



# Scottish Police Federation

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## JCC Circular 13 of 2014

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Dear Colleague

### **PSoS Conduct & Performance Regulations 2014 – Information**

I refer to the above and attach herewith the PSoS Conduct and Performance Regulations 2014 for your information.

Yours sincerely

**Calum Steele**  
General Secretary

# POLICE SERVICE OF SCOTLAND (PERFORMANCE) REGULATIONS 2014

## GUIDANCE



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# **1 Performance Regulations**

## **1.1 Introduction**

- 1.1.1 These performance procedures have been prepared by a Scottish Government led Working Group with representatives from Police Scotland, the Scottish Police Federation (SPF) and the Association of Scottish Police Superintendents (ASPS).
- 1.1.2 The formal procedures to deal with unsatisfactory performance including attendance are set out as below.
- 1.1.3 The purpose of this guidance is to help managers to decide how and when to use the formal procedures to manage unsatisfactory performance or attendance on the part of police officers. Guidance focussing specifically on attendance management can be found at section 3.
- 1.1.4 The underlying principle of the procedures is to provide a fair, open and proportionate method of dealing with performance and attendance issues and to encourage a culture of learning and development for individuals and the organisation.
- 1.1.5 The procedures in the Regulations are the same whether applied to unsatisfactory performance or attendance (the differences that do exist are set out clearly in this guidance). However the issues that arise in attendance cases may be different from those in performance cases. This guidance therefore contains separate sections dealing with performance and attendance before a section on the procedures.
- 1.1.6 Where reference is made to time periods (e.g. 3 working days) this will begin on the first working day following the day on which the particular action has taken place. The term of “working days does not include Saturdays, Sundays or Public Holidays.
- 1.1.7 The primary aim of the procedures is to improve poor performance and attendance in the police service. It is envisaged that early intervention via improvement action should achieve the desired effect of improving and maintaining a police officer’s performance or attendance to an acceptable level.
- 1.1.8 There will, however, be cases where it will be appropriate for managers to take formal action under the procedures. At the conclusion of proceedings under the Regulations, one possible outcome is that a police officer’s service may be terminated.

## **1.2 Delegated authority**

- 1.2.1 The Chief Constable must designate a Deputy Chief Constable to exercise functions under these Regulations (and references in these Regulations to the

“Deputy Chief Constable” are, unless the context otherwise requires, references to that individual).

- 1.2.2 The Deputy Chief Constable may direct or authorise any of his or her functions under these Regulations to a police officer of at least the rank of Sergeant. References in this guidance to the Deputy Chief Constable recognise that the function may be so delegated.

### **1.3 Unsatisfactory performance**

- 1.3.1 Unsatisfactory performance is defined in the as:

***“an inability or failure of the constable to perform the duties of the constable’s role or rank (or both) to a satisfactory standard.”***

- 1.3.2 This definition covers all performance issues including unsatisfactory attendance.

### **1.4 Scope**

- 1.4.1 The procedures apply to police officers who have completed their period of probation, up to and including the rank of chief superintendent.
- 1.4.2 The procedures governing performance and attendance issues in respect of probationers are set out in the Police Service of Scotland Regulations 2013.
- 1.4.3 The procedures do not apply to special constables.

### **1.5 Principles**

- 1.5.1 Performance and attendance management in the police service are intended to be positive and supportive processes, with the aim being to improve performance or attendance.
- 1.5.2 All unsatisfactory performance and attendance matters should be handled in a timely manner while maintaining confidence in the process. Performance procedures should be applied fairly in both a non-discriminatory and non-adversarial way and matters must be handled in the strictest confidence.
- 1.5.3 Where the performance procedures are used, line managers in the police service and others involved in the process must act in a way that an objective observer would consider reasonable. At all times, the requirements of the Regulations must be complied with.
- 1.5.4 The importance of challenging unsatisfactory performance or attendance of individual police officers in the context of overall performance and the police officer’s personal development should not be underestimated. Dealing sensitively and appropriately with unsatisfactory performance or attendance issues does not

constitute bullying. If a police officer believes that they are being unfairly treated, they may have available the avenues of appeal that exist at each stage of the performance procedures.

- 1.5.5 It is assumed that officers will cooperate with every stage of the process, although non-cooperation will not in itself prohibit the use of the Regulations.
- 1.5.6 In deciding matters of fact the person conducting each stage of the performance procedure must apply the standard of proof required in civil cases, that is, the balance of probabilities. Unsatisfactory performance or attendance will be proved on the balance of probabilities if the person conducting the meeting is/are satisfied by the evidence that it is more likely than not that the performance or attendance of the police officer is unsatisfactory. The more serious the allegation of poor performance that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be in order to meet that standard.
- 1.5.7 There is a general principle of openness and sharing in regard to documents to be used in evidence at meetings and hearings. Every effort should be made to share such documents in advance. However, despite the failure by any person to provide any document in advance of any meeting or hearing, the person conducting or chairing that meeting or hearing may allow that document to be considered at the meeting or hearing if it is considered appropriate to do so.

## **1.6 Police Representative**

- 1.6.1 Police officers have the right to a police representative at all stages of the performance proceedings. A person approached to be a police representative is entitled to decline to act as such.
- 1.6.2 The Police officers concerned may choose another officer or representative from the Association of the Scottish Police Superintendents or Scottish Police Federation (as appropriate to their rank) as their representative. A person approached to be a police representative is entitled to decline to act as such.
- 1.6.3 A police representative may:
  - a) advise the officer throughout any proceedings under the Regulations;
  - b) accompany the officer to any meeting or hearing which the constable is required to attend under the Regulations;
  - c) make representations on the officer's behalf at any meeting or hearing under the Regulations (including asking questions of any witnesses where the officer would be entitled to do so); and
  - d) make representations to the deputy chief constable concerning any aspect of the proceedings under the Regulations.

- 1.6.4 A police representative cannot be appointed to act as such if he or she has had some involvement in that particular case e.g. he or she is a witness etc.
- 1.6.5 It is good practice to allow the police representative to participate as fully as possible, but at a meeting or hearing the police representative is not there to answer questions on the police officer's behalf. It is for the police officer concerned to speak for himself or herself when asked questions.
- 1.6.6 A police representative who has agreed to accompany a police officer is entitled to take a reasonable amount of duty time to fulfil their responsibilities as a police representative and should be considered to be on duty when attending meetings or hearings.

