should act whether on or off duty.

Where the misconduct procedure is being used because an officer's conduct is alleged to have fallen below the standard expected of a police officer, it is important to identify the actual behaviour that is alleged to have fallen below the standard, with clear particulars describing that behaviour.

Initial assessment (Is the case one of misconduct?)

Initial reports or allegations indicating that the conduct of a police officer may have fallen below the Standards of Professional Behaviour (whether from members of the public or internally generated) must be formally assessed against the full range of options available for responding.

The initial assessment will be carried out by the Head of PSD, who will determine the appropriate procedure i.e. is there a case to answer? If so, is it..

- a Direction and Control issue?
- an issue that can be resolved by Local Resolution (and is it IPCC referable)?
- a grievance?
- A performance matter that could be dealt with by management action or under the Unsatisfactory Performance/Attendance procedure?
- a conduct matter that could be IPCC referable or dealt with by management action or under the formal misconduct procedure?
- is it a criminal matter referable to the IPCC?
- is it a recordable matter e.g. a death or serious injury that needs to be referred to the IPCC?

The purpose of the initial assessment is to:

- ensure a timely response to a complaint or conduct issue
- ensure that the most appropriate procedures are used
- identify the police officer(s) subject to the allegation and to eliminate those not involved

Where the matter does not involve a public complaint, a recordable conduct matter or a death or serious injury (DSI), it will be dealt with by the Police (Conduct) Regulations 2008 from the outset.

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Under these regulations, the Head of PSD will determine if the complaint indicates that the conduct of a police officer did not meet the Standards of Professional Behaviour, and decide whether it is necessary for the matter to be investigated, and whether the allegation, if proven or admitted, would amount to misconduct or gross misconduct.

If it is determined that the conduct if proven or admitted would amount to misconduct it will be referred to a misconduct meeting. If it is determined that the conduct if proven or admitted would amount to gross misconduct, it will be referred to a misconduct hearing using the procedures described in this policy.

If the alleged conduct is referable, the IPCC may determine that the investigation should be conducted locally, be supervised or managed by the IPCC or be an independent investigation. This will also include an assessment of whether the officer behaved in a way that would justify criminal or formal disciplinary proceedings and will determine the nature of the investigation and whether a notice of investigation (Regulation 15/14A) should be sent to the officer concerned

Matter arising from public complaints will be dealt with using the procedures described in the [Public Complaints FPD](#). In all cases of public complaints the Investigator responsible for that case will keep the complainant informed.

Where the Head of PSD makes an initial assessment that the matter is a grievance it will be dealt with using the procedures described in the [Fairness at Work FPD](#).

Where the Head of PSD makes an initial assessment that the conduct does not amount to misconduct, he/she may take no action, take management action against the officer concerned, or refer the matter to be dealt with under the performance regulations, using the procedures described in the [Unsatisfactory Performance/Attendance – Police Officers FPD](#). In this case the officer will be notified in writing as soon as practicable.

For criminal matters see the paragraphs entitled '[Conducting investigations where there are possible outstanding criminal proceedings](#)' and '[Misconduct action following criminal proceedings](#)'.

At any time before the start of misconduct proceedings, the Head of PSD may revise his/her assessment of the conduct if they consider it appropriate to do so.

Link between Misconduct Procedures and Public Complaints

The [Public Complaints FPD](#) details the procedures to follow in relation to public complaints, and these procedures still apply.

Critical Incident

If at any time during the process the circumstances of the incident fit the definition of a critical incident one must be declared and the [FPD](#) referred to.

Recordable conduct matters

A matter may come to light which may not be subject of a public complaint, but where there is an indication that an officer may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings (e.g. death or serious injury).

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In such cases the Head of PSD will make a record of the matter and refer it to the IPCC if appropriate. In such cases an investigation will take place and the Investigator will submit a report to the Head of PSD setting out their conclusions as to whether they determine that there is a case to answer in respect of Misconduct or Gross Misconduct. The Head of PSD will determine whether to refer the matter to a Misconduct Meeting or Misconduct Hearing.

Dealing with Misconduct

Where a matter has been assessed as Misconduct on the basis of the information available at the initial assessment stage, it can be dealt with by

- Management Action, or
- Formal action for Misconduct

The purpose of Management Action is to

- deal with misconduct in a timely, proportionate and effective way that will enhance the confidence of staff, officers and the public
- identify any underlying causes or welfare considerations
- improve conduct and to prevent a similar situation arising in the future

Management Action should be timely and may include

- pointing out how the behaviour fell short of the expectations set out in the Standards of Professional Behaviour
- identifying expectations for future conduct
- establishing an improvement plan (which should be in writing, include timescales for improvement, be agreed as an accurate record with the officer concerned and entered in the officer's PDR)
- addressing any underlying causes of misconduct

Conduct and performance should be regularly reviewed, and improvements or otherwise should be recorded.

If an officer does not agree to the Management Action, it can still be imposed providing such action is reasonable and proportionate.

The officer may, in some cases, be advised that if the misconduct is repeated or if there is further misconduct of a different type, then this may lead to formal action for misconduct.

Management Action is not a formal misconduct outcome, but is considered to be part of the normal management responsibility of police managers. Management Action is always available including, during or after the process of resolving a complaint using local resolution.

Where a manager or the Head of PSD decide that Management Action is the most appropriate and proportionate way to deal with an issue of misconduct, there will usually be no requirement to conduct a formal investigation, and therefore no requirement to give a written notice to the officer concerned in accordance with the provisions in the Police (Conduct) Regulations 2008.

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Note: Management Action is not a disciplinary outcome, and no disciplinary outcomes may be imposed on a police officer unless the case has been referred to a Misconduct Meeting, Misconduct Hearing or a Special Case Hearing.

Multiple instances of Misconduct

Low level breaches of the Standards of Professional Behaviour will be discussed between the line manager and the officer concerned. However, where misconduct is repeated, or if there is further misconduct of a different type, this could lead to formal action for misconduct and the line manager should discuss the officer's conduct with the PSD to identify the best method of dealing with the conduct issue.

More serious breaches of the Standards of Professional Behaviour will be discussed with PSD to make an initial assessment of the matter and to determine the way forward.

Where an officer has a live written warning they will have been informed that any future misconduct within the **12 month** validity period of the written warning may result in a final written warning.

Where an officer has a final written warning, they will be informed that any future misconduct within the **18 month** validity period of the final written warning may result in dismissal.

Suspension, restricted or change of duty

The Appropriate Authority will not suspend a police officer unless the following 'suspension conditions' are satisfied:

- having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the Appropriate Authority has determined that such redeployment is not appropriate in all the circumstances of the case; and
- it appears that an effective investigation may be prejudiced unless the officer is suspended, or
- having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer should be suspended

An officer who is suspended remains a police officer for the purposes of the Police (Conduct) Regulations 2008, but ceases to have the powers conferred on the office of Constable whilst suspended. A Special Constable ceases to be a member of a police force whilst suspended.

Where a police officer is suspended from duty, this will be with pay. The rate of any pay will be that which applied to the officer at the time of suspension. This means that if the officer concerned was in receipt of a Competence-Related Threshold Payment, or a Special Priority Payment, at the time of his/her suspension or temporary move to a new location or role as an alternative to suspension, those payments will continue (subject to the paragraph below).

Pay will be withheld when an officer

- is suspended and 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 (in prison or elsewhere) between conviction by a court and sentence, or

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Protective security marking

Non-Protectively Marked

- has absented him/herself from duty and whose whereabouts are unknown to the Chief Constable (or a Chief Officer acting as Chief Constable)

Police officers who are suspended from duty can still take their annual leave entitlement whilst suspended, providing they seek permission from the Appropriate Authority.

The officer concerned, or his/her police friend, may make representations against the initial decision to suspend within **7 working days** of the suspension taking effect, and at any time during the course of the suspension if they believe circumstances relevant to the suspension conditions have changed and that suspension is no longer appropriate.

Suspension is not a formal misconduct outcome – and does not suggest guilt or that a finding of misconduct would be made.

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

The officer should be told exactly why he/she is being suspended, or being moved to other duties, and this should be confirmed in writing within **3 working days** of suspending or redeploying the officer. If suspension is on public interest grounds, it should be clearly explained, so far as possible, what those grounds are.

The Standards of Professional Behaviour continue to apply to police officers who are suspended from duty, and the Appropriate Authority can impose such conditions or restrictions on the officer concerned as he/she considers reasonable e.g. restricting access to police premises, or police social functions.

The suspension conditions must be reviewed on receipt of representations from the officer concerned or his/her police friend, and at least every four weeks (or 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 officer must be informed in writing of the reasons why within **3 working days** of the review.

The officer will remain suspended until;

- the suspension conditions are no longer satisfied
- it is decided that the conduct of the officer will not be referred to misconduct proceedings or a special case hearing
- the misconduct proceedings have concluded
- the officer concerned is dismissed with notice (in which case he/she will remain suspended until the end of the notice period)

Suspension must be authorised by a senior officer (i.e. police officer above the rank of Chief Superintendent) – although the decision can be communicated to the officer by an appropriate manager (i.e. a police officer or police staff manager who is at least one rank or grade above that of the officer concerned).

In cases where the IPCC are supervising, managing or independently investigating a matter, the Head of PSD will consult with the IPCC before making a decision whether to suspend or

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not; and before making the decision to allow a police officer to resume his/her duties following suspension.

