

Appendix A

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Proposed Draft Police Misconduct Procedure

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Introduction

1. This procedure applies to all police officers and special constables and underpins the Standards of Professional Behaviour which sets out the high standards of behaviour that the Police Service expects. Any failure to meet these standards may undermine the important work of the police service and public confidence in it.
2. The misconduct procedures provide a fair, open and proportionate method of dealing with alleged misconduct. The procedures set out below are intended to encourage a culture of learning and development for individuals and/ or the organisation. Sanction has a part, when circumstances require this, but improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the Police Service).
3. The misconduct procedure has been prepared in consultation with the Association of Chief Police Officers (ACPO), the Police Federation of England and Wales (PFEW), the Police Superintendents' Association of England and Wales (PSAEW), the Chief Police Officers Staff Association (CPOSA), the Association of Police Authorities (APA), Her Majesty's Inspectorate of Constabulary (HMIC), the Independent Police Complaints Commission (IPCC) and the Home Office. A valuable source of information and advice has been provided by the Advisory Conciliation and Arbitration Service (ACAS) and this procedure is based on the ACAS Code of Practice on Disciplinary and Grievance procedures.
4. The police misconduct procedures are designed to reflect what is considered to be best practice in other fields of employment while recognising that the Office of Constable is unique. The Police Service is committed to ensuring that the procedure is applied fairly to everyone.
5. For the new system to work as intended and for police officers to have confidence that they will be dealt with fairly and impartially it will be important that managers understand their responsibility to respond to, and deal promptly and effectively with, poor behaviour and complaints about conduct from members of the public. It is a key responsibility of all managers to understand and apply the procedure in a fair, proportionate and timely manner.
6. The police service will support any manager who has exercised his or her judgement reasonably and adhered to the guidance provided.
7. Where the conduct is linked to a complaint, the appropriate authority is required to follow the provisions in the Police Reform Act 2002, the

accompanying regulations and IPCC statutory guidance which set out how complaints by members of the public are to be dealt with.

8. A flow chart showing the misconduct procedure can be found at Annex A.

Principles

9. The following principles apply:
 10. In the interests of fairness, managers in the police service, those in Professional Standards Departments (PSD) and others involved in the process (such as the IPCC when a determination is made in respect of misconduct or gross misconduct) must act in a way which an objective observer would consider reasonable. Examples include:
 - Being clear about the grounds for believing that misconduct took place;
 - Ensuring that written notification to inform the police officer that there is an investigation into his or her potential breach of the Standards of Professional Behaviour is given as soon as is practicable
 - Ensuring that the police officer is aware of his or her right to be accompanied at investigative interviews and misconduct meetings;
 - Giving proportionate and balanced investigative effort into what happened;
 - Conducting the misconduct procedure properly;
 - Ensuring that the level of any outcome imposed and any related remedial action, taking into account all the circumstances (including the nature of the working environment) is proportionate and fair in the circumstances.
 11. In the interests of justice and fairness, all misconduct matters should be handled as speedily as possible while maintaining confidence in the process.
 12. The misconduct procedure should be applied fairly in a non-discriminatory way.
 13. The misconduct procedures should be applied in a non-adversarial way.
 14. All misconduct matters must be handled in the strictest confidence (subject to the disclosure process in the Police Reform Act 2002).
 15. Except in gross misconduct cases no police officer will be dismissed for a first breach of the Standards of Professional Behaviour.
 16. Any police officer who is subject to action for misconduct has a right of appeal against the decision and any outcome.

17. A police officer may seek legal advice at any time subject to constraints in the procedure. Police officers have the right to be legally represented at Level 2 meetings and Level 2 appeals.

The Misconduct Procedure

Assessment Stage

The assessment stage is a two stage process:

Step 1- Initial assessment- (Is it a conduct matter?)

The purpose of the initial assessment is to:

- **Ensure a timely response to a complaint or issue of conduct**
- **Ensure that the most appropriate procedures are used.**
- **Identify the police officer subject to the report, complaint or allegation and to eliminate those not involved.**

18. The appropriate authority (as defined in Part 2 Police Reform Act 2002) must ensure that where a report, complaint or allegation is made it is assessed. A decision must be made whether the matter is potentially one of conduct (including potential criminality), unsatisfactory performance, grievance or a matter of direction and control.
19. Where a matter arises from a public complaint or there is evidence of a recordable conduct matter, a determination should firstly be made as to whether the matter will be recorded (see IPCC Statutory Guidance). The appropriate authority will refer all cases which are required to be referred to the IPCC under the Police Reform Act 2002. In these cases the complainant's rights of appeal under the Police Reform Act (see IPCC Statutory Guidance) mean that any assessment can only be provisional. A matter arising under the Police Reform Act 2002 may also be the subject of a dispensation application (see IPCC Statutory Guidance).
20. The assessment should be made by an appropriate manager (See Annex C). The assessor can always consult the Professional Standards Department or Human Resources Department for assistance.
21. If it is not possible to make an immediate assessment a process of fact finding should be conducted only to the extent that it is necessary to determine which procedure should be used and to identify the police officer concerned. A formal investigation affords the police officer certain safeguards

in the interests of fairness. The initial assessment and in particular fact finding should not go so far as to undermine these safeguards.

22. Even if the assessor has decided that the matter is not potentially one of misconduct he or she should consider whether there are any developmental or organisational issues which may need addressing by the individual or the organisation.
23. Useful definitions can be found at Annex B to assist the assessor in making the initial assessment.

Step 2- Severity assessment- (Is the matter potentially misconduct or gross misconduct?)

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

- Allow the police officer subject to the misconduct procedures to have an early indication of the possible outcome if the misconduct alleged is proven or admitted.**
- Give an initial indication of how the matter should be handled (for example, locally or by the PSD).**

24. Where a report, complaint or allegation is made which indicates that the conduct of a police officer did not meet the standards set out in the Standards of Professional Behaviour, the appropriate authority (or the IPCC where the IPCC decides to supervise, manage or independently investigate a case referred to it) must decide whether, if proven or admitted, the allegation would amount to misconduct or gross misconduct.
25. A definition and examples of gross misconduct can be found at [Annex B](#).
26. The initial assessment is important so that the police officer concerned knows the likely outcome if the misconduct is proven or admitted and how the matter will be handled.
27. If the initial assessment has been made incorrectly or if new evidence emerges, then a fresh assessment can be made. The matter may be moved up to a level of gross misconduct or down to a level of misconduct. In the interests of fairness to the police officer, the rationale for all decisions made at the initial assessment stage and at any subsequent reassessment must be clearly articulated and documented, and a copy given to the police officer.
28. The same principle applies where the initial assessment suggests that the matter is one of misconduct or gross misconduct but subsequent investigation reveals that it is not, and may be for example, one of unsatisfactory performance. In such cases the police officer will be informed that the matter is now not being considered as a matter of misconduct.
29. In matters which stem from a complaint, the complainant's rights of appeal under the Police Reform Act 2002 (see IPCC Statutory Guidance) will mean that the assessment can only be provisional. The requirement to keep complainants informed is also relevant (see IPCC Statutory Guidance).

30. In some cases some aspects of a police officer's conduct may have fallen below that expected and some aspects may suggest that his or her performance may have been unsatisfactory. These cases may be handled simultaneously under the misconduct procedures and under the unsatisfactory performance procedures.
31. The misconduct procedures should not be used as a means of dealing with unsatisfactory performance.

Matters referred to the IPCC

Certain complaints and conduct matters are required to be referred to the IPCC under Schedule 3 to the Police Reform Act 2002 and associated regulations. There is also a requirement to refer cases involving death or serious injury (DSI) to the IPCC under Schedule 12 of the Serious Organised Crime and Police Act 2005 and associated regulations.