## **1.7 On-going performance assessment and review**

- 1.7.1 Every police officer should have some form of performance appraisal, or what is commonly referred to as a "performance and development review" (PDR). The PDR should be the principal method by which the police officers performance and attendance is monitored and assessed. It is the responsibility of the line manager to set objectives for their staff and it is the responsibility of all police officers, with appropriate support from management, to ensure that they both understand and meet those objectives. Objectives set by the line manager should be specific, measurable, achievable, relevant and time-related (SMART).
- 1.7.2 The activities and behaviours expected of a police officer in order to achieve their objectives should be in accordance with the relevant national framework which will form the basis of the police officer's role profile.
- 1.7.3 Any shortfall in performance or attendance should be pointed out at the earliest opportunity by the line manager and consideration given as to whether this is due to inadequate instruction, training, supervision or some other reason.

## **1.8 Sources of information and Complaints**

- 1.8.1 Unsatisfactory performance or attendance will often be identified by the first line manager of the police officer as part of their normal management responsibilities.
- 1.8.2 Where the police officer currently works to a manager who has no line management responsibility for him or her, it is the responsibility of that manager to inform the police officer's line manager of any performance or attendance issues identified.
- 1.8.3 Line managers may be police officers or police staff members.
- 1.8.4 It is also possible that line managers may be alerted to unsatisfactory performance on the part of one of their police officers as a result of information from a member of the public. The information from a member of the public may take the form of a

formal complaint. Such cases must be dealt with in accordance with the established procedures for the handling of complaints.

- 1.8.5 It may be that the outcome of an investigation into a complaint alleging misconduct is that an issue of unsatisfactory performance has been identified involving one or more police officers. The Police Service of Scotland (Conduct) Regulations 2014, contain provision to transfer from misconduct proceedings to the performance process at various stages to allow consideration of action under the performance procedures in order that the police officer may learn and improve.
- 1.8.6 There is no provision to transfer a case from performance procedures to the misconduct process once the formal performance procedures process has begun. However, where further incidents occur, the decision on the best course of action would be dependent on consideration of all the circumstances and it may then be appropriate to consider misconduct proceedings but only for the new incidents. Any sanction resulting from such further proceedings would need to carefully consider the progress the officer had made up to the point of the incident and in the period since.

**Example**

Through complaints from the public it is identified that an officer has a belligerent attitude. It is decided to address this by use of the Performance Regulations to allow the officer to improve and develop his skill in dealing with the public. The performance meeting goes ahead and an action plan agreed. All the complaints from the public up to that point are resolved by this action and no misconduct action can be taken in regard to them.

The officer complies with the improvement notice and his behaviour improves within the specified period. However, during the validity period there is a further complaint from a member of the public that the officer swore at them. In regard to this later incident of swearing it is decided to take misconduct action. The matter is to be considered at a Misconduct Meeting. In this case it would not be appropriate for the meeting to consider any evidence of the previous complaints in deciding whether or not the officer's conduct fell below the Standards of Professional Behaviour when coming to a determination on that occasion. However the meeting could consider the progress, or otherwise, the officer has made with their action plan when deciding on an outcome.

- 1.8.7 A single complaint from a member of the public about a police officer's performance will not normally trigger the performance procedures, which are designed to deal with a pattern of unsatisfactory performance. However, where the complaint adds to existing indications of unsatisfactory performance, it may be appropriate to initiate the performance procedures or, if the police officer is already subject to these, to continue to the next stage of the process.
- 1.8.8 Whilst the unsatisfactory performance procedures are internal management

procedures, it may be necessary at times to inform public complainants of action taken with respect to the police officer to whom the complaint relates. In explaining the outcome of a complaint the Service may inform the complainer that the police officer may be subject to the statutory procedures for improving their performance.

## **1.9 Improvement action**

- 1.9.1 Managers are expected to deal with unsatisfactory performance or attendance issues in the light of their knowledge of the individual and the circumstances giving rise to these concerns.
- 1.9.2 There are, however, some generally well understood principles which should apply in such circumstances:
  - a) the line manager must discuss any shortcoming(s) or concern(s) with the individual at the earliest possible opportunity. It would be quite wrong for the line manager to accumulate a list of concerns about the performance or attendance of an individual and delay telling him or her about them until the occasion of the police officer's annual or interim PDR meetings;
  - b) the reason for dissatisfaction must be made clear to the individual as soon as possible and there must be a factual basis for discussing the issues i.e. the discussion must relate to specific incidents or omissions that have occurred;
  - c) line managers should seek to establish whether there are any underlying reasons for the unsatisfactory performance or attendance. For example, in the context of performance, a failure to perform a task correctly may be because the individual was never told how to do it or was affected by personal circumstances. In that case it may be appropriate for the line manager to arrange further instruction or guidance;
  - d) consideration should be given as to whether there is any health or welfare issue that is or may be affecting performance or attendance. If a police officer has or may have a disability within the scope of Equality Act 2010, this in particular needs to be taken fully into account and the requirements of that legislation complied with;
  - e) the line manager must make it clear to the police officer that they are available to give further advice and guidance if needed;
  - f) depending on the circumstances, it may be appropriate to indicate to the police officer that if there is no, or insufficient, improvement, then the matter will be dealt with under the performance procedures;
  - g) line managers are expected to gather relevant evidence and keep a comprehensive note of interactions with the police officer;

- h) challenging unsatisfactory performance or attendance in an appropriate manner does not constitute bullying. The appeals process under the Regulations should be used by officers who have a sense of grievance about any action arising from use of the Regulations. The relevant Police Service of Scotland Standard Operating Procedure should be consulted when considering whether action constitutes bullying.
- 1.9.3 The principles outlined above cover the position when a line manager first becomes aware of some unsatisfactory aspect(s) of the police officer's performance or attendance and is dealing with the issue as an integral part of normal line management responsibilities.
- 1.9.4 Improvement action taken as a result of identifying unsatisfactory performance or attendance should be put on record which may be the police officer's PDR. In particular, the line manager should record the nature of the performance or attendance issue; the advice given and steps taken to address the problems identified. Placing matters on record is important to ensure continuity in circumstances where one or more members of the management chain may move on to other duties or the police officer concerned moves to new duties. It is also important to put on record when improvement has been made in their performance or attendance.
- 1.9.5 Ideally, as a result of improvement action, performance or attendance will improve and continue to an acceptable level.
- 1.9.6 Where there is no improvement, insufficient improvement, or the improvement is not sustained over a reasonable period of time (preferably agreed between the line manager and the police officer), it will then be appropriate to use the performance procedures.
- 1.9.7 The period of time agreed or determined by the line manager for the police officer concerned to improve their performance or attendance prior to using the performance procedures must be sufficient to provide a reasonable opportunity for the desired improvement or attendance to take place and must be time limited.
- 1.9.8 This period may be extended if; due to some unforeseen circumstance (e.g. certified sickness absence in the context of performance issues) the police officer is unable to demonstrate whether or not the required improvement has been achieved.