The decision whether to suspend an officer or not rests with the Appropriate Authority, and the IPCC are responsible for ensuring that he/she is supplied with sufficient information to enable them to effectively review the need for continuing the suspension.

(The Police Authority is responsible for dealing with the suspension of a senior officer.)

Managing attendance

All police personnel have a responsibility to achieve and maintain good levels of attendance, and managers will maintain or facilitate regular contact with officers who are absent from work.

Absences related to sickness, and which affect an officer's ability to perform the duties of their rank or role to a satisfactory standard, would normally be dealt with under the Unsatisfactory Performance/Attendance FPD.

Other forms of absence, not related to sickness, may be dealt with under the misconduct procedures e.g. where an officer's absence is unexplained or unauthorised; or where frequent absences or lateness occur and there are no underlying sickness issues.

Fairness at Work

Line Managers are responsible for the performance of their team members, and it is their responsibility to ensure that their staff are appropriately trained and developed to meet the requirements of their role. This involves seeking feedback on the performance of members of their team and where appropriate discussing areas for improvement. Challenging misconduct in an appropriate manner does not constitute bullying.

If an officer believes he or she is being unfairly treated during the formal stages of the misconduct process, they may appeal against both the finding and the outcome at each stage of the misconduct procedure.

In addition, the officer may be accompanied by a police 'friend' at each stage of the formal process.

If the officer wishes to raise an issue under the 'Fairness at Work' procedure, this will be recorded by the Investigator and, if appropriate, may be included as part of the investigation. If it is not appropriate to include the matter in the investigation, it will be dealt with separately under the [Fairness at Work](#) procedure.

Appointment of the Investigator

Where the Head of PSD determines that the conduct will be investigated, the investigator will:

- have an appropriate level of knowledge, skills and experience to plan and manage the investigation
- not be an interested party
- not work directly or indirectly under the management of the officer concerned

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The purpose of the investigation is to

- gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct
- assist the Head of PSD to establish whether, on the balance of probabilities, based on the evidence and taking into account all the circumstances, there is a case to answer in respect of misconduct or gross misconduct, or whether there is no case to answer
- identify any learning for the individual or the organisation

The Head of PSD will ensure that a proportionate and balanced investigation is carried out as soon as possible after any misconduct is alleged or suspected, and that the investigation is carried out as quickly as possible allowing for the complexity of the case.

An investigation into a complaint is not automatically an investigation into whether the officer has breached the Standards of Professional Behaviour, but an investigation into the circumstances that led to the complaint or allegation.

The Investigator will keep the officer, their police friend and in the case of an external complaint, the complainant informed of the progress of the investigation within at least **28 days** from the start of the investigation, and thereafter within at least **28 days** of the last notification.

Notice of Investigation

As soon as reasonably practicable, the Investigator will give the officer concerned written notice of the investigation by issuing a Regulation 15/14A notice (PSD2) - (unless he/she considers that to do so might prejudice any investigation of the matter).

The notice will:

- be in writing
- describe the conduct that is the subject matter of the allegation and how the conduct is alleged to fall below the Standards of Professional Behaviour
- give the Head of PSD's assessment as to whether the conduct, if proved, would amount to misconduct or gross misconduct
- state that there is to be an investigation into the matter, and the name of the Investigator
- explain that if the case was to be referred to misconduct proceedings – whether it would be likely to be a Misconduct Meeting or a Misconduct Hearing, and the reason for this
- explain that if the likely form of the misconduct proceedings changes, further notice (with reasons) will be given
- informing the officer that he/she has the right to seek advice from their staff association or any other body, and to be accompanied by a police friend to any interview or meeting forming part of the investigation or misconduct proceedings
- of the right to legal representation (where appropriate)
- of the right to make representations to the investigator
- informing him/her that whilst he/she does not have to say anything, it may harm his/her case if he/she does not mention when interviewed or when providing any information under Regulations 16(1), or 22(2) or (3) something which he/she later relies on in any misconduct proceedings or special case hearing or at an appeal meeting or appeal hearing.

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- given to him/her in person or left with someone at, or sent by recorded delivery to, his/her last known address, or in the case of the written notice of investigation (Regulation 15/14A Notice – PSD2) given to the officer concerned by his/her police friend (where the police friend has agreed with the Appropriate Authority to deliver the notice)

Representations to the Investigator

The officer may provide a written or oral statement to the Investigator within **10 working days** of receipt of the written notice of the investigation (unless this period is extended by the Investigator).

In addition, the officer or his/her police friend may:

- provide any other relevant documents relating to the matter under investigation, and
- suggest particular lines of inquiry to be pursued or witnesses to be interviewed

The Investigator will consider such statements, documents and suggestions, and make a record of having received them. The Investigator will document any decisions taken in relation to the information supplied by the officer concerned or his/her police friend.

The consequence of failing to make these representations is that an inference may be drawn from any failure to mention something which is later relied upon.

Interviews during the Investigation

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

Where the Investigator wishes to interview the officer, he/she will agree a date and time for the interview with the officer concerned.

If a date and time is not agreed, the Investigator will specify a date and time and notify the officer in writing. If the officer and his/her police friend are not available at that time, the officer may propose a reasonable alternative time (to fall before the end of the period of **5 working days** beginning with the first working day after the day specified by the Investigator) – in which case the interview must be postponed to the time proposed by the officer concerned.

The date, time and place of the interview will be confirmed to the officer in writing and in advance of the interview the Investigator will provide the officer with such information as the Investigator considers appropriate in the circumstances of the case to enable the officer to prepare for the interview.

The officer is required to attend the interview.

The police friend may not answer any questions asked of the officer concerned during the interview.

Interviews may be electronically recorded, in which case the person being interviewed will be given a copy of the interview on request. If the interview is not electronically recorded, a written record or summary of the discussion must be given to the person being interviewed.

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After the investigatory interview, the officer concerned will be given the opportunity to check that he or she agrees with the summary as an accurate record of what was said, and sign and return a copy to the Investigator. Where an officer refuses or fails to exercise their right to agree and sign a copy, this will be noted by the Investigator.

An agreed written record of the information supplied will normally be sufficient at the interview for low level misconduct investigations (rather than the criminal style witness statements taken for criminal investigations and complex misconduct or gross misconduct investigations).

Where the officer is on certificated sick leave, and there is a need to interview them, advice should be sought from the Occupational Health Department to establish if the officer is fit for interview. (It may be that the officer is not fit for normal duty, but is perfectly capable of being interviewed.) Alternatively the officer concerned may provide a written response to the allegations within a specified period by answering questions posed by the Investigator.

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

Where the matter to be investigated involves both criminal and misconduct allegations, it should be made clear to the officer concerned at the start of the interview whether he or she is being interviewed in respect of the criminal or misconduct allegations. Careful consideration will also be given as to how the information provided by the officer in each interview is treated to ensure that the information collected is admissible during the relevant proceedings.

Searches of Property and Monitoring of Systems during an Investigation

As part of an investigation Norfolk Constabulary may conduct searches of vehicles, buildings, offices, lockers, desks, correspondence trays and any other property owned, occupied or used by Norfolk Constabulary.

Also as part of any such investigation Norfolk Constabulary may monitor and interrogate telephone (landline and mobile), airwave, e-mail, instant messenger and internet traffic data for the purposes specified in the [Communications FPD](#).

For the purposes of maintaining your own personal privacy, you need to be aware that such monitoring or searches might reveal personal data about you. By using the Force's facilities for your personal use you consent to our processing any personal data about you which may be revealed by such monitoring or searches.

Report of Investigation

If, during an investigation, it appears to the Investigator that a criminal offence may have been committed by the officer, or that they have behaved in a manner that would justify disciplinary proceedings, they will certify the investigation as one subject to special requirements under paragraph **19A of Schedule 3 of the 2002 Act**.

In such case, the Investigator must, as soon as reasonably practicable, forward their report to the Head of Professional Standards who will make a severity assessment as to whether the conduct, if proved, would amount to Misconduct or Gross Misconduct, and the form the disciplinary proceedings would be likely to take i.e. a Misconduct Meeting or Misconduct Hearing.

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In all other cases on completion of the investigation, the Investigator will submit a written report to the Head of PSD as soon as practicable. (PSD 5)

The report will:

- provide an accurate summary of the evidence
- attach or refer to any key relevant documents, and
- indicate the Investigator's opinion as to whether there is a case to answer in respect of Misconduct or Gross Misconduct, or whether there is no case to answer, giving reasons

If at any time during the investigation the Investigator believes that the 'special conditions' are satisfied, whether or not the investigation is at an end they will submit to the Head of PSD.

- a statement of their belief and the grounds for it, and
- a written report on the investigation to that point

The Appropriate Authority is responsible for determining if the 'special conditions' are satisfied and, if appropriate, he/she will certify the case as a Special Case, and refer it to a Special Case Hearing.

Based on the report, the Head of PSD will determine whether, on the balance of probabilities, there is a case of misconduct to answer (or not). In matters involving a public complaint, this decision will be notified to the complainant and be subject to a 30 (28+2) day appeal period by the complainant to the IPCC.

Conducting investigations where there are possible outstanding criminal proceedings (The matter is sub judice)

Where there are possible or outstanding criminal proceedings, these will not normally delay misconduct proceedings or a Special Case Hearing, unless it is decided that such action is likely to prejudice the outcome of the criminal case. If there is any doubt, advice will be sought from the Crown Prosecution Service (CPS) or other prosecuting authority.