32. In cases which are referred, the IPCC (or the force if it is a local, supervised or managed investigation) will initially focus the investigation on the incident and not necessarily the conduct of an individual police officer.
33. If during the course of an investigation into an incident which has been referred to the IPCC it becomes apparent that the conduct of an individual police officer may have breached the Standards of Professional Behaviour, then (in cases where the IPCC are managing or independently conducting the investigation) the IPCC will assess whether, if proven or admitted, the conduct would potentially amount to misconduct or gross misconduct and inform the police officer that his or her conduct is subject to investigation.

Dealing with Misconduct

There are two ways to deal with matters which have been assessed as potential misconduct:

- **Management action**
- **Formal action for misconduct**

34. A decision on which action will be appropriate will be made on the basis of the information available following the initial assessment.
35. In cases where misconduct is alleged as a result of a complaint being made, it is important to note that all recorded complaints must be the subject of a formal investigation unless:
 - The complainant agrees to Local Resolution
 - The IPCC agrees to a dispensation or
 - The IPCC agrees that a formal investigation should be discontinued
36. Management action should be considered in relation to cases locally resolved, after a dispensation has been granted or following discontinuance. Management action would also be possible as an outcome following an investigation.
37. Management action is not however an alternative to a formal investigation if one is required.
38. In non-complaint matters, only those matters where the IPCC requires a formal investigation need to be investigated in that way. The IPCC can only make these decisions once a case has been referred. Cases are referred either because of the requirement in the Police Reform Act and Regulations, because they have been voluntarily referred or because they have been 'called in' by the IPCC.
39. All others can be dealt with by management action and even those cases that have been subject to investigation can have management action as an outcome.

- Management action -

The purpose of management action is to:

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

Management action may include:

- **Pointing out unacceptable behaviour.**
- **Identifying expectations for future conduct.**
- **Establishing an improvement plan.**
- **Addressing any underlying causes of misconduct.**

40. When appropriate, managers in the police service are expected and encouraged to intervene at the earliest opportunity to prevent misconduct occurring and to deal with cases of misconduct in a proportionate and timely way through management action. The police officer does not have to agree to management action.

41. The police officer may in some cases be informed 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.

42. The manager may draft an improvement plan with the police officer. This should include timescales for improvement in the conduct. A written record may be made of any improvement action, such as a file note placed on the officer's personal record or PDR. Any such note should be agreed as an accurate record with the police officer concerned and copied to him or her.

43. Any improvement action is not a formal misconduct outcome but is considered to be part of the normal managerial responsibility of managers in the police service. Management action is always available, including during or after the process of resolving a complaint using local resolution.

- Formal action for misconduct -

The purpose of formal action is to:

- **Establish the facts underlying the report, complaint or allegation.**
- **Deal with cases of misconduct in a timely, proportionate and effective way such as will 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.**

44. Where management action is not appropriate to deal with the alleged breach of the Standards of Professional Behaviour then formal action for misconduct may be necessary.
45. An appropriate manager should initiate the formal misconduct process by appointing an investigating officer. The investigator should be the most appropriate person having regard to all of the circumstances. It may be appropriate in some cases, which are deemed to be complex, for the PSD to conduct the investigation. In cases falling under paragraphs 17, 18 or 19 of Schedule 3 to the Police Reform Act 2002 the appropriate manager must follow the appropriate provisions regarding approval by the IPCC.
46. The PSD must be consulted before formal misconduct action is taken for misconduct to ensure that there are no other matters that need to be considered prior to any investigation.

The Formal Misconduct Process

Written notification

- Giving written notification -

The purpose of the notification is to:

- Inform the police officer that there is an investigation into his or her potential breach of the Standards of Professional Behaviour.
- Ensure that the police officer is able to preserve any documentation or make any notes which may assist to establish the facts.
- Give the police officer an indication of the possible outcome if the allegation is proven or admitted.
- Inform the police officer how decisions will be made and the process to be followed.

47. The appropriate authority should ensure that the police officer subject to investigation shall, as soon as practicable, be provided with written notification that his or her conduct is being investigated unless to do so would prejudice the investigation. Any decision not to inform the officer will be recorded and kept under regular scrutiny and review in order to avoid unreasonable delay.
48. If the IPCC is conducting an independent or managed investigation then the responsibility for ensuring that the officer is provided with the written notification as soon as practicable rests with the IPCC.
49. There will be times when an incident is being investigated and there is no initial indication that an individual's conduct has fallen below the standards expected (see 'Matters referred to the IPCC' above). In these cases notification should only be given when the conduct of an individual police officer is going to be investigated. In the interests of fairness care must be taken when an incident is being investigated to ensure that the notification is given as soon as practicable when an issue of misconduct arises.

- Content of the written notification -

The notification must set out:

- **The fact that there will be an investigation into the individual's conduct and who will be conducting it.**
- **The details of the allegation/ complaint, including how the police officer is alleged to have breached the Standards of Professional Behaviour and specifically what it was about his or her conduct which it is alleged fell below the standards expected.**
- **An indication of whether the matter is being treated as one of potential misconduct or gross misconduct based on an objective assessment of the facts known at the time.**
- **That the police officer will be given every opportunity to give his or her account in response to the report, complaint or allegation.**
- **That any decision will be based on an objective assessment of the evidence including what he or she has said in response to the allegation.**
- **The right to be accompanied by a friend at any stage of the process.**

50. The terms of reference for the investigation, or the part of the terms of reference for the investigation relating to the individual's conduct, should, subject to the harm test, be supplied to the police officer and to his or her friend on request, and they should both be informed if they change. In cases falling under the Police Reform Act 2002, this information should also be supplied to the complainant or an interested person (see IPCC Statutory Guidance).

51. An example of a model notice can be found at [Annex D](#).

Suspension or restricted duty

The decision to suspend will only be taken where:

- **An effective investigation may be prejudiced unless the officer is suspended.**

Or

- **The public interest, having regard to the nature of the report, complaint or allegation, and any other relevant considerations, requires that the officer should be suspended.**

52. A temporary move to a new location or role must always be considered before suspension.
53. Where it is decided that the police officer will be suspended from duty, this will be with full pay.
54. The police officer or his or her friend may make representations against the decision to suspend and at any time during the course of the suspension if they believe circumstances have changed and that suspension is no longer appropriate.
55. Suspension is not a formal misconduct outcome and does not suggest guilt.
56. The period of suspension should be as short as possible and any investigation into the conduct of a suspended police officer must be made a priority.
57. The police officer should be told exactly why he or she is being suspended and this should be confirmed in writing. If suspension is on public interest grounds, it should be clearly explained, so far as possible, what those grounds are.
58. The use of suspension must be reviewed at least every month 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.
59. The decision to suspend a police officer rests with the appropriate authority. Suspension must be authorised by a Chief Officer except in cases where a

Chief Officer is to be suspended in which case the suspension must be authorised by the Police Authority.

60. In cases where the IPCC are supervising, managing or independently investigating a matter, the appropriate authority will consult with the IPCC before making a decision whether to suspend or not. The decision to suspend or not rests with the appropriate authority. Similarly, the appropriate authority must consult the IPCC before making the decision to allow a police officer to resume his or her duties following suspension where the IPCC are supervising, managing or independently investigating.
61. In cases where the IPCC are managing or independently investigating and the appropriate authority has suspended the police officer, the IPCC will be responsible for ensuring that the appropriate authority is supplied with sufficient information to enable them to effectively review the need for continuing suspension.

Conducting investigations when there are outstanding criminal proceedings

62. Criminal proceedings will not normally delay the misconduct procedure unless it is decided that such action is likely to prejudice the outcome of the criminal case. The presumption is that action for misconduct should be taken prior to, or in parallel with, any criminal proceedings.
63. The person conducting a misconduct meeting (or the Chair for a Level 2 meeting) should always consider whether in proceeding with a misconduct meeting in advance of any potential criminal trial, there is any likelihood of prejudice to that trial. If there is any doubt then advice should be sought from the Crown Prosecution Service (CPS).
64. If the person conducting the misconduct meeting (or the Chair for a Level 2 meeting) decides that a witness, who is also potentially a witness at a criminal trial, should be present at a misconduct meeting, then he or she must first consult with the CPS. Having carefully considered the views of the CPS he or she must then decide whether the misconduct meeting should proceed.
65. The decision to proceed with a misconduct meeting rests with the person conducting it or, in the case of a Level 2 meeting, with the Chair of that meeting.