## **2 Performance Issues**

### **2.1 Introduction**

- 2.1.1 The performance of individual police officers is a key element in the delivery of a quality policing service. Police officers should know what standard of performance

is required of them and be given appropriate support to attain that standard.

- 2.1.2 Performance management is an integral part of a line manager's responsibilities. Managers should let a police officer know when they are doing well or, if the circumstances arise, when there are the first signs that there is a need for improvement in their performance. An essential part of effective line management is that managers should be aware of the contribution being made to meeting the aims and objectives of the team by each of the individuals they manage.

## 2.2 Framework for action

- 2.2.1 There is no single formula for determining the point at which a concern about a police officer's performance should lead to formal procedures under the Regulations being taken. Each case must be considered on its merits. However the following points need to be emphasised:

- the intention of performance management including formal action under the Regulations is to improve performance;
- occasional lapses below acceptable standards should be dealt with in the course of normal management activity and should not involve the application of the performance procedures, which are designed to cover either repeated failures to meet such standards or more serious cases of unsatisfactory performance;
- managers should be able to demonstrate that they have considered whether improvement action is appropriate before using the performance procedures.

## 3 Attendance Issues

### 3.1 Introduction

- 3.1.1 The Police Service of Scotland has an Attendance Management Standard Operating Procedures in place. Failure to adhere to these procedures may result in the use of performance procedures.
- 3.1.2 The Police Service of Scotland is committed to providing, as far as is reasonably practicable, healthy and safe working environment for all staff. It recognises that the health and welfare of police officers is a key element in the delivery of quality services, as well as in maintaining career satisfaction and staff morale.
- 3.1.3 The key objective of the attendance management policy and the appropriate use of the Regulations insofar as they relate to managing unsatisfactory attendance, is to encourage an attendance culture.
- 3.1.4 Managing sickness absence is vitally important both in terms of demonstrating a

supportive attitude towards police officers and for the efficiency of the organisation. Managing attendance is about creating a culture where all parties take ownership of the policy and act reasonably in the operation of the scheme with managers being proactive in managing sickness.

- 3.1.5 The primary aim of the procedures is to improve attendance in the police service. It is envisaged that supportive action will in most cases achieve the desired effect of improving and maintaining a police officer's attendance to an acceptable level.
- 3.1.6 There may however be cases where it will be appropriate for managers to take formal action under the Regulations. At the conclusion of procedures under the Regulations, termination of service is a possible outcome.
- 3.1.7 Where the performance procedures are used in relation to attendance matters, such matters will normally relate to periods of sickness absence such that the ability of the police officer to perform their duties is compromised.
- 3.1.8 Where absence is due to genuine cases of illness, either self-certified or medically certified, the issue is one of capability and thus falls under the performance procedures rather than the procedures relating to misconduct. In such cases management should take a sympathetic and considerate approach, particularly if the absence is disability related and where reasonable adjustments in the workplace also need to be made which might enable the police officer to return to work.
- 3.1.9 On the basis of Occupational Health advice, management should consider whether alternative work is available. If there is some doubt about the nature of the police officer's illness or injury, the police officer will be informed that they will be examined by the Police Service of Scotland Medical Adviser. If the police officer refuses, they will be told in writing that a decision on whether they are to be subject to performance procedures will be taken on the basis of the information available. The above will be applied in accordance with the Police Service of Scotland attendance procedures.
- 3.1.10 In accordance with the Police Service of Scotland attendance management procedures, the line manager and the police officer should keep in regular contact. If management wish to contact the police officer's doctor, normal Police Service of Scotland arrangements will be followed.
- 3.1.11 The police officer should be made aware at the start of the performance procedures that if they remain unwell and if necessary adjustments cannot be made dismissal from the Police Service of Scotland is a possible outcome at a Performance Hearing.

## **3.2 Attendance at each stage of the procedures and ill-health**

- 3.2.1 Attendance at any stage meeting/hearing is not subject to the same considerations

as reporting for duty. An illness or disability may render a police officer unfit for duty without affecting their ability to attend a meeting/hearing. However, if the police officer is incapacitated, the meeting/hearing may be deferred until there is sufficient improvement to allow attendance.

3.2.2 A meeting/hearing will not be deferred indefinitely because the police officer is unable to attend, although every effort should be made to make it possible for the police officer to attend if they wish to be present. For example:

- the acute phase of a serious physical illness is usually fairly short-lived, and the meeting/hearing may be deferred until the police officer is well enough to attend;
- if the police officer suffers from a physical injury — a broken leg, for instance, it may be possible to hold the meeting/hearing at a location convenient to him or her.

3.2.3 Where such circumstances apply at a Performance Hearing, the Police Service of Scotland may wish to consider the use of video, telephone or other conferencing technology.

3.2.4 Where, despite such efforts having been made and the meeting/hearing having been deferred, the police officer either persists in failing to attend the meeting/hearing or maintains their inability to attend, the person conducting the meeting/hearing will need to decide whether to continue to defer the meeting/hearing or whether to proceed with it, if necessary in the absence of the police officer. The person conducting the meeting/hearing must judge the most appropriate course of action.

3.2.5 Nothing in this section should be taken to suggest that, where a police officer's medical condition is found to be such that they would normally be retired on medical grounds the performance procedures should prevent or delay retirement.

3.2.6 Other forms of absence not related to genuine sickness would normally be dealt with under the misconduct procedures e.g. where a police officer's absence is unauthorised.

### **3.3 Framework for action**

3.3.1 Attendance management in the police service is intended to be a positive and supportive process to improve attendance. In all cases, the starting point is supportive action. Except where a police officer fails to co-operate, appropriate supportive action must be taken before formal action is taken under the Regulations. A failure by a police officer to co-operate will not prevent formal action being taken or continued.

3.3.2 If supportive action is taken, the police officer co-operates and the attendance

improves and is maintained at a satisfactory level, then there will be no need to take formal action under the Regulations.