Where it is determined that such prejudice would result, then this decision will be kept under regular review to avoid any unreasonable delay to the misconduct proceedings.

The presumption is that action for misconduct should be taken prior to, or in parallel with, any criminal proceedings.

If a witness is to appear at a misconduct meeting/hearing, and is also potentially a witness at the criminal trial, the Appropriate Authority must consult with the CPS and, having considered their views, decide if there is a real risk of prejudice to the criminal trial if the misconduct meeting/ hearing proceeds.

(Note: A misconduct meeting/hearing is concerned with whether the officer concerned breached the Standards of Professional Behaviour, and not whether the officer has committed a criminal offence).

The decision to proceed with the misconduct meeting/hearing rests with the Appropriate Authority, subject to any direction given by the IPCC.

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The CPS or prosecuting authority will be informed of the outcome of the misconduct meeting/hearing as soon as practicable.

Formal action for Misconduct

There are two types of formal misconduct proceedings:

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**.

Misconduct Hearing – for cases where there is a case to answer in respect of **gross misconduct**, or where the 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 a misconduct hearing is **dismissal**.

The Professional Standards Department must be consulted before the formal misconduct procedures are used to ensure that there are no other matters to be considered prior to any investigation.

The purpose of the formal misconduct proceedings is to:

- establish the facts underlying the allegation
- deal with cases of misconduct in a timely, proportionate and effective way, in order to command the confidence of the police service and the public
- identify any underlying causes or welfare considerations
- identify any learning opportunities for the individual or the organisation

Following the initial assessment, if the Head of PSD determines that management action is not appropriate to deal with the alleged breach of the Standards of Professional Behaviour, he/she will further determine if the matter constitutes Misconduct or Gross Misconduct.

If the Head of PSD determines that the matter constitutes Misconduct, he/she will initiate a proportionate investigation to be carried out by an appropriate investigator.

If the Head of PSD determines that the matter constitutes Gross Misconduct (or is a particularly complex misconduct issue), he/she will initiate a full investigation to be carried out by an appropriate investigator.

The Head of PSD will determine that the matter constitutes Gross Misconduct if the officer concerned has received a final written warning within the 18 months prior to the severity assessment, or if the IPCC has so directed for the case.

Persons conducting Misconduct Meetings and Misconduct Hearings

Where a case is referred to a Misconduct Meeting, the meeting will be conducted by a person who is not an interested party and

- is an officer who is at least one rank higher than the officer concerned, or
- a police staff member who is more senior than the officer concerned, or

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Protective security marking

Non-Protectively Marked

- where the officer is a Special Constable, a member of a police force and at least one rank or grade higher than the officer concerned

A police staff manager will not be appointed to conduct a Misconduct Meeting if the case substantially involves operational policing matters.

An appropriate manager, HR or PSD professional may also be appointed as an adviser to the person conducting the meeting. Their role is to advise on the procedure to be adopted. They do not form part of the decision making process, and do not receive copies of the documents circulated prior to the meeting. In addition, the adviser must be sufficiently independent from the case to avoid any suggestion of unfairness.

Where the case is referred to a Misconduct Hearing, the hearing will be conducted by a panel of 3 persons comprising:

The Chair - who will be a senior officer (i.e. officer above the rank of Chief Superintendent) or a senior HR professional.

The second panel member will be;

- where the chair is a senior officer, a police officer of the rank of Superintendent or above, or an HR professional; or
- where the chair is a senior HR professional, a police officer of the rank of Superintendent or above

The third panel member will be;

- a person selected by the Appropriate Authority from a list of candidates maintained by the Police Authority and trained in the conduct of Misconduct Hearings

The HR professional will have sufficient seniority, skills and experience to be the panel chair and will be senior in rank to the officer concerned.

The persons conducting the misconduct meeting/hearing will be provided with;

- copies of the notification of an investigation – Regulation 15/14A (PSD 2)
- the Investigator's report - or such parts as relate to the officer concerned (PSD 5)
- the documents provided by the officer in response to the notification of the misconduct meeting/hearing
- where the officer concerned does not accept that his/her conduct constituted Misconduct or Gross Misconduct or where he/she disputes any part of the case against him/her, any statements or documents that, in the opinion of the Head of PSD, should be considered at the meeting/hearing
- any other documents that the person conducting the meeting or the panel may request

The officer concerned will be supplied with the list of the documents supplied to the person conducting the misconduct proceedings, and a copy of any documents with which he/she has not already been supplied.

Procedure at Misconduct Meeting and Misconduct Hearing

The persons conducting the meeting or hearing will determine the course of the meeting/hearing in accordance with the principles of natural justice and fairness.

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Protective security marking

Non-Protectively Marked

The misconduct proceedings will not proceed unless the officer concerned has been notified of their rights to representation by a police friend or relevant lawyer (as appropriate). (See [‘Representation at misconduct meetings and hearings’](#))

The persons conducting the Misconduct Meeting or Misconduct Hearing will have read the Investigator’s report and the response from the officer concerned, and any representations made by the officer or his/her friend (or legal representative in the case of a Misconduct Hearing). They will also have had an opportunity to read any other documents submitted by the officer concerned.

The purpose of the meeting/hearing is to hear the evidence of the alleged misconduct and to give the officer the opportunity to put forward his/her views. The persons conducting or chairing the meeting/hearing will:

- explain to the officer concerned the reasons why their case has been referred to a misconduct meeting/hearing
- provide the officer concerned with the opportunity to make representations in response
- provide his or her police friend (if he or she has one) with an opportunity to make representations
- provide his or her legal representative (if he or she has one) with an opportunity to make representations
- listen to what the officer (and his or her representative) has to say and comment as appropriate
- determine whether any questions should or should not be put to a witness

and, where the officer has admitted misconduct:

- allow the officer to put forward any factors they wish to be considered in mitigation

If information emerges which needs to be checked by the person conducting or chairing the misconduct proceedings, the meeting/hearing may be adjourned whilst this is done.

Having considered any representations by the officer concerned and/or his or her police friend or legal representative, the person conducting or chairing the meeting/hearing will review the facts of the case and decide whether, on the balance of probabilities, (or because the officer concerned admits it is the case) the conduct of the officer constituted Misconduct (in the case of a Misconduct Meeting) or Gross Misconduct (in the case of Misconduct Hearing) or not.

In the case of a Misconduct Hearing, any decision will be based on a majority (with the Chair having the casting vote if necessary). The panel will not indicate whether the decision was taken unanimously or by majority.

The person or persons conducting the meeting/hearing will;

- decide if the conduct of the police officer fell below the Standards of Professional Behaviour based on the balance of probabilities and having regard to all the evidence and circumstances
- inform the officer concerned of their decision and their reasons
- inform him or her of the disciplinary action they will be taking
- inform him or her of their right to appeal

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A record of the proceedings at the meeting/hearing will be taken and, in the case of a Misconduct Hearing, this will be by means of a verbatim record (by tape recording or any other recording method).

Attendance of others at a misconduct meeting or hearing

Misconduct proceedings will normally be held in private, but subject to the discretion of the person conducting or chairing the meeting/hearing, may be attended by witnesses, the IPCC, the complainant or other interested persons.

Where it appears to the person conducting or chairing the misconduct meeting/hearing that any person in giving evidence may disclose information which, in the public interest, ought not to be disclosed to any person attending the meeting/hearing, he/she shall require such persons to withdraw while the evidence is given.

In all cases the person conducting or chairing the misconduct proceedings will record the reasons why other parties are required to attend, or excluded, from the proceedings.

Witnesses

Where the officer concerned makes a request for a witness to attend the misconduct meeting/hearing, the person conducting the meeting or chairing the panel will consider that request and decide if their attendance is necessary to resolve the disputed issues in the case.

No witnesses will give evidence at a misconduct meeting/hearing unless the person conducting the meeting or chairing the panel believes that it is necessary for the witness to do so, in which case they will;

- In the case of a police officer, order that person to attend the misconduct meeting/hearing
- In any other case (e.g. police staff, member of another police force or member of the public) give notice to the witness that their attendance is necessary

Witnesses will be provided with the date, time and place of the meeting/hearing and may at the discretion of the person conducting or chairing the proceedings, be accompanied by one other person.

The person conducting the meeting/hearing will explain how the proceedings will be run. Questions to witnesses will be made through the person conducting the meeting, or the chair of the panel, who may allow questions to be asked directly if he or she feels that this is appropriate.

No witnesses will attend Special Case Hearings.

Withdrawal of case

If at any time before the misconduct meeting/hearing the Appropriate Authority directs that the case be withdrawn, the officer concerned will;

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- receive written notification, indicating whether or not no further action or management action will be taken, or whether the matter will be referred to be dealt with under the performance regulations, and
- on request, where the investigation has been completed, (and subject to the 'harm test') be sent a copy of the Investigator's report (or such parts of that report which relate to the officer concerned)

Withdrawal of the case may be appropriate where the 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.

Representation at misconduct meetings and hearings

Police Friend

Police officers have the right to consult with, and be accompanied by, a 'friend' at any misconduct investigatory interview and at all stages of the misconduct or performance proceedings.

The officer concerned may choose a police officer, a police staff member or a person nominated by their staff association to act as his/her police friend. (A person approached to be a 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, for instance if they are a witness.

At any stage of a case, up to and including a Misconduct Meeting or Misconduct Hearing, the officer concerned or his/her 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 subject to the timescales at that stage of the procedure. 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 officer concerned.