Investigation

The purpose of an investigation is to:

- **Gather evidence to establish the facts and circumstances of the alleged misconduct**
- **Establish, on the balance of probabilities, based on the evidence and taking into account all of the circumstances, whether there is a case to answer in respect of either misconduct or gross misconduct.**

66. The appropriate authority should 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.

The investigator should be:

- **Capable**
- **Impartial, not in any way involved in the case.**

67. In cases which do not fall under the Police Reform Act 2002, the appropriate authority can discontinue an investigation if there is a change in circumstances which makes it appropriate to do so. Similarly, in cases which do fall under the Police Reform Act 2002, the appropriate authority can apply to the IPCC to discontinue an investigation.

68. The investigation should have clear and precise terms of reference which are focussed on the alleged misconduct.

69. The investigation should be balanced, proportionate and timely and in cases where the police officer is suspended the completion of the investigation must be made a priority.

70. The investigating officer must ensure that the police officer and his or her friend are kept informed of the progress of the investigation. The requirement under the Police Reform Act 2002 to keep the complainant or an interested person informed may also apply.

71. The investigating officer will consider and document reasons for following or not following any submissions made by the police officer or his or her friend with a view to ensuring that the investigation is as thorough and as fair as possible. This may involve a further suggested line of investigation or further examination of a particular witness. The purpose is to enable a fair and balanced investigation report to be prepared and made available for consideration at a misconduct meeting and to negate the need (except where necessary) for witnesses to attend that meeting.
72. In cases where the IPCC manage or independently investigate matters, the IPCC will be responsible for considering any submissions made as set out in the above paragraph.
73. Written notice of the date, time and venue of the interview, details of the alleged misconduct and the fact that he or she can be accompanied must be given to the police officer to give him or her time to prepare. (See the 'The right to be accompanied' below.) Where possible the appropriate authority (or IPCC) should agree a date and time for the interview with the police officer and his or her friend if appropriate. If the chosen friend is not available at the date or time specified by the appropriate authority (or IPCC) the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that proposed by the appropriate authority (or IPCC) the interview must be postponed to that time.
74. Prior to an investigatory interview, the investigating officer will provide the police officer and his or her friend with the appropriate amount of information at the appropriate time in order to give the police officer the opportunity to prepare. When deciding how much information is appropriate the investigating officer must balance the fairness to the police officer in preparing for the interview with the needs of the investigation, having regard to the seriousness of the matter under investigation.
75. Interviews may be electronically recorded but if they are then the person being interviewed must be given a copy. If the interview is not electronically recorded then a written record or summary of the discussion must be given to the person being interviewed. He or she must 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 investigating officer.
76. Other than a criminal investigation it will not be necessary for criminal style witness statements to be taken. In misconduct investigations an agreed written record of the information supplied at the interview will be sufficient.

- Investigation report and supporting documents -

The purpose of the investigation report is to:

- **Provide a sufficient, balanced and fair summary of the evidence gathered to enable the person who commissioned the investigation to determine whether there is an indication that there has been a breach of the Standards of Professional Behaviour.**
- **Indicate whether the potential breach warrants a misconduct meeting.**
- **Inform the police officer of the evidence obtained that will be considered at any subsequent misconduct meeting.**
- **Provide the person conducting the misconduct meeting, or the panel for Level 2 meetings (if a misconduct meeting is to be held), with the evidence in order to make a decision.**
- **Inform the Police Service to allow learning for the organisation and the individual concerned.**

77. After an investigation the appropriate authority (or the IPCC where there has been an independent or managed investigation) must ensure that there is a report setting out the evidence that has been gathered. It should contain all of the relevant documents and interview records. It will also summarise the information and evidence obtained and include a recommendation to the person who commissioned the investigation whether, on the balance of probabilities, the evidence indicates that the police officer's conduct may have fallen below the standards set out in the Standards of Professional Behaviour.

78. In IPCC managed or independent investigations, the investigating officer will submit the investigation report to the IPCC and provide a copy to the appropriate authority. It will then be for the appropriate authority to take action stipulated in the Police Reform Act 2002.

79. The person who commissioned the investigation must make a decision based on the report. He or she will either reach a firm conclusion, based on the balance of probabilities, either that there is no case of misconduct to answer or that there is.

80. If it is decided that there is no case of misconduct to answer then management action may still be appropriate. In matters falling within the

provisions of the Police Reform Act 2002, this decision may be subject to appeal to the IPCC (see IPCC Statutory Guidance).

81. If no further action is to be taken then the investigation report or part of the investigation report that is relevant to the police officer should be given, subject to the harm test, to the police officer on request. In matters arising under the Police Reform Act 2002 the complainant or interested person may, subject to the harm test, also receive a copy of the investigation report.
82. If there is a formal misconduct case to answer (and immediate management action is not considered appropriate without a misconduct meeting) then a misconduct meeting should be arranged and the police officer should be given a copy of the investigation report or the part of the report which is relevant to him or her including all relevant documents, subject to the harm test, at least 14 working days before a misconduct meeting, although this period may be reduced by mutual consent.
83. The police officer will also receive details of the particulars clearly setting out the behaviour that is alleged have fallen below the standards of professional behaviour expected.
84. A complainant may appeal to the IPCC against a decision not to take action for misconduct or against the level of misconduct meeting decided.
85. At least 7 working days prior to a misconduct meeting the police officer will be required to submit in writing whether he or she admits or denies the behaviour described in the particulars.
86. In complying with this requirement, if the police officer denies the behaviour described or takes issue with any part of the particulars, he or she must submit a detailed statement outlining the particulars that he or she takes issue with and why. If the police officer admits the behaviour he or she may also wish to submit further details.
87. The aim is to try and establish an accurate set of facts for the misconduct meeting to consider.
88. The police officer will have the opportunity to enter written representations on other matters prior to the misconduct meeting for consideration.

The right to be accompanied

The purpose of the friend is to:

- **Support the police officer during the process.**
- **Assist the police officer to put forward any evidence he or she wishes to be considered.**

89. Police officers have the right to consult with, and be accompanied by, a friend at any investigatory interview and at all stages of the misconduct process. This also applies to special constables.

90. A friend is any member of the police service or a nominee of the officer's staff association.

91. The friend must not be an interested party, involved in the incident or the investigation.

Throughout the process the friend can:

- **Advise the police officer on the process.**
- **Clarify any points which may be unclear.**
- **Make representations on the fairness of the process.**

At a misconduct meeting the friend can:

- **Put the police officer's case.**
- **Sum up the police officer's case.**
- **Confer with the police officer.**

92. It is good practice to allow the friend to participate as fully as possible but at a meeting or interview the friend is not there to answer questions on the police officer's behalf.