3.3.3 There is no single formula for determining the point at which concern about a police officer's attendance should lead to formal procedures under the Regulations being invoked. Each case must be considered on its merits. However the following points need to be emphasised:

- The intention of attendance management including formal action under the Regulations is to improve attendance.
- Where police officers are injured or ill they should be treated fairly and compassionately.
- Managers should be able to demonstrate that they have acted reasonably in all actions taken at all stages of the attendance management process, including any action under the Regulations.
- In cases where a decision is made at a performance hearing to impose an outcome, including dismissal from the service or reduction in rank, then the police officer will have the right to appeal to a police appeals tribunal.

3.3.4 By the very nature of the work they do, officers may on occasions be injured on duty, despite the best efforts of all concerned to minimise this. In these circumstances staff need to have the confidence that the service will support them throughout their recovery period. The presumption will always be against using the performance procedures for injuries/illnesses sustained on duty, instead the balance should be towards supportive action. However, each case must be considered on its own merits and injuries/illnesses sustained on duty will not ultimately preclude the use of the performance procedures where other avenues to improve attendance have been exhausted.

3.3.5 For the purposes of this guidance, an injury/illness shall be treated as being received by a person in the execution of their duty as a constable if this was received whilst exercising police powers or whilst carrying out Police Scotland directed and authorised training.

### Examples

An officer is injured on duty in a road accident. After a period of recovery the officer is signed off as fit and returns to full duties. Following a period back at work the officer's line managers notice a pattern of the officer regularly reporting sick for night duty, citing a recurrence of the road accident injury as the reason. The line managers meet with the Officer and seek to understand what help and support they can give him and any background reasons for the absences. The officer refuses to co-operate and the pattern of sickness continues. Further

interventions by Line Managers and the HR Department make no difference. In these circumstances it would be appropriate to consider the formal performance procedures process.

An officer is seriously assaulted on duty and is on certificated absence for a considerable period due to the nature of his injuries. The officer meets with line managers who establish what further help and support they can give. The officer fully cooperates. In these circumstances it would be inappropriate to consider the performance procedures even where the absence continues for an extended period.

### **3.4 Monitoring attendance**

- 3.4.1 The arrangements by the Police Service of Scotland for the effective monitoring of sickness absences (and the reasons for them) are set out in the relevant Standard Operating Procedure.
- 3.4.2 It is the responsibility of line managers, in conjunction with the Human Resources (HR) department if necessary, to monitor a police officer's attendance. A formal record of a police officer's period of illness will be kept.
- 3.4.3 HR managers should be consulted when line managers are deciding whether it might be appropriate to use the performance procedures in relation to unsatisfactory attendance.

### **3.5 Occupational health**

- 3.5.1 The Occupational Health Service is an essential part of effective attendance management and should be involved as soon as any concerns about a police officer's attendance are identified that relate to their health.
- 3.5.2 Where action is taken under the performance procedures in respect of a police officer's attendance, the police officer may be referred to the Occupational Health Service for up to date information and advice at any stage within the procedure in accordance with policy. This should enable the Police Service of Scotland to make an informed decision about the officer's attendance. Where police officers do not attend appointments or otherwise fail to co-operate with the Occupational Health Service, an assessment will be made on the information available.
- 3.5.3 The role of the Occupational Health Service is to advise on medical issues affecting a police officer's performance and attendance. Where the Police Service of Scotland has concerns about a police officer's health and the effect it has on their work and attendance, Occupational Health medical advice can be sought on a range of issues, including but not limited to:
  - a) assessment of the impact of the police officer's medical condition;

- b) when the medical problem is likely to be resolved;
- c) whether the police officer will be fit to carry out his/her duties on their return to work;
- d) the duties that the police officer may be fit to undertake;
- e) whether the police officer is a disabled person within the meaning of the Equality Act 2010;
- f) whether there are any adjustments or adaptations to the work, equipment or workplace that might assist in improving attendance;
- g) the likelihood of the illness recurring or of some other illness emerging;
- h) any concerns raised by the police officer about their health and/or working environment;
- i) whether the police officer may be permanently disabled.

### **3.6 The Equality Act 2010 and other statutory obligations**

- 3.6.1 In any unsatisfactory attendance case it is essential that managers and the Police Service of Scotland ensure compliance with their obligations under the Equality Act 2010.
- 3.6.2 Compliance with other statutory obligations including the Data Protection Act 1998 must also be ensured.

### **3.7 Action under the Regulations**

- 3.7.1 It is not possible to be prescriptive about all circumstances where action under the Regulations may be appropriate. Scenarios include cases of unacceptable levels of persistent short-term absences or long-term absences due to sickness and/or injury, but may also include other circumstances. In deciding whether to take action under the procedures managers must treat each case on its merits and consider all of the pertinent facts available to them, including:
  - a) whether the illness or injury was sustained in the line of duty;
  - b) whether absences have been medically certified;
  - c) the nature of the illness, injury or condition;
  - d) the likelihood of the illness, injury or condition (or some other related illness, injury or condition) recurring;

- e) the pattern and length of absence(s) and the period of good health between them;
- f) the need for the work to be done i.e. what impact on performance and workload is the absence having;
- g) the extent to which a police officer has co-operated with supportive improvement action;
- h) whether the police officer was made aware, in the earlier supportive action, that unless an improvement was made, action under the Regulations might be used;
- i) whether the selected medical practitioner (SMP) has been asked by the Scottish Police Authority (SPA) to consider the issue of permanent disablement and/or the SPA is considering medical retirement;
- j) the impact of Equality Act 2010.

3.7.2 Action under the Regulations should not normally be invoked unless:

- a) earlier supportive action was offered but the police officer either declined it or failed to co-operate and as a result there has not been the necessary improvement in the police officer's performance or attendance; and/or
- b) the police officer is absent due to long-term sickness and, notwithstanding supportive improvement action having been taken, there is no realistic prospect of return to work in a reasonable timeframe.
- c) the police officer is showing unacceptable levels of persistent short term absences and notwithstanding supportive management action having been taken, there is insufficient improvement in their attendance.

3.7.3 Whether it is appropriate to take formal action in any particular case will depend on the known merits and facts of that case.