A friend who has agreed to accompany an officer is entitled to take a reasonable amount of duty time to fulfil his/her responsibilities as a friend, and should be considered to be on duty when attending interviews, meetings or hearings which form part of the proceedings under the Police (Conduct) Regulations 2008.

Where the officer is legally represented at a Misconduct Hearing or Special Case Hearing, the police friend can also attend and may confer with the officer concerned.

The police friend has no automatic right to attend the criminal interviews of an officer who is arrested in connection with a criminal offence committed whilst off duty, that has no connection with his or her role as a serving police officer. A police officer who commits a criminal offence whilst off-duty will be treated in the same way as any other member of the public for the purposes of the criminal offence.

Legal representation

The officer concerned has the right to be legally represented by a relevant lawyer of his/her choice at a Misconduct Hearing, a Special Case Hearing or a Police Appeals Tribunal.

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If the officer chooses not to be legally represented at such a hearing, he/she may be dismissed or receive any other outcome of that hearing without being legally represented.

Where the officer has the right to be legally represented, and chooses not to be, he/she may be represented at misconduct proceedings, a Special Case Hearing or an appeal meeting by a police friend.

The Appropriate Authority may be represented by a relevant lawyer at a Misconduct Hearing, a Special Case Hearing and a Police Appeals Tribunal (whether or not the officer concerned chooses to be legally represented). In all other cases the Appropriate Authority may appoint a police officer or police staff member of the force to represent them.

The Independent Police Complaints Commission

In the case of a public complaint, where a misconduct or gross misconduct issue emerges which is not directly linked to the complaint, the Force will progress with the Misconduct Meeting or Misconduct Hearing in accordance with the assessment made by the Head of PSD.

Where a gross misconduct issue is the result of a public complaint and is referred to a Misconduct Hearing or a Special Case Hearing, the hearings will proceed without waiting for the complainant to appeal.

If the matter is referred to a Misconduct Meeting, the meeting will not proceed before being notified by the IPCC that the complainant has decided not to appeal. (The complainant has **30 (28+2) days** to appeal, beginning from the day after they are notified of the outcome of the investigation).

Where the IPCC has supervised, managed, conducted an independent investigation or directed that the matter be referred to a misconduct meeting/hearing, the IPCC may attend the proceedings to make representations.

In such a case, the IPCC will inform the complainant and any interested person; and the person conducting or chairing the meeting/hearing will notify the officer concerned.

Where the IPCC attends a Misconduct Hearing, they may instruct a relevant lawyer to represent them.

Where a Misconduct Hearing arises from an independent investigation by the IPCC, the IPCC may direct, because of its gravity or other exceptional circumstances, it would be in the public interest for the whole or part of the hearing to be held in public. In such cases the IPCC will consult with the Appropriate Authority, the officer concerned, the complainant or interested person, and any witnesses, and notify them in writing of the reasons for that direction within **5 working days**.

The Investigator

The investigator, or a nominated person, will attend the meeting/hearing on the request of the person conducting or chairing the proceedings.

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If a nominated person attends, they will have sufficient knowledge of the investigation of the case to be able to assist the person conducting or chairing the meeting/hearing.

The Complainant or other interested person

In the case of a misconduct matter which is the subject of a complaint, the Head of PSD will inform the complainant and any interested person of the date, time and place of the misconduct meeting/hearing.

The complainant, or any interested person, has the option to attend the misconduct meeting/hearing (subject to the harm test), up to the point at which the person conducting or chairing the proceedings announces the finding, but not including the point at which they consider the mitigation or the outcome.

The complainant and interested person may each be accompanied by one other person, who may sit with them and support them, but has no other role in the proceedings. In the case of special need, they may be accompanied by one further person to accommodate that need.

If the complainant, interested person, or any person accompanying them, is required to give evidence as a witness at the misconduct meeting/hearing, they will not be allowed to attend the meeting/hearing before that evidence is given.

The person conducting or chairing the misconduct proceedings has the discretion to put any questions to the officer concerned at the request of the complainant or interested person.

Disclosure of information (the 'harm' test)

The purpose of the 'harm test' is to ensure that information in documents is not be supplied to the officer concerned if the Appropriate Authority considers that preventing disclosure is:

- necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings
- necessary in the interest of national security
- necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders
- justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegation against the officer concerned
- necessary and proportionate for the protection of any informant or witness, or
- otherwise in the public interest

Factors which may justify the non disclosure of information are:

- the information is relevant to, or may be used in, any actual or prospective disciplinary proceedings or special case proceedings concerning a police officer other than the officer concerned, or a police staff member
- the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings
- the disclosure of that information may prejudice the welfare or safety of any third party
- the information constitutes criminal intelligence

The Appropriate Authority will have to be satisfied that disclosure of the information would cause a significant adverse effect.

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Non attendance of officer at misconduct meetings and hearings

The officer concerned will attend the Misconduct Meeting or Misconduct Hearing. However, there may be occasions when an officer is unable to attend, e.g. when they are absent through sickness. In such cases a short delay may be reasonable to allow him/her to attend. If this is not possible the persons conducting or chairing the proceedings may allow the officer to participate by video link or other means.

Where the officer concerned fails to attend a Misconduct Meeting he/she may be represented by their police friend.

Where the officer concerned fails to attend a Misconduct Hearing, he/she may be represented by their police friend or their legal representative.

Where the officer is allowed to participate in the misconduct proceedings by video link or other means, his/her police friend (or relevant lawyer in the case of a Misconduct Hearing) may attend the meeting/hearing.

Where the officer is detained in prison or other institution, there is no requirement to have the officer produced for the purposes of the Misconduct Meeting or Misconduct Hearing.

Where the officer fails to attend a meeting/hearing, the meeting/hearing may proceed and be concluded in the absence of the officer concerned, whether or not he/she has representation.

Arrangement, postponement and adjournment of meetings or hearings

The manager who is responsible for conducting or chairing the misconduct meeting/hearing (or an appeal) will agree a date and time for the meeting/hearing with the officer concerned. Where agreement cannot be reached, the manager will specify the date and time for the meeting/hearing. If the officer and/or his/her friend are not available at the date or time specified by the manager, the officer may propose an alternative. Provided the alternative time is reasonable and falls within a period of **5 working days** beginning with the first working day after the date specified by the manager, the meeting/hearing must be postponed to that time.

The manager may postpone or adjourn a meeting/hearing or an appeal to a specified later time or date if it appears to him/her necessary or expedient to do so, and notify the officer concerned and others attending the meeting/hearing of his/her reasons for doing so, and the revised time and place for the meeting/hearing.

The misconduct meeting/hearing will not be adjourned solely to allow any witnesses, the complainant or any interested persons to attend.

If information which needs to be checked emerges during the proceedings, the meeting/hearing may be adjourned whilst this is done.

Any document or material that was not submitted in advance of the meeting/hearing may be considered at the proceedings at the discretion of the manager or the chair of the meeting/hearing. The presumption is that such documents or material will not be permitted unless it can be shown that they were not previously available to be submitted in advance. Where the document or material is permitted to be considered, a short adjournment may be

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necessary to enable the manager, panel or the officer concerned to read the document or material and consider its implications.

Where an officer has informed the manager conducting or chairing the proceedings in advance that he/she is unable to attend the meeting/hearing due to incapacity or some other unavoidable reason, they may allow the officer to participate in the meeting/hearing via video link or other means. However, where it appears that the officer would not be able to properly participate in the proceedings in such a way, the manager conducting or chairing the meeting/hearing may adjourn it.

Joint meetings or hearings

Where two or more officers are to appear before a Misconduct Meeting or Misconduct Hearing in relation to the same incident, it will normally be considered necessary to deal with all the cases together in order to disentangle the various strands of action and therefore a joint meeting/hearing will be appropriate.

Where a joint meeting/hearing is held, it will be the responsibility of the person conducting or chairing the proceedings, once the outline of events is clear, to consider each officer individually and deal with him or her appropriately.

An officer may request a separate meeting/hearing if he or she can demonstrate that there would be a real risk of unfairness to that officer if his/her case was dealt with in a joint meeting/hearing.

Notification and timing of misconduct proceedings

Where the Head of PSD determines that there is a case to answer in respect of misconduct a misconduct meeting/hearing will be arranged.

In the case of a public complaint, the Head of PSD will ensure that no action is taken (e.g. taking management action, notifying the officer that there is no case to answer or serving the documents on an officer informing him/her that his/her case has been referred to misconduct proceedings) until the **28(28+2) day** period that the complainant may appeal has elapsed, and the IPCC has confirmed that no appeal has been made.

(NB. there will be no such delay in cases where the Appropriate Authority has determined that the case should be dealt with as Gross Misconduct or a Special Case and has referred the matter to a Special Case Hearing).