93. Where possible the appropriate authority (or IPCC) should agree a date and time for any investigatory interview with the police officer and his or her friend if appropriate. If the chosen friend is not available at the date or time specified by the appropriate authority (or IPCC) the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that proposed by the appropriate authority (or IPCC) the hearing must be postponed to that time. This provision also applies when arranging the date and time of a misconduct meeting.
94. A friend who has agreed to accompany a colleague is entitled to take a reasonable amount of duty time to fulfil his or her responsibilities as a friend.
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Misconduct meetings

The purpose of a formal misconduct meeting is to:

- **Give the police officer a fair opportunity to make his or her case having considered the investigation report including supporting documents. In cases where misconduct has been proven or admitted, the misconduct meeting will allow the opportunity to put forward any factors the police officer wishes to be considered in mitigation (including a submission which may be sent earlier to the person conducting the meeting for his or her consideration).**
- **Decide if misconduct has occurred (ie whether the conduct of the police officer fell below the standards set out in the Standards of Professional Behaviour) on the balance of probabilities, having regard to all of the evidence and circumstances.**
- **Consider what the outcome should be if misconduct is proven or admitted. Consideration will be given to any live misconduct warnings and any early admission of guilt by the police officer.**
- **Inform the police officer of the decision, and that he or she has a right to appeal.**

The purpose of the meeting is not to routinely:

- **Reinvestigate the allegations.**
- **Reinterview or cross examine witnesses.**

95. It is for the investigating officer to examine the evidence given by witnesses. A witness should only be called if the person conducting the meeting considers that his or her attendance is necessary in the interests of fairness. There may be occasions when the person conducting the meeting (the Chair for Level 2 meetings) thinks that it would be desirable or essential to interview a witness. This decision may follow representations made by the police officer or his or her friend.

96. The person conducting the meeting or any panel member can ask a witness, the police officer or the investigating officer questions. The police officer or his or her friend may ask for certain questions to be asked in a submission prior to the misconduct meeting or at the meeting itself through

the person conducting the meeting (or the Chair for Level 2 meetings). In matters arising under the Police Reform Act 2002 complainants or interested persons may also ask the person conducting the meeting (or the Chair for Level 2 meetings) to put questions on their behalf.

- Types of misconduct meeting -

There are two types of misconduct meetings:

- A **Level 1 Meeting** for cases which are potentially misconduct and where the maximum outcome would be a final written warning.
- A **Level 2 Meeting** for cases where the police officer has a live final written warning and has potentially committed a further act of misconduct or in cases which are potentially gross misconduct. The maximum outcome at this meeting would be dismissal from the police service.

97. Where possible the appropriate authority should agree a date and time for the misconduct meeting with the police officer and his or her friend (in the case of Level 2 meeting this includes the officer's legal representative) if appropriate. If the chosen friend (or legal representative in Level 2) is not available at the date or time specified by the appropriate authority the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that proposed by the appropriate authority the hearing must be postponed to that time.
98. The police officer must be given a copy of the investigation report or part of the investigation report relevant to the officer including relevant documents, subject to the harm test, at least 14 working days before a misconduct meeting takes place. This does not prevent the misconduct meeting from taking place earlier than the 14 days with the mutual consent of the police officer and the person conducting the meeting if this is considered appropriate and desirable.
99. There is an expectation however that both level 1 and level 2 misconduct meetings will take place within 28 calendar days of the police officer being provided with the investigation report, including relevant documents which will be relied upon at the meeting. Extensions can be granted to the 28 calendar day period where for example the case is complex or involves a large amount of documentation such that the police officer needs more time to prepare properly for the meeting. In considering these timescales, due regard will need to be given to the right of complainants to appeal against the decision of the appropriate authority.
100. The police officer has the right to be accompanied by a friend but if the person conducting the meeting (or the Chair at a Level 2 Meeting) questions the police officer then it is for the police officer to reply.

101. If any new information comes to light during the meeting it will be for the person conducting the meeting (or the Chair for Level 2 meetings) to decide whether the meeting should be interrupted to allow further enquiries to be made.
102. It is in the interests of fairness to ensure that the misconduct meeting is held as soon as possible. A meeting may take place if the police officer is absent. In cases where the police officer is absent through sickness a short delay may be reasonable to allow him or her to attend. If this is not possible the person conducting the meeting may allow the police officer to participate by telephone or video link. In these circumstances a friend will always be permitted to attend the meeting to represent the police officer in his or her absence.
103. The misconduct procedure should only be delayed if a police officer is shown to be incapable of giving proper instruction to a misconduct meeting, either in person (including via telephone or video link) or through a friend.
104. The investigating officer or a person with detailed knowledge of the case will be present at the meeting to answer any questions that may arise. In IPCC independent or managed investigations, or misconduct meetings arising following an appeal to the IPCC, the IPCC will be responsible for providing this person.
105. During the investigation the police officer will be given every opportunity to give his or her account of the evidence. If the police officer chooses not to give an account then the person conducting the meeting (or the panel for Level 2 Meetings) will make his, her or its decision having regard to all of the evidence before him, her or it.
106. [Guidance will include further Information on how the meeting should be conducted and model letters.]

Rights of complainants to attend meetings

107. Where a misconduct meeting is being held as a direct result of a public complaint, the complainant will have the right to attend the meeting as an observer. He or she may be accompanied by one other person plus (in the case of a particular need i.e. an interpreter, sign language expert etc.) a second person.
108. Where the complainant is required to attend a meeting to give evidence, he or she will not be permitted to be present in the meeting until after he or she has given his or her evidence.

109. A complainant will be permitted to remain in the meeting up to and including any finding by the person(s) conducting the meeting. The complainant will not be permitted to remain in the meeting whilst character references are being given or the decision of the panel as to the outcome. However the appropriate authority will have a duty to inform the complainant of the outcome of any misconduct meeting whether the complainant attends or not.
110. The misconduct meeting must not be delayed unreasonably in order to facilitate a complainant attending the meeting.

IPCC direction and attendance at meetings

111. Where the IPCC uses its power to direct an appropriate authority to hold a misconduct meeting, this will also include a provision for the IPCC to determine whether the meeting will be at Level 1 or Level 2.
112. Where a case arises from a complaint or conduct matter which the IPCC has independently investigated and the appropriate authority has determined (or has been directed by the IPCC) that a Level 2 meeting should be held, the IPCC can because of the gravity or other exceptional circumstances direct that the whole or part of the meeting will be held in public. The IPCC will first consult the appropriate authority, the police officer concerned, the complainant and any witness prior to making its determination as to whether to direct that the hearing be held in public.
113. In cases where the IPCC has supervised, managed or independently investigated a complaint, conduct matter or Death or Serious Injury or has directed an appropriate authority following an appeal, a member of the IPCC will be permitted to attend a misconduct meeting as an observer.

114. - Holding a misconduct meeting -

Meetings will be held by:

Level 1

- **An appropriate manager who will make the decisions.**
- **A Human Resources professional from the police service will be present to act as an advisor, although the decision will rest with the appropriate manager.**

The appropriate manager can be a police staff member but only where knowledge of operational policing is not essential or relevant to the matter to be considered.

Level 2

A panel of 3 comprising:

- **A Chief Officer or Human Resources Director (or equivalent grade) will act as the chair**
- **A superintendent or above or a police Human Resources professional**
- **An independent member**

The chair must be either a Chief Officer or a Human Resources Director. If the Human Resources Director is the Chair then he or she will be accompanied by an independent member and a superintendent or above.

The police officer should be informed of the names of those holding the meeting as soon as reasonably practicable after they have been appointed. The police officer may object to any person hearing or advising at a Level 1 or Level 2 meeting. If he or she submits a compelling reason why such a person should not be involved in the meeting then, in the interests of fairness, a replacement should be found.

- Chief Officer Misconduct Meetings -

For ranks below a Chief Constable meetings will be held by:

Level 1

- **A Deputy Chief Constable (DAC in the MPS) who will make the decisions.**
- **A Clerk or designated police authority officer will be present to act as an advisor, although the decision will rest with the Deputy Chief Constable.**

If the Deputy Chief Constable (or DAC) has an interest in, or is associated with the matter, then the Chief Constable (or AC in the MPS) will conduct the misconduct meeting.

Level 2

A panel of 3 comprising:

- **A Chair of the Police Authority or a member of the police authority with delegated authority.**
- **The Chief Constable (AC in the MPS).**
- **A person from the ACAS Panel of Arbitrators.**

The chair will be the police authority chair.