## **4 The Performance Procedures**

### **4.1 Stages**

4.1.1 There are potentially three stages to the performance procedures, each of which involves a different meeting composition and possible outcomes. The stages are:

1. Performance Meeting;

2. Progress Meeting; and
3. Performance Hearing

4.1.2 A line manager can ask an HR professional or police officer (who should have experience of performance procedures and be independent of the line management chain) to attend a performance meeting to advise them on the proceedings at the meeting. A line manager may also obtain such advice prior to the performance meeting if they are in any doubt about the process. The second line manager may also have an advisor (as above) in respect of the progress meeting. For the performance hearing, an HR professional or other officer of at least the same rank as the subject officer may be appointed to advise the officer chairing the proceedings.

## **4.2 Improvement notices and action plans**

4.2.1 At a performance meeting or progress meeting, if it is found that the police officer's performance or attendance is unsatisfactory, an improvement notice or final improvement notice may be issued. These notices require a police officer to improve on their performance or attendance and must state:

- in what respect the police officer's performance or attendance is considered unsatisfactory;
- the improvement in performance or attendance required;
- the "improvement period" in which the improvement is required to take place (see below); and
- the "validity period", of the written improvement notice (see below).

4.2.2 The improvement notice and final improvement notice should also inform the police officer of the circumstances in which progress to the next stage may be necessary.

4.2.3 The improvement period/ final improvement period of an improvement notice/final improvement notice is a period specified by the manager conducting the meeting (having considered any representations made by or on behalf of the police officer) within which the police officer must improve their performance or attendance. It is expected that the specified period for improvement would not normally exceed 12 weeks. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but which should not exceed 12 months).

4.2.4 The "validity period" of an improvement notice/ final improvement notice describes the period of 12 months from the date of the notice within which performance or attendance must be maintained (assuming improvement is made during the specified period). If at any point the improvement is not maintained within this period then the next stage of the procedures may be used.

4.2.5 Improvement notices/ final improvement notices must be accompanied by the

written record of the meeting and a notice informing the police officer of their right to appeal against the finding or terms of the notice. Following a progress meeting, that documentation must also inform the police officer of their right to appeal against the decision to require him or her to attend the progress meeting. Any such appeal can only be made on the grounds that the meeting did not concern unsatisfactory performance or attendance which was similar to or connected with that referred to in the written improvement notice.

- 4.2.6 Written improvement notices must be signed and dated by the person responsible for issuing the notice e.g. in the case of an improvement notice issued following a progress meeting, by the second line manager.
- 4.2.7 An improvement notice would normally be followed by an action plan. An action plan describes what action(s) the police officer should take which should help them achieve and maintain the improvement required and would normally be formulated and agreed by both the police officer (and their police representative if desired) and their line manager. In particular, the action plan should:
  - identify any weaknesses which may be the cause of unsatisfactory performance or attendance;
  - describe what steps the police officer must take to improve performance and/or attendance and what support is available from the organisation e.g. training and support;
  - specify a period within which actions identified should be followed up; and
  - set a date (s) for a staged review (s) of the police officer's performance or attendance.

### **4.3 Improvement notice extensions and suspensions**

- 4.3.1 On the application of the police officer or otherwise (e.g. on the application of their line manager) an officer above the rank of Chief Inspector and of higher rank than the subject officer may extend the improvement period/ final improvement period if they consider it appropriate to do so. This provision is intended to deal with situations that were not foreseen at the time of the issue of the improvement notice/final improvement notice. For example, where the police officer has not had sufficient time to improve due to an emergency deployment to other duties. An extended final improvement period may only be extended further by the Deputy Chief Constable.

- 4.3.2 In setting the extensions outlined above, consideration should be given to any known periods of extended absence from the police officer's normal role e.g. if the police officer is going to be on long periods of pre-planned holiday leave, study leave, or is due to undergo an operation. The extension must not lead to the improvement period exceeding 12 months.
- 4.3.3 If an improvement period is extended, the validity period specified in the relevant notice is also extended, provided that the validity period must end not later than 6 months after the end of the improvement period.
- 4.3.4 The period for improvement under an improvement notice/final improvement notice and the validity period do not include any time that the police officer is taking a career break. For example, if a police officer is issued with an improvement notice with a specified period of 3 months and then takes career leave two months into the notice, whenever the police officer returns, they will have one month left of the 3 month specified period and ten months of the validity period of the notice.
- 4.3.5 An improvement period or validity period must be suspended where the officer is absent from duty for a continuous period of 4 weeks or more. It will resume when the officer returns to a duty which allows them sufficient opportunity to fulfil the improvement plan. This does not apply where the officer's absence is the subject of the proceedings under the Regulations.

#### **4.4 Multiple instances of unsatisfactory performance**

- 4.4.1 In normal circumstances, a police officer can move to a later stage of the performance procedures only in relation to unsatisfactory performance or attendance that is similar to or connected with the unsatisfactory performance or attendance referred to in any previous written improvement notice. Where failings relate to different forms of unsatisfactory performance or attendance it will be necessary to commence the performance procedures at the first stage. If more than one performance procedure is commenced, then, given that the procedures will relate to different failings and will have been identified at different times, the finding and outcome of each should be without prejudice to the other(s).
- 4.4.2 However, there may be circumstances where procedures have been initiated for a particular failing and an additional failing comes to light prior to the performance meeting. In such circumstances it is possible to consolidate the two issues at the performance meeting provided that there is sufficient time prior to the meeting to comply with the notification requirements explained in more detail below. If this is not possible, the meeting should either be rearranged to a date which allows the requirements to be met or a separate performance meeting should be held in relation to the additional matter.

## **5 The First Stage – Performance Meeting**

### **5.1 Preparation and purpose**

5.1.1 Having considered the use of improvement action where a first line manager considers that a police officer's performance or attendance is unsatisfactory and decides that the performance procedures are the most appropriate way of addressing the matter(s), they will notify the police officer in writing that they are required to attend a performance meeting and include in that notification the following details:

- details of the procedures for determining the date and time of the meeting
- a summary of the reasons why the line manager considers the police officer's performance or attendance unsatisfactory;
- the possible outcomes of a performance meeting, progress meeting and performance hearing;
- any proposed attendance at the meeting of a human resources professional or a police advisor to advise the line manager on the proceedings;
- that if the police officer agrees, any other person specified in the notice may attend the meeting;
- that prior to the meeting the police officer must provide the line manager with any documentation they intend to rely on in the meeting; and,
- the police officer's rights i.e. their right to seek advice from a police representative and to be accompanied and represented at the meeting by a police representative.

5.1.2 The notice shall be accompanied by copies of related documentation relied upon by the first line manager in support of the view that the police officer's performance or attendance is unsatisfactory.