The officer concerned will receive written notice of the Misconduct Meeting or the Misconduct Hearing (Regulation 21) which will;

- describe the conduct that is the subject matter of the case, and how that conduct is alleged to amount to misconduct or gross misconduct (describing the particulars of the behaviour which is alleged to have fallen below the standards)
- provide the name of the person appointed to conduct the meeting/hearing
- explain that the officer may object to any person who has been appointed to conduct the misconduct proceedings or to advise the person conducting the proceedings
- explain the right to be accompanied by a police friend or to be legally represented (in the case of a Misconduct Hearing)

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- include copies of any statements he/she has made to the Investigator during the course of the investigation
- include copies of the Investigator's report, or parts of the report that relate to him/her (subject to the 'harm' test)
- include any other relevant statements or documents gathered during the course of the investigation and, as soon as practicable thereafter
- provide the names of any persons appointed to advise the person(s) conducting the meeting/hearing
- provide the names of the persons comprising the panel (in the case of a Misconduct Hearing)

The officer may object to the person appointed to conduct the meeting/hearing, members of the panel and the person appointed to advise the person(s) conducting the meeting/hearing within **3 working days** of being notified of the person's name, and if the Head of PSD upholds the objection, the person to whom the officer objects will be replaced. The Head of PSD will, as soon as reasonably practicable after the appointment, notify the officer of the name of the new panel member or the adviser to the person or persons conducting the misconduct proceedings. The officer has a further opportunity to object to the new appointments no later than **3 working days** after receipt of notification.

A **Misconduct Meeting** will take place no later than **20 working days** after the date on which the documents and material were supplied to the officer concerned.

A **Misconduct Hearing** will take place no later than **30 working days** after the date on which the documents and material were supplied to the officer concerned.

The person conducting or chairing the meeting/hearing may extend these time periods where they consider that it would be in the interests of justice to do so; in which case he/she will provide written notification of his/her reasons for doing so to the Head of PSD, the officer concerned and (where applicable) his/her police friend.

The person conducting or chairing the meeting/hearing shall, if reasonably practicable, agree a date and time for the misconduct meeting/hearing with the officer concerned. If this is not possible, the person conducting or chairing the proceedings will specify a date and time for the meeting/hearing.

If the officer and/or his/her police friend will not be available at that time, and the officer proposes a reasonable date and time before the end of the period of **5 working days** beginning with the first working day after the day specified by the person conducting or chairing the proceedings, the meeting/hearing must be postponed to the time proposed by the officer concerned.

The officer concerned will be given written notice of the date, time and place of the misconduct proceedings.

In cases involving a public complaint, the time limit when a Misconduct Meeting or Misconduct Hearing needs to be held will not start until either the time for the complainant to appeal has elapsed without an appeal being notified; or after the IPCC has made a determination in response to an appeal by a complainant. (Therefore papers will not be served on the officer concerned until the **30(28+2) day** appeal time has elapsed and the IPCC have confirmed that an appeal has not been made, or after the IPCC has made a response to an appeal).

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Procedure on receipt of Notice of a Misconduct Meeting or Misconduct Hearing (Regulation 22)

The officer concerned will respond to the notification of a misconduct meeting/hearing within **14 working days** (unless this period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances) stating;

- whether or not he/she accepts that their conduct constitutes Misconduct or Gross Misconduct
- where he/she accepts that his/her conduct constitutes Misconduct or Gross Misconduct, any submission he/she wishes to make in mitigation
- where he/she does not accept that his/her conduct constituted Misconduct or Gross Misconduct, or disputes part of the case against him/her, written notice of
 - the allegations he/she disputes and his/her account of the relevant events
 - any arguments on points of law he/she wishes to be considered by the person(s) conducting the misconduct proceedings
 - any request he/she has for the attendance of witnesses at the misconduct meeting/hearing

The officer concerned must also provide copies of any documents he/she intends to rely on at the misconduct meeting/hearing.

In cases where there are submissions from the police friend (or the officer's legal representative) based on the way the procedures have been applied during the course of the investigation, or other legal arguments, these should be submitted to the person conducting or chairing the proceedings to deal with in advance of the misconduct meeting/hearing.

Outcomes of a Misconduct Meeting or Misconduct Hearing

Where the person(s) conducting the misconduct proceedings find the conduct amounts to misconduct (but not gross misconduct) they may record a finding of misconduct, but take no further action.

Disciplinary action that may be taken by the person conducting a Misconduct Meeting is:

- Management Advice
- Written Warning
- Final Written Warning

Disciplinary action that may be taken by the persons conducting a Misconduct Hearing is:

- Management Advice
- Written Warning
- Final Written Warning
- Dismissal with Notice
- Dismissal without Notice

The disciplinary action will have effect from the date on which it is notified to the officer concerned and, in the case of Dismissal with Notice, the panel will decide the period of notice to be given (subject to a minimum period of 28 days).

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Where a Written Warning is given, the officer will be told that any future misconduct may result in further action being taken which may lead to a Final Written Warning. A Written Warning will be put on the officer's personal file and will remain live for **12 months** from the date the warning is given. If any improvement action is required, this will be specified, with timescales.

Where a Final Written Warning is given, the officer will be told that any future misconduct may result in further action being taken, which may lead to Dismissal. A Final Written Warning will be put on the officer's personal file and will remain live for **18 months** from the date the warning is given. If any improvement action is required, this will be specified, with timescales.

Were there is a finding of Gross Misconduct, and the panel at the Misconduct Hearing decide that the officer concerned shall be dismissed, the dismissal will be without notice and without pay in lieu of notice.

Where a case has been referred to a Misconduct Meeting, and the officer concerned has a live Written Warning, the person conducting the meeting cannot impose another written warning. They will have to decide whether to take no action, give management advice, or if they determine that a written warning is appropriate, they will impose a Final Written Warning.

Where a case has been referred to a Misconduct Hearing on the grounds that the officer has a live Final Written Warning, and the officer admits or is found to have committed a further act of misconduct, the persons conducting the hearing cannot impose another written or Final Written Warning. They will have to decide whether to take no action, give management advice or if they determine that a written warning or a Final Written Warning is appropriate, they will dismiss the officer unless they are satisfied that there are exceptional circumstances that warrant the officer concerned remaining in the police service (in such a case Dismissal with Notice may be appropriate).

Where it is determined that such exceptional circumstances exist, the persons conducting the hearing will extend the current Final Written Warning for a further **18 months** from the date of the hearing. These 18 months will be added to any unexpired time on the current Final Written Warning. (An extension to a Final Written Warning can only be given on one occasion).

Exceptional circumstances may include where the misconduct which is the subject of the latest hearing pre-dates the misconduct for which the officer received his/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.

Where the question of disciplinary action is being considered, the person or persons conducting the misconduct meeting/hearing will:

- have regard to the record of police service of the officer concerned, as shown on his/her personal record, and may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question, and
- give the officer concerned, or his/her police friend (or his/her relevant lawyer in the case of a Misconduct Hearing), and the Appropriate Authority the opportunity to make oral or written representations

The officer will be informed of the finding and of any disciplinary action imposed as soon as practicable and, in any event, be provided with written notice of the finding and the outcome

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and a summary of the reasons within **5 working days** of the conclusion of the misconduct meeting/hearing.

The officer will also be informed of their right of appeal in writing, and the name of the person to whom an appeal should be sent.

A record of the misconduct meeting/hearing will be taken, and the officer concerned, will, on request, be supplied with a copy of the record of the proceedings.

In cases involving a public complaint, the complainant will be informed of the outcome.

Expiry of Warnings

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

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

Where an officer with a live Written Warning, or a Final Written Warning, takes a career break or has an extended period of absence (e.g. maternity, paternity, adoption leave etc), then any time on such leave will not count towards the period of the written warning. For example, if an officer has a Written Warning that has been live for 6 months, then goes on a career break for 12 months, on their return to Force they will still have 6 months before the written warning expires.

Appeal from Misconduct Meeting or Misconduct Hearing

The officer has the right to appeal against the finding and/or the outcome imposed at a misconduct meeting or hearing.

The officer concerned may appeal on the grounds that:

- the finding or disciplinary action imposed was unreasonable
- there is critical new evidence that could not reasonably have been considered at the misconduct meeting/hearing
- there was a breach of the procedures or other unfairness which could have materially affected the finding or decision on disciplinary action

The officer will give written notice of their appeal to the Head of PSD within **7 working days** for misconduct meetings and **10 working days** for misconduct hearings of receipt of the written notice of the finding and outcome of the misconduct meeting/hearing (unless this is extended by the Head of PSD for exceptional circumstances). They will specify the grounds of their appeal, with details, and whether a meeting is requested.

In the case of a misconduct meeting the Head of PSD will as soon as reasonably practicable, give the officer concerned written notice of the name of the person appointed to conduct the appeal meeting, and the name of any person appointed to advise the person conducting the appeal meeting.

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In the case of the findings and outcome of a misconduct meeting, the appeal will be determined by an officer or police staff member (who is not an interested party) at least one rank or grade higher than the officer or police staff member who conducted the misconduct meeting. (If the case substantially involves operational policing matters, the appeal will be conducted by a police officer).

An HR professional or police manager may be present to advise him/her on procedural matters.

The officer may object to the person appointed to conduct the appeal meeting or the person appointed to advise them. This objection must be made in writing to the Head of PSD no later than **3 working days** after the officer is notified of their names, and must set out the grounds of the objection.

If the Head of PSD upholds the objection, the officer will be notified in writing of the new person appointed to conduct the appeal meeting or the advisor. The officer has an opportunity to object to these new appointments no later than **3 working days** after receipt of notification.

The person appointed to conduct the appeal will decide whether the notice of appeal sets out arguable grounds for appeal. If they determine that there are no arguable grounds, then he/she will dismiss the appeal and inform the officer concerned of their reasons.

Where the person conducting the appeal determines that there are arguable grounds for appeal, then he/she will hold a meeting with the officer concerned within **5 working days** of that determination.

In the case of a Misconduct Hearing, the appeal will be determined by a Police Appeals Tribunal.