For Chief Constables (or ACs in the MPS) meetings will be held by:

Level 1

- **The Chair of the Police Authority who will make the decisions.**
- **A serving member of Her Majesty's Inspectorate of Constabulary (the Deputy Commissioner in the MPS)**
- **Clerk or designated Police Authority officer will be present to act as advisors, although the decision will rest with the Chair of the Police Authority.**

Level 2

A panel of 3 comprising:

- **A Chair of the Police Authority or a member of the police authority with delegated authority.**
- **A serving member of Her Majesty's Inspectorate of Constabulary (the Deputy Commissioner in the MPS).**
- **A person from the ACAS Panel of Arbitrators.**

The chair will be the police authority chair.

For MPS Commissioner and Deputy Commissioner Meetings will be held by:

Level 1

- **Chair of the Police Authority who will make the decisions.**
- **An HMIC Inspector and Clerk to PA or delegated Police Authority member will act as advisors. Decision will rest with the Police Authority Chair.**

Level 2

A panel of 3 comprising:

- **Chair of the Police Authority**
- **CHMIC**
- **A person from ACAS panel of arbitrators**

115. A summary of who conducts misconduct meetings for Chief Officers can be found at Annex E and F.

The Standard of Proof

116. The standard of proof in misconduct meetings will be the civil standard of balance of probabilities.

Outcomes

The purpose of a formal outcome is to:

- **Ensure that the police officer is aware that his or her conduct is determined to have been unacceptable.**
- **Re-enforce the message that misconduct is taken seriously by the police service.**
- **Allow the police officer's conduct to be monitored and to encourage improvement.**

In cases where dismissal is justified the purpose is to remove a police officer from the police service in a timely and fair way while ensuring that proper safeguards are in place and the officer's rights are protected.

117. The following outcomes are available at misconduct meetings:

Level 1 Meeting

- *Not proven*
- *Management action*
- *First written warning*
- *Final written warning*

Level 2 Meeting

- *Not proven*
- *Management action*
- *First written warning*
- *Final written warning*
- *Dismissal*
- *Summary dismissal (dismissal without notice for acts of gross misconduct)*

118. Written warnings will remain live for:

First written warning = 12 months

Final written warning = 18 months

119. Improvement notices given under the unsatisfactory performance procedures:

The police misconduct procedure is distinct from the unsatisfactory performance procedure. Improvement notices given for unsatisfactory performance must never be added to live written warnings given for misconduct and vice versa.

- At a Level 1 Meeting -

- Not Proven
- Management Action

Management action is always available as an outcome and will usually be in addition to any written warning.

- First Written Warning

120. If following a misconduct meeting it is found that the conduct of the police officer is sufficiently serious the police officer will receive a first written warning. This will remain live on the police officer's personal file for twelve months.

The police officer will be told:

- **The reason for the warning.**
- **Any improvement action required- this will be specified with timescales.**
- **That any future misconduct may result in further action being taken which may lead to a final written warning.**
- **That he or she has a right to appeal.**
- **That the warning will be put on his or her personal file and will remain live for twelve months.**

- Final Written Warning

121. If a police officer has a live first written warning and it is found following another investigation and misconduct meeting that there has been further misconduct then a final written warning may be given.

122. If the initial misconduct is of a more serious nature then a final written warning may be given.

123. A final written warning will remain live on the police officer's personal file for eighteen months.

The police officer will be told:

- **The reason for the warning.**
- **Any improvement action required- this will be specified.**
- **That any future misconduct may result in dismissal.**
- **That he or she has a right to appeal.**
- **That the warning will be put on his or her personal file and will remain live for eighteen months.**

- At a Level 2 Meeting -

- Not Proven
- Management Action
- Written Warning
- Final Written Warning
- Dismissal

124. In cases where a police officer has a live final written warning and it is found following another investigation and a Level 2 misconduct meeting that there has been further misconduct then the police officer may be dismissed with notice or payment in lieu of notice.

125. For gross misconduct, dismissal will be summary (ie without notice or payment in lieu of notice) following a Level 2 misconduct meeting.

The police officer will be told:

- **The reason for the dismissal.**
- **The formal notice period (unless the dismissal is for gross misconduct where no notice or pay in lieu is given except for accrued annual leave).**
- **That he or she has a right to appeal.**

Expiry of Warnings

126. Notification of written warnings issued, including the date issued and expiry date will be recorded on a personal record, along with a copy of the written notification of the outcome.
127. As a general rule written warnings that have expired cannot be used in any subsequent misconduct proceedings. The only exception is in cases where there has been cyclical behaviour. Cyclical behaviour is when a written warning is given in respect of similar behaviour within 3 months of the expiry of a previous warning on two or more occasions. In these circumstances the police officer has clearly not learnt from the process and improved his or her conduct. In these rare cases the expired written warning may be resurrected.
128. Where a police officer with live 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.
129. If a police officer does not serve for a period of time temporarily, for example due to a career break or through long term sickness, then the time that a written warning remains live will be suspended until he or she returns to duty.
130. Any warning whether 'live' or 'spent' must be revealed to the CPS for the purpose of any criminal trial where the police officer may be a witness. It is for the CPS to decide if the warning is relevant and therefore disclosable to the defence in a particular case.

Fast-track dismissal

131. There may be cases of gross misconduct where it is in the interests of the police service and the public interest to have a fast track system of dealing with the alleged misconduct. These cases will be rare.
132. In the interests of fairness it is important to set out the conditions that must be satisfied before the fast track procedure can be used. These are: -
- That the report, complaint or allegation indicates that the conduct of the police officer concerned amounts to gross misconduct and;
 - the conduct is such that were the case to be referred to a Level 2 meeting, and the persons conducting that meeting were to find that the conduct failed to meet the appropriate standard, they would in the opinion of the appropriate authority be likely to dismiss the police officer from the force; and
 - the report, complaint or allegation is supported by written statements, documents or other material which is, in the opinion of the appropriate authority, sufficient without further evidence to establish on the balance of probabilities that the conduct of the officer concerned did not meet the appropriate standard; and
 - the appropriate authority is of the opinion that it is in the public interest for the officer concerned to cease to be a member of a police force, or to be a special constable, without delay.
133. The appropriate authority will be required to issue a certificate certifying that the case is a special case and to refer it to a hearing.
134. The appropriate authority shall ensure that as soon as practicable the police officer concerned is given written notice of the decision to refer the case to a fast track meeting and will supply copies of –
- the certificate setting out that the conditions have been met
 - any statement the police officer concerned may have made
 - Any relevant statement, document or other material obtained during the course of the investigation.
135. The appropriate authority will fix a date for the hearing which shall be not less than 14 calendar days and not more than 21 calendar days from the date on which notice is given to the police officer that a fast track meeting will be held.
136. The fast track meeting will be held by the Chief Constable (AC in MPS).

137. The Chief Constable (AC in MPS) will have the facility to remit a case back to a normal Level 2 meeting if he or she determines that the fast track procedure is not appropriate to deal with that particular case.

138. In the case of Deputy Chief Constables (AC's or below in MPS) the case will be heard by a Level 2 meeting.

139. This procedure will apply to Deputy Chief Constables and Assistant Chief Constables (ranks above Chief Superintendent in MPS up to and including the Deputy Commissioner. In these cases the matter will be heard by a Level 2 meeting.

140. This procedure does not apply to Chief Constables (Commissioner in MPS or City of London Police) as these officers are subject to procedures in Section 11 and Section 42 of the Police Act 1996.

Notification of the outcome

The purpose of the notification is to:

- **Inform the police officer as soon as practicable of the outcome including any remedial action required.**
- **Remind the police officer that he or she has a right to appeal.**

141. In all cases the police officer will be informed in writing of the level of outcome. This will be done as early as possible but within seven calendar days of the misconduct meeting.

142. The notification will include a description of any remedial action required and the timescale for improvement if appropriate. It will also include details of what will happen if there is further misconduct and information on how to appeal.