5.1.3 In advance of the meeting, the police officer shall provide the first line manager with any documents on which they intend to rely in support of their case. The general principle of sharing information in advance applies to all parties.

5.1.4 Any document or other material that was not submitted in advance of the meeting may be considered at the meeting at the discretion of the line manager. The purpose of allowing this discretion is to ensure fairness to all parties. However the presumption should be 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 such a document or other material is permitted to be considered, a short adjournment may be necessary to enable the line manager or the police officer, as the case may be, to read or consider the document or other material and consider its implications. The length of the adjournment will depend upon the case. A longer adjournment may be necessary if the material in question is complex.

5.1.5 The purpose of the meeting is to hear the evidence of the unsatisfactory

performance or attendance and to give the police officer the opportunity to put forward their views. It will also be an opportunity to hear of any factors that are affecting the police officer's performance or attendance and what the police officer considers can be done to address them.

- 5.1.6 The first line manager should explain that there are potentially three stages to the procedures and that the maximum outcome of a performance meeting is an improvement notice and the maximum outcome of a progress meeting is a final improvement notice. The manager will also explain that if the procedure is followed to the performance hearing stage, dismissal, a reduction in rank (but not for attendance cases), or an extended improvement notice (in exceptional circumstances) are possible outcomes.
- 5.1.7 Wherever possible, the meeting date and time should be agreed between the first line manager and the police officer. If the police officer or their police representative is not available at the date or time specified by the line manager, the police officer may propose an alternative time. Where agreement cannot be reached the manager must specify a time and date. Provided that the alternative time is reasonable and falls within a period of 10 working days from the date specified by the manager, the meeting must be postponed to that time.
- 5.1.8 Once the date for the meeting is fixed, the first line manager should send to the police officer a notice in writing of the date, time and place of the meeting.

## **5.2 At the performance meeting**

- 5.2.1 At the performance meeting the first line manager will:
  - a) explain to the police officer the reasons why the line manager considers that the performance or attendance of the police officer is unsatisfactory;
  - b) provide the police officer with the opportunity to make representations in response;
  - c) provide their police representative (if they have one) with an opportunity to make representations;
  - d) listen to what the police officer (and their police representative) has to say, ask questions and comment as appropriate.
- 5.2.2 The first line manager may postpone or adjourn the meeting at any time if they consider it is necessary or expedient to do so. An adjournment may be appropriate where information which needs to be checked by the line manager emerges during the course of the meeting or the manager decides that they wish to adjourn the meeting to make a decision.
- 5.2.3 Where the first line manager finds that the performance or attendance of the police

officer has been satisfactory during the period in question, they will inform the police officer that no further action will be taken.

- 5.2.4 Where having considered any representations by either the police officer and or their police representative, the first line manager finds that the performance or attendance of the police officer has been unsatisfactory they shall inform the officer:
- a) in what respect(s) their performance or attendance is considered unsatisfactory;
  - b) of the improvement that is required in their performance or attendance;
  - c) of the period within which improvement is required;
  - d) that if a sufficient improvement is not made within the period specified by the line manager, they may be required to attend a progress meeting.
  - e) that they will receive a written improvement notice;
  - f) of the validity period of that notice
  - g) that if the sufficient improvement in their performance or attendance is not maintained during the validity period of such notice they may be required to attend a progress meeting.

- 5.2.5 It is expected that the specified period for improvement would not normally exceed 12 weeks. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but must not exceed 12 months). In determining the specified period of an improvement notice, consideration should also be given to any periods of known extended absence from the police officer's normal role.

### **5.3 Procedure following the Performance Meeting**

- 5.3.1 As soon as reasonably practicable, following the meeting, the first line manager shall prepare and send to the police officer a written record of the meeting and, where they found at the meeting that the performance or attendance of the police officer was unsatisfactory, a written improvement notice.

- 5.3.2 Any written improvement notice must set out the information conveyed to the police officer, state the period for which it is valid and be signed and dated by the line manager. Any improvement notice must be accompanied by a notice informing the police officer of their right to appeal, the grounds for appeal and the name of the person to whom the appeal should be sent. The notice must also inform the police officer of their right to submit written comments on the written record of the meeting and of the procedure for doing so.
- 5.3.3 The police officer may submit written comments on the written record not later than the end of 7 working days after the date that they received it. Any written comments provided by the police officer should be retained with the note.
- 5.3.4 It is the responsibility of the line manager to ensure that the written record, written improvement notice and any written comments of the police officer regarding the written record are retained together and filed in accordance with Police Service of Scotland policies.
- 5.3.5 Normally it will be appropriate to agree an action plan, setting out the actions which should assist the police officer to perform their duties to an acceptable standard. This may be agreed at the performance meeting or at a later time specified by the line manager. It is expected that the police officer will co-operate with implementation of the action plan and take responsibility for their own development or improvement. Equally, the police officer's managers must ensure that any actions to support the police officer to improve are implemented.

#### **5.4 Assessment of Performance or Attendance**

- 5.4.1 It is expected that the police officer's performance or attendance will be actively monitored against the improvement notice and, where applicable, the action plan by the first line manager throughout the specified period of the improvement notice. The manager should discuss with the police officer any concerns that they have during this period as regards their performance or attendance and offer advice and guidance where appropriate.
- 5.4.2 As soon as reasonably practicable after the specified period of the improvement notice comes to an end, the first line manager must formally assess the performance or attendance of the police officer during that period. If the manager considers that the police officer's performance or attendance is satisfactory, the line manager should notify the police officer in writing of this. The notification should also inform the officer that whilst their performance or attendance is now satisfactory, the improvement notice is valid for a period of 12 months (from the date of the notice) and the improvement must be maintained until the end of that period.

- 5.4.3 If the first line manager considers that the police officer's performance or attendance is still unsatisfactory, the line manager must refer the officer in writing to a progress meeting.
- 5.4.4 If the police officer has improved their performance or attendance to an acceptable standard within the specified improvement period, but then fails to maintain that standard during any part of the 12 month validity period, the manager must refer the officer to a progress meeting. If the improvement is not maintained during the validity period there is no need to wait until the end of the period before moving on to the next stage.

## **5.5 Performance Meeting Appeals**

- 5.5.1 A police officer has a right of appeal against the finding and the terms of the improvement notice imposed at the performance meeting. However, any finding and outcome of the meeting will continue to apply up to the date that the appeal is determined. Therefore where the police officer contests the finding or outcome, they should continue to follow the terms of the improvement notice and any accompanying action plan pending the determination of the appeal.
- 5.5.2 Any appeal should be made in writing to the second line manager within 7 working days following the day of the receipt of the improvement notice and written record of the meeting (unless the period is extended by the second line manager following an application by the police officer). The notice of appeal must clearly set out the grounds and evidence for the appeal.