Arranging the Appeal Meeting

Where the officer concerned requests a meeting in his/her written notice of appeal, the person determining the appeal will specify a date and time for the appeal meeting.

If the officer or his/her police friend is not available at that time, and the officer proposes an alternative time that is reasonable and falls before the end of the period of **5 working days** beginning with the first working day after the day specified by the person determining the appeal, the appeal meeting must be postponed to the time proposed by the officer concerned.

The officer will be given written notice of the date, time and place of the appeal meeting, and where the misconduct meeting arose from a public complaint, the complainant or any interested person will be notified of the appeal.

The person determining the appeal will be provided with a copy of;

- the documents given to the person who conducted the misconduct meeting
- the notice of appeal given by the officer concerned
- the record of the misconduct meeting
- any critical new evidence that the officer wishes to submit in support of his/her appeal and which was not considered at the misconduct meeting

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The person determining the appeal may impose such conditions as they see fit relating to the attendance or exclusion of a complainant or interested person (who may attend as an observer up to but not including the point at which the person determining the appeal considers the question of disciplinary action).

Finding of the Appeal

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

The person determining the appeal will consider:

- whether the finding of the original Misconduct Meeting was unreasonable, having regard to all the evidence considered, or if the finding could now be in doubt due to critical new evidence which has emerged since the Misconduct Meeting
- any outcome imposed by the Misconduct Meeting which may be considered too severe or too lenient having regard to all the circumstances of the case
- whether the finding or outcome could be unsafe due to procedural unfairness and prejudice to the officer (although the person conducting the appeal must also take into account whether the unfairness or prejudice could have materially influenced the outcome)

They may then:

- confirm or reverse the decision appealed against
- deal with the officer concerned in any way in which the person conducting the Misconduct Meeting could have dealt with him/her including (unless a Final Written Warning was imposed) imposing more severe disciplinary action than that appealed against up to a maximum of a Final Written Warning

The officer will be informed in writing of the outcome of the appeal, with reasons, within **3 working days** of the determination of the appeal.

The decision of the person determining the appeal will take effect from the date of the written notice of the outcome of the Misconduct Meeting.

In cases where the IPCC made a direction to the Appropriate Authority, the IPCC will receive written notice of the determination of the appeal with a summary of the reasons.

Appeal from Misconduct Hearing (Police Appeals Tribunal)

Following a Misconduct Hearing the officer may appeal to a Police Appeals Tribunal. The Police Appeals Tribunal will consist of a Chair and 3 members appointed by the Police Authority.

The Chair will be a person selected from the ACAS Arbitration Panel, and members will be;

- a senior officer
- a member of the Norfolk Police Authority
- a retired member of a police force who, at the time of their retirement, was a member of an appropriate staff association (i.e. Superintendents' Association or Police Federation)

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Fast Track Procedures (Special Cases)

Guidance for Fast Track Procedures is set out in Appendix A.

Moving between Misconduct and Unsatisfactory Performance Procedures

It may not be apparent at the outset of an inquiry whether the matter is one of misconduct or unsatisfactory performance. It would be difficult to conduct parallel inquiries on the same matter under both procedures, and ideally it should be established at the investigation stage which procedure is appropriate.

Assessing a matter as misconduct or performance is an important distinction to make.

Misconduct procedures should be followed when dealing with behaviour falling below the standard required of a police officer, by reference to the Standards of Professional Behaviour.

The Unsatisfactory Performance Procedure exists to deal with poor performance and issues of capability, competence or attendance. Capability and competence can be measured against the activities in the officer's role profile and through the Constabulary's PDR process.

If, on investigation, a matter that appears initially to relate to misconduct turns out to be a matter relating to unsatisfactory performance, the matter should be referred to the line manager to deal with under the Unsatisfactory Performance Procedure. (See Unsatisfactory Performance – Police Officers FPD)

In very rare cases the matter may proceed to a Misconduct Meeting or Misconduct Hearing, and the persons conducting those proceedings find that the conduct of the officer amounts to unsatisfactory performance as opposed to misconduct. In such a case, the finding would be 'no case to answer' for Misconduct, and the matter would be referred back to the Head of PSD to consider if it would be appropriate to deal with the matter using the unsatisfactory performance procedure.

In making the recommendation to use the unsatisfactory performance procedure the persons conducting the Misconduct Meeting or Hearing will need to decide whether it would be a fair and reasonable exercise of their discretion to make this recommendation, taking into account such factors as;

- the impact of any delay on the officer concerned (including the impact on his/her health or career)
- whether representations had been made during the investigation that the matters under investigation concerned issues of performance as opposed to misconduct

Material gathered under the Unsatisfactory Performance procedure should not be used for the purposes of the Misconduct procedure if this means that the safeguards for officers provided in the Misconduct procedure – such as provision for formal notification – is undermined.

Competence Related Threshold Payments/Special Priority Payments

A finding or admission of misconduct at a Misconduct Meeting or a Misconduct Hearing will not automatically result in the removal of an officer's Competence Related Threshold Payment or Special Priority Payment.

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Where an officer has received a written warning or a final written warning this may trigger a review of the appropriateness of that officer continuing to receive such payments. However, the misconduct must 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.

Officers applying to transfer to another police force

Live written warnings are notifiable to the Force that the officer is applying to join. Live written warnings will transfer with the officer concerned, and the officer's conduct will continue to be assessed during the validity period of the warning.

Monitoring this policy

The application and the outcome of misconduct proceedings will be monitored, analysed and reported in line with our legal obligations under the Disability, Gender and Race Equality Schemes, the Constabulary's Diversity Strategy, Police Authority, Home Office and HMIC requirements.

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Roles and Responsibilities

Chief Constable	<ul style="list-style-type: none"> - Provides a fair, open and proportionate environment for dealing with misconduct issues to encourage learning and development - Chairs Misconduct Meetings for senior officers - Is a panel member of Misconduct Hearings for senior officers - Delegates authority to the Head of PSD to make the initial severity assessment for alleged misconduct issues - Conducts Special Case Hearings - Ensures that records are kept of all disciplinary proceedings and special case proceedings brought against every officer concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the officer concerned
Senior Officer (officers above the rank of Chief Superintendent)	<ul style="list-style-type: none"> - Provides a fair, open and proportionate environment for dealing with misconduct issues to encourage learning and development - Chairs Misconduct Hearings for officers up to the rank of Chief Superintendent - Is a panel member for a Misconduct Meeting or Misconduct Hearing for senior officers (providing they are at least one rank above the officer concerned) - Authorises the suspension of a police officer
Assistant Chief Officer (People)	<ul style="list-style-type: none"> - Provides a fair, open and proportionate environment for dealing with misconduct issues to encourage learning and development - Chairs Misconduct Hearings for officers up to and including the rank of Chief Superintendent - Maintains an overview of the effectiveness and efficiency of formal performance management procedures
Head of Professional Standards	<ul style="list-style-type: none"> - Provides specialist technical advice to Senior Management in relation to Misconduct issues - Accepts delegated responsibility from the Chief Constable in relation to misconduct issues - Ensures that the Constabulary adheres to statutory timescales - Ensures that adequate records are maintained of relevant occurrences and information received, meetings, decisions made and their reasons, and actions taken and their impact - Ensures that procedures meet the Force's commitment to all aspects of diversity and, where needed, appropriate reasonable adjustments are in place to make the processes accessible to officers with disabilities - Ensures that the misconduct process is monitored and recorded for fairness and consistency - Retains written warnings on the individual's personal file for the appropriate timescale ensuring that a copy is forwarded to the Human Resources Department as appropriate - Collates, analyses and reports on the statistics relating to all aspects of the misconduct procedures to meet the Force's legal obligations
Chair of Misconduct Hearings	<ul style="list-style-type: none"> - Makes introductions - Explains the format of the Misconduct Hearing and the reasons for the hearing - Ensures verbatim records of meetings are taken, documents decisions made and their reasons, actions taken and their impact, properly retaining records while the misconduct procedures are ongoing - Ensures that procedures meet the Force's commitment to all aspects of

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	diversity and, where needed, appropriate reasonable adjustments are in place to make the processes accessible to officers with disabilities
Superintendent/ Chief Superintendent	<ul style="list-style-type: none"> - Provides a fair, open and proportionate environment for dealing with misconduct issues to encourage learning and development - Acts as panel member for Misconduct Hearings as appropriate - Conducts Misconduct Meetings or appeals as appropriate - Ensures records of meetings are taken, documents decisions made and their reasons, actions taken and their impact, properly retaining records while the misconduct procedures are ongoing - Ensures that Force policies in relation to diversity and disability are adhered to in the course of the misconduct process.
HR/PSD Professionals (i.e. HR Advisors, senior members of PSD)	<ul style="list-style-type: none"> - Advises Line Managers as required on dealing with misconduct issues - Attends Misconduct Meetings as requested as HR/PSD representative - Ensures individual and/or witnesses are aware of welfare support available - Actions any outcomes (or reversal/reduction of outcomes) applied by the Misconduct Meetings, Misconduct Hearings or Appeals - Retains written warnings on the individual's personal file for the appropriate timescale - Retains misconduct information in line with this policy - Makes adequate records of relevant occurrences and information received, meetings, decisions made and their reasons and actions that are taken and their impact. Where possible the records should be contemporaneous and should be properly retained while the misconduct procedures are ongoing. - Ensures that Force policies in relation to diversity and disability are adhered to in the course of the misconduct process - Records details of misconduct processes in their area of responsibility to ensure fairness and consistency in the application of this policy
Investigator	<p>Police officer or police staff member with appropriate skills and experience appointed to</p> <ul style="list-style-type: none"> - investigate the case (subject to the requirements of Schedule 3 of the Police Reform Act 2002) - record oral and written statements and documents received from the officer concerned and/or their police friend - submit a report indicating whether or not there is a case to answer in respect of Misconduct or Gross Misconduct
Chief Inspector and above (dealing with a Misconduct Meeting Appeal)	<ul style="list-style-type: none"> - Provides a fair, open and proportionate environment for dealing with misconduct issues to encourage learning and development - Complies with the Force's PDR policy to monitor conduct - Ensures that Force policies in relation to diversity and disability are adhered to in the course of the misconduct process. - Conducts Misconduct Meeting Appeals adhering to agreed policies, procedures and timescales - Confirms or reverses the decisions appealed against - Issues outcomes up to final written warning - Reviews the progress of the officer with their Line Manager against any warnings issued following Misconduct Meetings - Retains records of informal action in line with this policy - Makes adequate records of relevant occurrences and information received, meetings, decisions made and their reasons, and actions that are taken and their impact. Where possible the records should be contemporaneous and should be properly retained while the misconduct procedures are ongoing.
Inspector and	<ul style="list-style-type: none"> - Provides a fair, open and proportionate environment for dealing with