143. In cases involving a complainant, the appropriate authority will be responsible for keeping the complainant informed of the outcome.

Appeals

The purpose of the appeal is to:

- **To give the police officer the opportunity to appeal against the finding and/or the outcome of a misconduct meeting.**

144. The appeal should be made in writing, including the reasons for the appeal within 7 working days of the receipt of the notification of outcome.

The person conducting the appeal or the panel (in the case of a Level 2 appeal) may consider:

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

145. The police officer has the right to be accompanied by a friend and in the case of a Level 2 appeal a legal representative.

146. The person conducting the appeal (or the panel in a Level 2 Appeal) can overturn any decision and reduce or increase any outcome.

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

- Level 1 Appeals -

A Level 1 Appeal will be heard by:

- **A member of the police service (of a higher rank or grade than the person who conducted the misconduct meeting). He or she will make the decisions.**
- **A Human Resources manager will be present to advise him or her.**

148. The appeal will normally be heard within 7 working days of receipt of the grounds for appeal. If this is not possible then the police officer will be informed of the revised date and the reason for the delay. If the chosen friend is not available at the date or time specified by the appropriate authority the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that proposed by the appropriate authority the hearing must be postponed to that time.

- Level 2 Appeals -

Level 2 Appeals will be heard by a panel of four people:

- **Chair - A person from the ACAS panel of arbitrators**
- **A Chief Officer from that force or another force.**
- **A member of the police authority**
- **A member of the officer's staff association**

Note: In the case of no overall majority the chair has the casting vote.

149. At a Level 2 Appeal the police officer may be legally represented.

150. The appeal panel can overturn a decision to dismiss and reinstate a police officer.

151. The appeal should be heard as soon as possible but within 8 weeks of the grounds for the appeal being received.

152. The police authority is responsible for making the arrangements for a Level 2 appeal. The police officer should be informed of the names of those holding the appeal as soon as reasonably practicable after they have been appointed. The police officer may object to any person hearing or advising at an appeal. If he or she submits a compelling reason why such a person should not be involved in the appeal then, in the interests of fairness, a replacement should be found.

153. A summary of who conducts appeals for Chief Officers can be found at Annex E and F.

Level 1 Appeal for Chief Officers -

For ranks below Chief Constable a Level 1 Appeal will be heard by:

- **The Chief Constable (or an AC in the MPS) who will make the decisions. If he or she has acted in the matter before then another Chief Constable will be nominated by HMIC from another force.**
- **An expert advisor who has not previously acted in the matter will act as an advisor.**

For Chief Constables (AC in MPS) a Level 1 Appeal will be heard by a panel of three:

- **A 3 person panel of Police Authority members who have not been previously involved in the matter.**
- **An expert advisor who has not previously been involved in the matter, and a serving member of HMIC who has not previously been involved in the matter (or the Commissioner in the MPS), will act as advisors**

For Commissioner and Deputy Commissioner in MPS a Level 1 Appeal will be heard by:

- **A 3 person panel of Police Authority members who have not been previously involved in the matter**
- **An expert advisor who has not previously been involved in the matter, and CIHMIC will act as advisors**

- Level 2 Appeals for Chief Officers –

For ranks below Chief Constable a Level 2 Appeal will be heard by a panel of three:

- **Chair- A full time serving Employment Tribunal Chair.**
- **A Chief Constable of another force nominated by HMIC (or Deputy Commissioner in the MPS).**
- **The Chair of the Police Authority or other member with delegated authority not previously involved in the matter.**

For Chief Constables a Level 2 Appeal will be heard by a panel of three:

- **Chair- A full time serving Employment Tribunal Chair;**
- **the CIHMIC or his or her delegate (not previously involved in the matter) (or Commissioner in MPS)**
- **Chair of Police Authority or delegate (not previously involved in the matter)**

For Commissioner or Deputy Commissioner of MPS a Level 2 Appeal will be heard by a panel of:

- **A High Court Judge**
- **A full time serving Employment Tribunal Chair**
- **Chair of the Police Authority or delegate (not previously involved in the matter)**

Resignation or retirement at any time

154. Police officers have the right to resign or retire from the police service at any time.

155. If a police officer resigns or retires whilst under investigation the appropriate authority must consider whether it is appropriate to continue with the investigation in order to come to a conclusion as to whether a misconduct meeting would have been held had the police officer not resigned or retired. This is particularly relevant where the investigation has originated as a result of a public complaint.

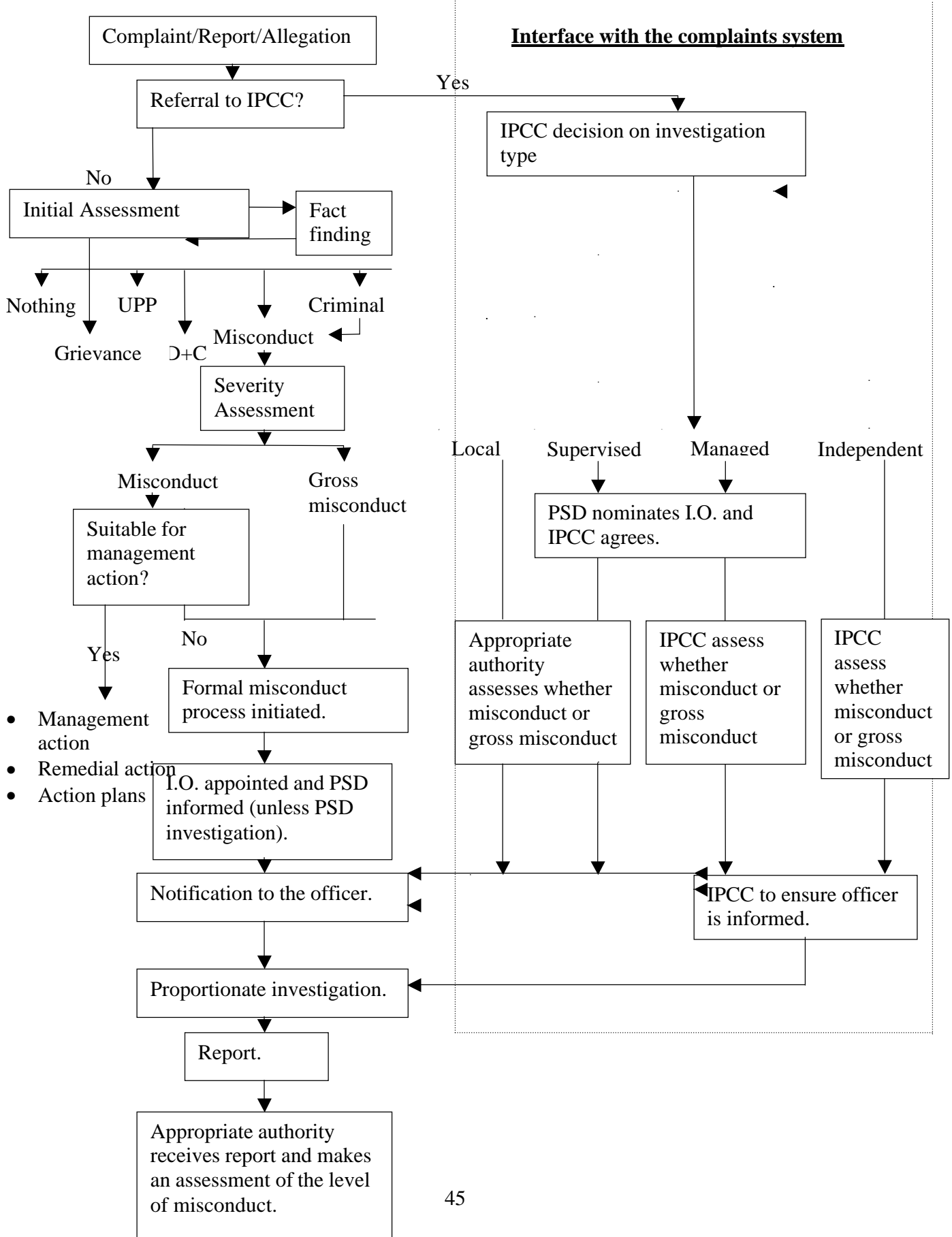
156. It would not be proportionate to start or continue an investigation after a police officer has resigned or retired if the outcome if proven would not have resulted in more than a Level 1 meeting.