## **5.6 Appeal grounds**

- 5.6.1 The grounds for appeal are:

- that the finding of unsatisfactory performance or attendance is unreasonable;
- that any of the terms of the improvement notice are unreasonable;
- that there is evidence that could not reasonably have been considered at the performance meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the terms of the written improvement notice;
- that there was a breach of the procedures set out in the Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or the terms of the improvement notice.

- 5.6.2 On the basis of the above grounds of appeal, the police officer may appeal against the finding of unsatisfactory performance or attendance or the terms of the written

improvement notice, those being:

- the respect in which the police officer's performance or attendance is considered unsatisfactory;
- the improvement which is required of the police officer; and/ or the length of the period specified for improvement by the line manager at the performance meeting.

5.6.3 As soon as practicable after receipt of an appeal notice the second line manager must decide whether to hold an appeal meeting or not. An appeal can only be determined without a hearing where the police officer agrees to this course of action.

5.6.4 If the second line manager decides to require the officer to attend a performance appeal meeting the second line manager must send to the officer a written notice giving details of:

- the procedures for determining the date and time of that meeting;
- any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
- any proposed attendance at the meeting of the first line manager;
- any proposed attendance at the meeting of any other named person and the officer's right to refuse to consent to their attendance;
- the officer's right to seek advice from a police representative; and
- the officer's right to be represented at the meeting by a police representative.

5.6.5 Where a performance appeal meeting is to be held, the date and time should be agreed between the second line manager and the police officer. However, where agreement cannot be reached the second line manager must specify a time and date. If the police officer or their police representative is not available at the date or time specified by the second line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 10 working days beginning with the first working day after that specified by the second line manager, the meeting must be postponed to that time.

5.6.6 Once a date for the meeting is fixed, the second line manager must send to the police officer a notice in writing of the date, time and place of the appeal meeting together with the foregoing information required to be provided under the

Regulations.

## **5.7 At the performance appeal meeting**

### 5.7.1 The following persons may attend the meeting:

- a human resources professional or a police adviser to advise the second line manager on the proceedings;
- the first line manager; and
- any other person whose proposed attendance was notified to the officer provided the officer has not refused to consent to their attendance.

### 5.7.2 At the appeal meeting the second line manager must:

- provide the officer with an opportunity to make representations; and
- provide the officer's police representative (if the officer has one) with an opportunity to make representations.

### 5.7.3 The second line manager may postpone or adjourn the performance appeal meeting to a later time or date if it appears necessary or expedient to do so. The procedure for setting the date of the performance appeal meeting applies to a postponed or adjourned meeting.

## **5.8 Determination of Appeal**

### 5.8.1 Where a performance appeal meeting takes place, the second line manager must consider;

- the appeal notice submitted;
- any evidence accompanying that notice;
- the written record of the performance meeting;
- the officer's written comments on that record (if any); and
- any representations made at the meeting (if any).

### 5.8.2 Where no performance appeal meeting takes place, the second line manager must consider;

- the appeal notice submitted;

- any evidence accompanying that notice;
- the written record of the performance meeting; and
- the officer's written comments on that record (if any).

5.8.3 Having considered the foregoing the second line manager may

- confirm or reverse the finding of unsatisfactory performance or attendance; and
- endorse or vary the terms of the improvement notice appealed against.

5.8.4 The second line manager may deal with the police officer in any manner in which the line manager could have dealt with them at the performance meeting. Where the second line manager has reversed the finding of unsatisfactory performance or attendance they must also revoke the written improvement notice.

5.8.5 If the second line manager reverses the finding of unsatisfactory performance; or varies any of the relevant terms of the first improvement notice against which the appeal is made, the decision of the second line manager substitutes the previous finding, from the date of that decision.

5.8.6 As soon as reasonably practicable after determining an appeal the second line manager must send to the officer a written note of their decision. In a case where a performance appeal meeting has taken place, the second line manager must also send to the officer a written record of that meeting.

## **6 The Second Stage – Progress Meeting**

### **6.1 Preparation and purpose**

6.1.1 Initiation of the second stage must be for matters similar to or connected with the unsatisfactory performance or attendance referred to in the improvement notice issued at the first stage.

6.1.2 Where, a first line manager refers an officer to a progress meeting the second line manager must send a notice to the officer notifying them in writing that they are required to attend a progress meeting. The notification will state:

- the details of the procedures for determining the date and time of the meeting ;
- a summary of the reasons why the line manager considers the police officer's performance or attendance unsatisfactory;

- the possible outcomes of a progress meeting and performance hearing;
- that the first line manager may attend the meeting;
- that a human resources professional or a police adviser may attend the meeting to advise the second line manager on the proceedings;
- that if the police officer agrees, any other person specified in the notice may attend the meeting;
- that prior to the meeting the police officer must provide the second line manager with any documentation they intends to rely on in the meeting; and
- the police officer's rights i.e. their right to seek advice from a police representative and to be accompanied and represented at the meeting by a police representative.

- 6.1.3 The notice must also include copies of related documentation relied upon by the second line manager in support of the view that the police officer's performance or attendance continues to be unsatisfactory.
- 6.1.4 In advance of the meeting, the police officer shall provide the second line manager with any documents on which they intends to rely on in support of their case.
- 6.1.5 Any document or other material that was not submitted in advance of the meeting may be considered at the meeting at the discretion of the second line manager. The purpose of allowing this discretion is to ensure fairness to all parties. However the presumption should be that such documents or other material will not be permitted unless it can be shown that they were not previously available to be submitted in advance. Where such a document or other material is permitted to be considered, a short adjournment may be necessary to enable the second line manager or the police officer, as the case may be, to read or consider the document or other material and consider its implications. The length of the adjournment will depend upon the case. A longer adjournment may be necessary if the material in question is complex.
- 6.1.6 The purpose of the meeting is to hear the evidence of the unsatisfactory performance or attendance and to give the police officer the opportunity to put forward their views. It will also be an opportunity to hear of any factors that are continuing to affect the police officer's performance or attendance and what the police officer considers can be done to address them.
- 6.1.7 The second line manager should explain that there is potentially a further stage to the procedures and that the maximum outcome of the progress is meeting is a final improvement notice. The second line manager will also explain that if the

procedure is followed to the final stage, dismissal, a reduction in rank (in performance cases only), or an extended improvement notice (in exceptional circumstances) are possible outcomes.