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above (dealing with a Misconduct Meeting)	<p>misconduct issues to encourage learning and development</p> <ul style="list-style-type: none"> - Complies with the Force's PDR policy to monitor conduct - Ensures that Force policies in relation to diversity and disability are adhered to in the course of the misconduct process. - Conducts Misconduct Meetings adhering to agreed policies, procedures and timescales - Issues outcomes up to final written warning - Reviews the progress of the officer with their Line Manager against any warnings issued following Misconduct Meetings - Retains records of informal action in line with this policy - Makes adequate records of relevant occurrences and information received, meetings, decisions made and their reasons, and actions that are taken and their impact. Where possible the records should be contemporaneous and should be properly retained while the misconduct procedures are ongoing.
Line Manager	<ul style="list-style-type: none"> - Provides a fair, open and proportionate environment for dealing with misconduct to encourage learning and development - Maintains performance standards of their members of staff by monitoring and improving conduct effectively through regular feedback, support, coaching and training - Complies with the Force's PDR policy to assess conduct and by setting and monitoring objectives and development activities - Ensures that Force policies in relation to diversity and disability are adhered to in the course of the misconduct process. - Seeks advice from the Professional Standards Department throughout the entire misconduct process - Initiates informal/management action by gathering facts promptly when conduct issues arise, ensuring that the officer is advised and clear that the meeting is not formal action - Retains records of informal action in line with this policy - If conduct does not improve, initiates the next stage of the process in consultation with PSD professionals and 2nd Line Manager and/or senior manager - Makes adequate records of relevant occurrences and information received, meetings, decisions made and their reasons, and actions that are taken and their impact. Where possible the records should be contemporaneous and should be properly retained while the misconduct procedures are ongoing.
All Managers	<ul style="list-style-type: none"> - Where an officer works for a manager who has no direct line management responsibility for them, it is that manager's responsibility to inform the officer's Line Manager that the officer's conduct does not meet the required standard.
All Officers	<ul style="list-style-type: none"> - Maintain standards of professional behaviour - Take all reasonable steps to attend meetings and hearings as required - Answer questions openly and honestly - Adhere to time frames - If he/she wishes to appeal against the decision of a Misconduct Meeting or Misconduct Hearing, submit notification within the given timeframes - Take responsibility for their own development and improvement - Participate in open and objective discussion with their Line Manager to identify areas for improvement in their standard of professional behaviour
Police Friend	<ul style="list-style-type: none"> - Advises and represents the officer concerned throughout the proceedings (unless the officer concerned has the right to be legally represented and chooses to be so represented)

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	<ul style="list-style-type: none"> - Makes representations to the Head of PSD concerning any aspect of the proceedings - Accompanies the officer to any interview, meeting or hearing which forms part of the Police (Conduct) Regulations 2008
Legal Representative	<ul style="list-style-type: none"> - Represents an officer at a Misconduct Hearing, a Special Case Hearing, or Police Appeals Tribunal by putting the case for the officer concerned, summing up that case and responding on behalf of the officer concerned to any view expressed at the meeting - Makes representations concerning any aspect of the proceedings
Role of the representative (Police Friend / Legal Representative)	<p>At any meeting under the Police (Conduct) Regulations 2008 the person representing the officer may address the meeting in order to do any or all of the following:</p> <ul style="list-style-type: none"> - Put the case for the officer concerned - Confer with the officer (if the officer is present at the meeting or participating in it by other means eg telephone link) - Sum up the case - Respond on the officer's behalf to any view expressed at the meeting - Make representations concerning any aspect of proceedings under these Regulations - Ask questions of any witnesses (subject to the discretion of the Chair of the panel) <p>The police friend or legal representative is not there to answer questions on the officer's behalf – it is for the officer concerned to speak for him/herself when asked questions.</p>
Occupational Health and Safety	<ul style="list-style-type: none"> - Provides independent counselling and support, when required - Provides advice on disability related issues and the nature of adjustments

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Definitions

Allegation	Includes an allegation within a complaint or misconduct matter
Appropriate Authority	The Chief Constable, who may delegate any of his/her functions under the Police (Conduct) Regulations 2008 to a member of a police force of at least the rank of Chief Inspector (or police staff member of at least a similar level of seniority) NB. Except where the regulations expressly require the Chief Constable to carry out a function, all issues relating to the Misconduct process are delegated to the Head of Professional Standards.
Chief Officer	Chief Constable of Norfolk Constabulary
Complainant	A member of the public who claims to - be the person in relation to whom the conduct took place - have been adversely affected by the conduct - have witnessed the conduct
Conduct	Includes acts, omissions and statements (whether actual, alleged or inferred)
Critical Incident	Any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community.
DSI	An incident involving Death or Serious Injury.
Disciplinary Proceedings	Proceedings at or in connection with a Misconduct Meeting, Misconduct Hearing or Special Case Hearing
Fast Track (Special Case) Procedures	Where there is sufficient evidence, on the balance of probabilities that the conduct of the officer constitutes gross misconduct and it is in the public interest, if the case is found or admitted, for the officer to cease to be a member of the police service.
Gross Misconduct	A breach of the Standards of Professional Behaviour so serious that dismissal would be justified
Head of PSD	Head of Professional Standards, who may delegate his/her functions to a senior member of the Professional Standards Department of at least the rank of Chief Inspector or police staff equivalent level
HR Professional	A police officer or police staff member who has specific responsibility for personnel matters relating to members of a police force
Interested Party	A person whose involvement in the role could reasonably give rise to concern as to whether he/she could act impartially under the Police (Conduct) Regulations 2008
Interested Person	A person who has an interest in being kept properly informed about the handling of a complaint or conduct matter as defined under section 21(5) of the 2002 Act
Investigator	Person appointed to investigate the case (police officer, police staff member or some other person with the appropriate level of knowledge, skills and experience to plan and manage the investigation)
IPCC	Independent Police Complaints Commission
Management Action	Action or advice intended to improve the conduct of the officer concerned. (Management action is not a disciplinary outcome and is not disclosable to the CPS)

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Management Advice	Management Action imposed following misconduct proceedings or an appeal meeting (ie a disciplinary outcome)
Manager	Police officer or police staff member who is at least one rank or grade above that of the officer concerned (NB. a police staff manager should not be appointed to conduct a misconduct meeting if the case substantially involves operational policing matters.)
Misconduct	A breach of the Standards of Professional Behaviour
Misconduct Meeting	Meeting at which the officer concerned may be dealt with by disciplinary action up to and including a final written warning
Misconduct Hearing	Meeting at which the officer concerned may be dealt with by disciplinary action up to and including dismissal
Misconduct proceedings	A Misconduct Meeting or a Misconduct Hearing
Officer	Police officer, below the rank of Senior Officer, including Special Constables regardless of their level of seniority
Officer concerned	The police officer in relation to whose conduct there has been an allegation
Outstanding criminal proceedings	All criminal proceedings brought, which have not yet been brought to a conclusion (apart from the bringing and determination of any appeal)
Personal Record	A personal record kept under Regulation 15 of Police Regulations 2003
Police Friend	A police officer, police staff member or a person nominated by the officer's staff association who advises the officer concerned, makes representations concerning any aspects of proceedings, and accompanies the officer to any interview, meeting or hearing which forms part of any proceedings under the Police (Conduct) Regulations 2008
Police staff member	Employee of the Police Authority who is under the direction and control of a Chief Officer
Recordable Conduct	Where there is an indication that a person serving with the police may have: committed a criminal offence or behaved in a manner which would justify bring disciplinary proceedings
Senior Officer	Police officer holding a rank above that of Chief Superintendent e.g. ACPO
Special Case Hearing	Where the appropriate authority determines that the special conditions are satisfied. Unless the circumstances are inappropriate to do so, the matter will be referred to a Special Case Meeting.
Special Conditions	Where there is sufficient evidence in the form of written statements or other documents to establish, on the balance of probabilities, that the conduct of the officer concerned constituted gross misconduct, and it is in the public interest for the officer concerned to cease to be a police officer without delay
Standards of Professional Behaviour	The expectations that the police service and the public have of how police officers should behave whether on or off-duty
Unsatisfactory Performance/Attendance	An inability or failure of an officer to perform the duties of the role or rank he/she is currently undertaking to a satisfactory standard or level
Working Days	Any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales (<i>i.e. does not</i>

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<i>relate to an individual officer's shift pattern)</i>

APPENDIX A Fast Track Procedures (Special Cases)

This procedure applies where the matter has been certified as a Special Case because the 'special conditions' have been satisfied or because the IPCC has given a direction under paragraph 20H(7) of Schedule 3 to the Police Reform Act 2002.