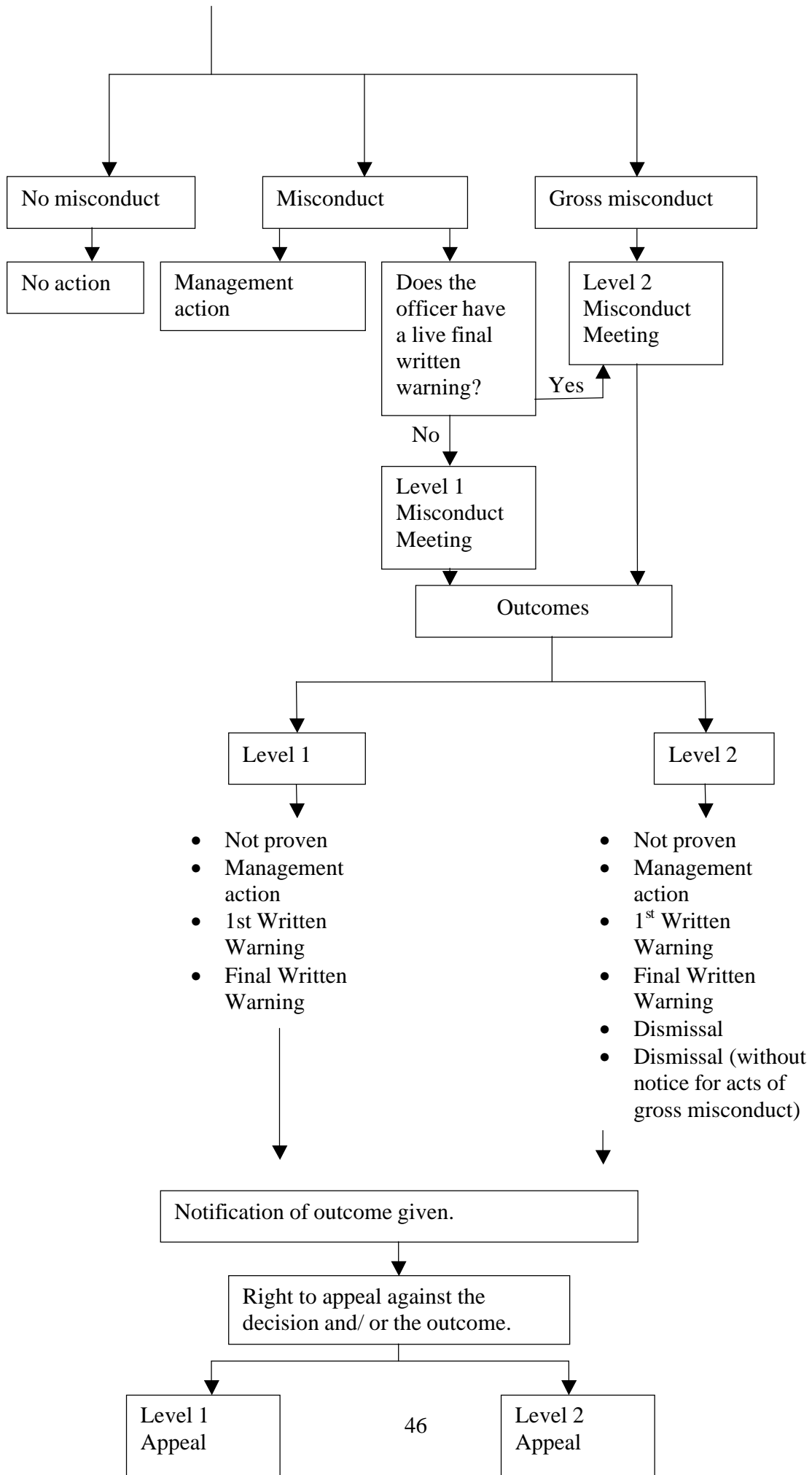
157. There may also be some matters that reach such a level of seriousness or public concern that the force may decide to hold the misconduct meeting with or without the ex-police officer's participation.

158. In all cases the ex-police officer will have the right to attend the misconduct meeting and will be entitled to the same safeguards as a serving police officer, including a right to appeal.

159. This provision does not in any way affect an investigation into a criminal allegation.

Annex A: **Proposed Draft Police Misconduct Procedure**





Annex B:

Definitions to assist with the initial assessment

Misconduct

Misconduct is a breach of the Standards of Professional Behaviour.

Gross Misconduct

Gross misconduct is where, if proven, the breach of the Standards of Professional Behaviour is so serious that the relationship between the police officer and the police service is damaged to the extent that dismissal from the service is possible.

The following list illustrates conduct likely to amount to gross misconduct but this list is neither exclusive nor exhaustive:

- Any act of dishonesty, theft, misappropriation or malicious damage to property
- Falsifying records or expense claims
- Unlawful or unreasonable physical violence on colleagues or the public
- Being under the influence of alcohol or drugs at work.
- Serious breach of regulations
- Non compliance with health and safety rules and regulations where it endangers the well being of the police officer or others
- Accepting or offering improper bribes or gifts, either to gain business or for personal gain
- Unauthorised use of police service materials, equipment, facilities or other resources for private purposes
- Unauthorised use of vehicles at any time
- Criminal offences which render the officer potentially unsuitable for continued service
- Unauthorised access to information whether held on computer or manual systems

- Unauthorised disclosure of information
- Improper use of position as a police officer for personal gain
- Blatant and consistent refusal to comply with a lawful order or instruction
- Attempting to pervert the course of justice
- Wilful harassment, bullying or victimisation or any other serious cases of grossly offensive behaviour against colleagues or the public
- Assaulting a restrained prisoner or person in custody

Unsatisfactory Performance

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

Grievance

A grievance is a problem or concern a police officer has about his or her work, working conditions or relationships with colleagues.

Direction and Control

Direction and control of a police force is taken to be the legitimate independent operational responsibility and discretion that is held by a chief officer. For the purpose of this guidance, a complaint that relates to the direction and control of a force by a chief officer is one that relates to:-

- Operational policing policies (where there is no issue of conduct)
- Organisational decisions
- General policing standards in the force
- Operational management decisions (where there is no issue of conduct)

Direction and control of a police force by a chief officer shall be taken to include the direction and control by any person serving under the chief officer who operates by virtue of a formal delegated authority from the chief officer, either directly or indirectly. For example a Basic Command Unit (BCU) commander will have delegated authority and prescribed discretion from the chief officer to provide a policing service in his or her BCU. He or she may develop local policies and operating procedures within the overall force framework. Such local policies

and operating procedures are regarded as direction and control of a police force by a chief officer.

Annex C:

General definitions

Appropriate manager

This is a police officer or member of police staff of any rank or grade with supervisory or management responsibility over a police officer.

Appropriate authority

This is defined in Part 2 to the Police Reform Act 2002.

'Friend'

A friend is any member of the police service or a nominee of the officer's staff association who is not an interested party in the case.

Staff association

Staff associations are the Police Federation of England and Wales, the Police Superintendents' Association of England and Wales or the Chief Police Officer Staff Association.

Chair of a panel

The Chair conducts the meeting. He or she has discretion to allow witnesses at misconduct meetings if there is a compelling reason for them to attend. When making a decision the Chair has an equal vote with the other two people on the panel.

Human Resources professional

A person considered by the appropriate authority to be competent and knowledgeable in matters relating to misconduct or disciplinary proceedings from the force Human Resources department.