Special conditions exist where there is sufficient evidence in the form of written statements or other documents or materials, without further evidence, to establish on the balance of probabilities that the conduct of the officer concerned constituted gross misconduct and it is in the public interest for the officer to cease to be a police officer without delay.

However, at any stage before the Special Case hearing, based on the emerging evidence from the investigation, the Appropriate Authority may direct that the case be dealt with by a Misconduct Meeting or a Misconduct Hearing (except in a case where the IPCC has directed that the matter should be dealt with as a Special Case).

There may also be cases where the special conditions are met, but it would not be appropriate to apply them, for instance, where it might prematurely alert others who are, or may be, the subject of an investigation or criminal proceedings.

Notice of referral to a Special Case Hearing

Where it has been determined that the matter will be referred to a Special Case Hearing, as soon as practicable the officer concerned will be given written notice and supplied with a copy of.

- the certificate issued under Regulation 41(4) of the Police (Conduct) Regulations 2008 certifying the case as a special case and describing the conduct that is the subject matter of the case, and how that is alleged to amount to gross misconduct
- any statements he or she has made to the Investigator during the course of the investigation
- the Investigator's report or any parts of the report that relate to the officer concerned
- any relevant statements or other documents gathered during the course of the investigation

Notice of the Special Case Hearing

The Head of PSD will specify a date for the special case hearing of not less than **10 working days, and not more than 15 working days**, from the date on which notice of referral to a Special Case Hearing is given to the officer.

The notice for the hearing will include:

- the date, time and place of the hearing
- the officer's right to be accompanied by a police friend
- the officer's right to be legally represented at the hearing

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- that if the officer chooses not to be legally represented he/she may only be represented by a police friend, and
- that if they choose not to be legally represented, they may be dismissed without being legally represented

Procedure on receipt of the notice

Within **7 working days** of the date on which the written notice and documents are sent to the officer concerned, the officer will provide written notice of

- whether or not he/she accepts that their conduct constituted gross misconduct
- where he/she accepts that their conduct constituted gross misconduct, any submission he/she wishes to make in mitigation
- where he/she does not accept that his/her conduct constituted gross misconduct
 - the allegations he/she disputes and his/her account of relevant events, and
 - any arguments on points of law that he/she wishes to be considered by the person conducting the special case hearing

At the same time the officer concerned will provide the person conducting the hearing with copies of any documents he/she intends to rely on at the hearing.

Conducting the Special Case Hearing

The Special Case hearing will be conducted by the Chief Constable (or if not available or involved in the case a Chief Constable from another Force).

The person conducting the hearing will be supplied with copies of the following papers prior to the hearing:

- the notice of referral to a Special Case Hearing
- the Investigator's report (or parts which relate to the officer concerned)
- the officer's response to the notice of the Special Case Hearing
- where the officer does not accept that his/her conduct constituted gross misconduct, any statements or documents that, in the opinion of the Investigator, should be considered at the hearing
- any other documents that the person conducting the hearing requests which are relevant to the case

The officer concerned will be supplied with a list of the documents supplied to the person conducting the hearing and a copy of any documents which have not already been supplied to them.

Attendance of the officer, and others, at the Special Case Hearing

If the officer fails to attend the hearing, his/her police friend and relevant lawyer may attend, and the hearing may proceed and be concluded in their absence.

Where the officer notifies the person conducting the hearing in advance that they are unable to attend on grounds which the person conducting the hearing considers reasonable, that person may allow the officer to participate in the hearing by video link or other means. In these circumstances their police friend, and/or relevant lawyer, may attend the hearing.

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In cases where the IPCC have given a direction on the case, the Commission may attend the hearing to make representations. Where the IPCC does attend, it may instruct a relevant lawyer to represent it and will notify the complainant and any interested person accordingly. The officer concerned will be informed by the person conducting the hearing.

The person conducting the hearing may ask the Investigator or a nominated person (ie someone who has sufficient knowledge of the investigation of the case to be able to assist the person conducting the hearing) to attend to answer questions.

Where the misconduct matter is the subject of a public complaint, the complainant (ie the originator of the complaint) or any interested person may attend the Special Case Hearing up to and including the point at which the finding is determined by the person conducting the hearing. They will not be permitted to remain in the hearing whilst character references or mitigation are being given, or the point at which the question of disciplinary action is determined. The complainant will have no right or opportunity to put questions to the officer concerned.

The Chief Constable has a duty to inform the complainant of the outcome of the hearing whether they attend or not.

(Where a complainant attends a Special Case hearing he/she is entitled to be accompanied by one other person and, if they have a special need, one further person to accommodate that need.)

Procedure at a Special Case Hearing

The person conducting the hearing may determine their own procedure, and may adjourn the hearing from time to time if it appears necessary or expedient to do so. (However, the hearing will not be adjourned solely to allow the complainant or any interested person to attend.)

At the hearing the police friend or relevant lawyer may make representations on behalf of the officer and confer with the officer concerned. They may not answer questions posed to the officer during the hearing.

The person conducting the hearing may allow any document to be considered regardless of whether a copy of it has been supplied to him/her by the officer concerned in advance of the hearing, and providing the officer concerned consents, if they have not been supplied with a copy of in advance of the hearing.

No witnesses will attend a Special Case Hearing. However, complainants and interested persons (as defined) have a right to attend.

The person conducting the hearing will review the facts of the case and decide whether or not the conduct of the officer constituted gross misconduct - on the balance of probabilities or because the officer admits that is the case.

Outcome of a Special Case Hearing

Where the person conducting the Special Case Hearing finds that the conduct of the officer constituted gross misconduct, he/she will impose disciplinary action which may be

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- a final written warning (unless a final written warning has been imposed on the officer within the 18 months prior to the assessment of the conduct which led to the Special Case hearing)
- an extension of a final written warning
- dismissal with without notice

In any other case, the person conducting the hearing will

- dismiss the case, or
- refer the case back to be treated as if it was not a 'special case'

The disciplinary action will take effect from the date on which it is notified to the officer, or in the case of an extension to a final written warning, 18 months from the date on which it would otherwise expire. (A final written warning may be extended on one occasion only.)

Where disciplinary action is being considered, the person conducting the hearing will have regard to the officer's service record, and will consider any documentary evidence which may assist them. They will also give the officer, the officer's police friend or his/her relevant lawyer, an opportunity to make oral or written representations.

The officer will be informed of the finding and disciplinary action imposed as soon as practicable, and in any event will receive written notice of the outcome and summary of the reasons within **5 working days** of the conclusion of the special case hearing.

Written notice of the outcome will include notice of the right of appeal to a Police Appeals Tribunal.

A verbatim record of the hearing will be taken, and the officer, on request, will be supplied with a copy of the proceedings.

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APPENDIX B**Guidance for Misconduct Meetings and Misconduct Hearings for officers above the rank of Chief Superintendent****Misconduct Meetings/Hearings for Chief Constables**

Where a case is referred to a Misconduct Meeting, and the officer is the Chief Constable, the proceedings will be conducted by the following panel:

- the Chair of the Police Authority (or another member of the Police Authority nominated by the Chair), and
- Her Majesty's Chief Inspector of Constabulary (HMCIC) (or an Inspector of Constabulary nominated by HMCIC)

A Misconduct Hearing will be conducted by the following panel:

- a senior Counsel selected from a list of candidates maintained by the Lord Chancellor, who will chair the panel
- the Chair of the Police Authority (or another member of the Police Authority nominated by the Chair)
- HMCIC (or an Inspector of Constabulary nominated by HMCIC), and
- a person selected from a list of candidates maintained by the Police Authority

Misconduct Meetings/Hearings for other senior officers

For other officers above the rank of Chief Superintendent, where the case is referred to a Misconduct Meeting, the proceedings will be conducted by the following panel:

- the Chief Constable (or a senior officer of at least one rank above that of the officer concerned nominated by the Chief Constable)
- the Chair of the Police Authority (or another member of the Police Authority nominated by the Chair)

A Misconduct Hearing will be conducted by the following panel:

- HMCIC (or an Inspector of Constabulary nominated by HMCIC)
- the Chief Constable (or a senior officer of at least once rank above that of the officer concerned nominated by the Chief Constable)
- the Chair of the Police Authority (or another member of the Police Authority nominated by the Chair)
- a person selected from a list of candidates maintained by the Police Authority

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 anyone appointed to advise them as soon as reasonably practical after they have been appointed.

The senior officer may object to anyone hearing or advising at a misconduct meeting/hearing, setting out clear and reasonable objections. If the senior officer submits a compelling reason why anyone should not be involved in the meeting/hearing, in the interests of fairness, a replacement should be found.

FPD Title: Misconduct – Police Officers	Policy owner: Deputy Chief Constable		Dept/Unit: Professional Standards	
Review 2011: No Changes	Implementation date	16.03.10.	Review date	02.03.13.