Human Resource Director (for Level 2 Meetings)

A human resource professional within a force at chief officer equivalent level.

A Chief Officer

A police officer above the rank of Chief Superintendent from any force.

An independent member

A person from outside the police service who is selected by the police authority for the force concerned from a list of candidates maintained by that authority.

A person from the ACAS panel of arbitrators

ACAS has an established list of arbitrators who can sit on panels. They have been recruited through a transparent, accountable and non-discriminatory process. The arbitrators have been selected for their knowledge, skills and employment relations experience. They are not employed by ACAS but are appointed on a case to case basis. The parties do not have any choice as to which arbitrator is selected to hear their case.

Staff Association Member (Level 2 appeals)

Any national representative from the police officer's staff association who has not previously been involved in the matter.

'Live' written warnings

A written warning which has not expired.

Harm Test

The harm test is set out in the Police Reform Act 2002. The Act sets out exceptions to the duty of disclosure namely for the purpose of –

- Preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings;
- Preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure-
 - Is in the interests of national security;
 - Is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;
 - Is required on proportionality grounds; or
 - Is otherwise necessary in the public interest

The non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

Working day

A working day is a day other than

- (a) a Saturday or a Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of Great Britain concerned.

Annex D:
Notice of a report, allegation or complaint of misconduct

Name: _____ Warrant number: _____ Rank: _____

Name of complainant (If appropriate): _____

Case reference number: _____

This is to notify you that a report, complaint or allegation has been made about your individual conduct and that there will be an investigation into the circumstances. The details of your conduct that it is alleged may have breached the Standards of Professional Behaviour can be found below. (See notes overleaf).

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

Misconduct **Gross Misconduct**

(continue on separate sheet as necessary)

Date

Signature of person investigating

I acknowledge that I have received the original of this document and my attention has been drawn to the notes overleaf.

Signature of Officer concerned. _____

Print Name _____

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

Name: _____
Date: _____

Signature: _____

EXPLANATORY NOTES FOR THE NOTIFICATION

1. This notice has been issued to inform you at the earliest possible stage that an allegation has been made that you may have breached the Standards of Professional Behaviour and that there is to be an investigation into your individual conduct (in accordance with the Police Misconduct Regulations 2007).
2. The fact that you have been given this notice does not necessarily imply that misconduct action will be taken against you but is given to safeguard your interests. It is given in order that you have the opportunity to secure any documentation or other material or make any notes that may assist you in responding to the allegation(s).
3. You can seek advice from your staff association and be accompanied to any interview or meeting by a 'friend,' who must be a member of the police service or a nominee of your staff association. Any friend must not be an interested party in the investigation.
4. The terms of reference for the investigation or part of the terms of reference which is relevant to you will be given to you, subject to the harm test, if you request them.
5. During the course of the investigation you will be given every opportunity to respond to the allegations against you. You can provide a written account at any stage of the investigation in addition to any account you may provide at an interview.
6. At the end of the investigation, any decision as to whether there is an indication that you have breached the Standards of Professional Behaviour will be based on an objective assessment of all the evidence provided during the course of the investigation. You should understand that the decision will be determined on the civil standard of proof, which is the balance of probabilities.
7. Whatever the outcome of the investigation you will be informed of the result and you will be entitled to a copy of the investigation report.

8. Outcomes available for formal misconduct action:

Misconduct

- *Not proven*
- *Management action*
- *First written warning*
- *Final written warning*

Gross misconduct

- *Not proven*
- *Management action*
- *First written warning*
- *Final written warning*
- *Dismissal*
- *Dismissal (without notice for acts of gross misconduct)*

Annex E:

SUMMARY OF THE MAKE UP OF PERSONS CONDUCTING MISCONDUCT MEETINGS FOR CHIEF OFFICERS (OUTSIDE THE MPS)

Misconduct or UPP process.	ACPO (below CC)	Appeal	CC/AC	Appeal
<p>Level 1 (max sanction final written warning).</p> <p><i>Only one decision maker.</i></p> <p>NB Similar structure to be used for UPP Stages 1 and 2.</p>	<p>DCC to decide unless involved, in which case CC to act.</p> <p>Where a DCC's conduct is at issue, the CC will act.</p> <p>Clerk or a designated PA officer to advise</p>	<p>CC (unless acted before then HMI¹ to nominate another CC).</p> <p>Expert who has not previously acted to advise.</p>	<p>Chair PA to decide</p> <p>(1) HMI and (2) Clerk or a designated PA officer to advise</p>	<p>3-person panel of PA members not previously involved in the matter</p> <p>(1) HMI and (2) an expert adviser– neither previously involved in the matter – to advise.</p>
<p>Level 2. (max sanction dismissal)</p> <p><i>Three decision makers requiring majority verdict</i></p> <p>Similar process for Level III UPP.</p>	<p>Chair PA (or delegate)</p> <p>CC</p> <p>ACAS arbitrator.</p>	<p>ET chair (full time serving)</p> <p>CC of another force, nominated by HMI</p> <p>Chair PA or delegate (not previously involved in the matter)</p>	<p>Chair PA (or delegate)</p> <p>HMI</p> <p>ACAS arbitrator</p>	<p>ET Chair (full time serving)</p> <p>CIHMIC or delegate (not previously involved in the matter) (or Commissioner in MPS)</p> <p>Chair PA or delegate (not previously involved in the matter).</p>

Annex F:

SUMMARY OF THE MAKE UP OF PERSONS CONDUCTING MISCONDUCT MEETINGS FOR CHIEF OFFICERS (IN MPS)

Misconduct or UPP process.	ACPO (below AC)	Appeal	AC	Appeal
<p>Level 1. (max outcome final written warning).</p> <p><i>Only one decision maker.</i></p> <p>NB Similar structure to be used for UPP level II.</p>	<p>DAC to chair unless involved.</p> <p>Where a DAC's conduct is at issue, the AC will act.</p> <p>Clerk or a designated PA officer to advise</p>	<p>AC (who has not acted before)</p> <p>Expert who has not previously acted to advise.</p>	<p>Chair PA</p> <p>(1) Deputy Commissioner and (2) Clerk or a designated PA officer to advise</p>	<p>3-person panel of PA members not previously involved in the matter</p> <p>(1) Commissioner and (2) an expert not previously involved in the matter to advise.</p>
<p>Level 2. (max outcome dismissal)</p> <p><i>Three decision makers requiring majority verdict</i></p> <p>Similar process for Level III UPP.</p>	<p>Chair PA (or delegate)</p> <p>AC</p> <p>ACAS arbitrator.</p>	<p>ET chair (full time serving)</p> <p>Deputy Commissioner</p> <p>Chair PA or delegate (not previously involved in the matter)</p>	<p>Chair PA (or delegate)</p> <p>Deputy Commissioner</p> <p>ACAS arbitrator</p>	<p>ET Chair (full time serving)</p> <p>Commissioner</p> <p>Chair PA or delegate (not previously involved in the matter)</p>

Misconduct or UPP Process	Commissioner and Deputy Commissioner	Appeal
<p>Level 1 (maximum outcome final written warning)</p> <p><i>Only one decision maker</i></p>	<ul style="list-style-type: none"> • Chair of Police Authority • An HMIC Inspector and Clerk to PA or delegated PA member will act as advisors. Decision rests with Police Authority chair. 	<ul style="list-style-type: none"> • A 3 person panel of Police Authority members (who have not previously been involved in the matter) • An expert advisor who has not previously been involved in the matter, and CIHMIC will act as advisors
<p>Level 2 (maximum outcome dismissal)</p> <p><i>Three decision makers requiring majority verdict</i></p>	<ul style="list-style-type: none"> • Chair of Police Authority • CIHMIC • A person from ACAS panel of arbitrators 	<ul style="list-style-type: none"> • A High Court Judge • ET Chair (full time serving) • Chair of the Police Authority or delegate (not previously involved in the matter)