- 6.1.8 Wherever possible, the meeting date and time should be agreed between the second line manager and the police officer. However, where agreement cannot be reached the second line manager must specify a time and date. If the police officer or their police representative is not available at the date or time specified by the second line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 10 working days beginning with the first working day after that specified by the second line manager, the meeting must be postponed to that time.
- 6.1.9 Once a date for the meeting is fixed, the second line manager should send to the police officer a notice in writing of the date, time and place of the progress meeting.

## **6.2 At the Progress Meeting**

- 6.2.1 At the Progress Meeting the second line manager must:
  - a) explain to the police officer the reasons why their performance or attendance is considered to be unsatisfactory;
  - b) provide the police officer with the opportunity to make representations in response;
  - c) provide the officer's police representative (if they have one) with an opportunity to make representations;
  - d) listen to what the police officer (and/or their police representative) has to say, ask questions and comment as appropriate;
- 6.2.2 The second line manager may adjourn the meeting at any time if they consider it is necessary or expedient to do so. An adjournment may be appropriate where information, which needs to be checked by the line manager, emerges during the course of the meeting or the manager decides that they wish to adjourn the meeting whilst they make a decision.
- 6.2.3 Where an officer is required to attend a progress meeting and it is found that the officer's performance or attendance has improved or been maintained (contrary to the first line manager's assessment) the second line manager will inform the officer that no further action will be taken at that meeting. The first improvement notice remains in place for the entire validity period and the officer can still be required to attend another progress meeting if they do not maintain their improvement throughout the 12 months that the improvement notice is valid.

- 6.2.4 Where, having considered any representations by either the police officer and/ or their police representative, the second line manager finds that the performance or attendance of the police officer has been unsatisfactory (either during the period specified in the written improvement notice or during the validity period of the written improvement notice) they shall inform the police officer:
- a) in what respect(s) their performance or attendance is considered unsatisfactory;
  - b) of the improvement that is required in their performance or attendance;
  - c) of the period within which improvement is required (the final improvement period);
  - d) that if a sufficient improvement is not made within the period specified by the second line manager, they may be required to attend a performance hearing.
  - e) that they will receive a written final improvement notice;
  - f) of the validity period of that notice;
  - g) that if the sufficient improvement in their performance or attendance is not maintained during the validity period of such notice they may be required to attend a performance hearing.

- 6.2.5 It is expected that the specified period for improvement would not normally exceed 12 weeks. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but which should not exceed 12 months). In determining the specified period of an improvement notice, consideration should also be given to any periods of known extended absence from the police officer's normal role.

### **6.3 Procedure following the progress meeting**

- 6.3.1 As soon as reasonably practicable following the meeting, the second line manager will prepare a written record of the meeting and, where they found at the meeting that the performance or attendance of the police officer was unsatisfactory, a final improvement notice. The written record and any final improvement notice shall be sent to the officer as soon as reasonably practicable.
- 6.3.2 The final improvement notice must set out the information previously conveyed to the police officer, state the period for which it is valid, and be signed and dated by the second line manager. Any improvement notice must be accompanied by a notice informing the police officer of their right to appeal and the name of the person to whom the appeal should be sent. The notice must also inform the police

officer of their right to submit written comments on the written record of the meeting and of the procedure for doing so.

- 6.3.3 The police officer may submit written comments on the written record not later than the end of 7 working days after the date that they received it (unless an extension has been granted by the second line manager following an application by the police officer). Any written comments provided by the police officer should be retained with the note.
- 6.3.4 It is the responsibility of the second line manager to ensure that the written record, written improvement notice and any written comments of the police officer on the written record are retained together and filed in accordance with Police Service of Scotland policy.
- 6.3.5 Normally it will also be appropriate to agree an action plan setting out the actions which may assist the police officer to perform their duties to an acceptable standard e.g. attending training courses or a recommendation that the police officer seek welfare or medical advice. It is expected that the police officer will co-operate with implementation of the action plan and take responsibility for their own development or improvement. Equally, the police officer's managers must ensure that any actions to support the police officer to improve are implemented.

#### **6.4 Assessment of performance or attendance**

- 6.4.1 It is expected that the police officer's performance or attendance will be actively monitored against the improvement notice and, where applicable, the action plan by the first line manager throughout the specified period of the final improvement notice. The line manager should discuss with the police officer any concerns that the line manager has during this period as regards their performance or attendance and offer advice and guidance where appropriate.
- 6.4.2 As soon as reasonably practicable after the specified improvement period of the final improvement notice comes to an end, the first line manager must formally assess the performance or attendance of the police officer during that period.
- 6.4.3 If the first line manager considers that the police officer's performance or attendance is satisfactory, the line manager should notify the police officer in writing of this. The line manager must also notify the police officer that whilst the performance or attendance of the police officer is now satisfactory, the final improvement notice is valid for a period of 12 months from the date printed on the notice so that it is possible for the Performance Hearing procedures to be initiated if the performance or attendance of the police officer falls below an acceptable level within the remaining period.

- 6.4.4 If the first line manager considers that the police officer's performance or attendance is unsatisfactory at the end of the final improvement period, the first line manager must refer the officer to a Performance Hearing.
- 6.4.5 If the police officer has improved their performance or attendance to an acceptable standard within the final improvement period, but then fails to maintain that standard during any part of the validity period, the first line manager must refer the officer to a Performance Hearing to consider the performance or attendance issues. If the improvement is not maintained during the validity period there is no need to wait until the end of the period before moving on to the next stage.
- 6.4.6 Where the first line manager is of the opinion that the police officer has maintained the improvement to the end of the validity period, they must inform the officer of this in writing.

## **6.5 Progress Meeting Appeals**

- 6.5.1 A police officer has a right of appeal against the finding and the terms of the improvement notice imposed at progress meeting and against the decision to require them to attend the meeting. However, any finding and outcome of this progress meeting will continue to apply up to the date that the appeal is determined. Therefore where the police officer contests the finding or outcome, they should continue to follow the terms of the final improvement notice and any accompanying action plan pending the determination of the appeal.
- 6.5.2 Any appeal should be made in writing to the senior manager within 7 working days following the day of the receipt of the improvement notice (unless the period is extended by the senior manager following an application by the police officer). The notice of appeal must clearly set out the grounds and evidence for the appeal.

## **6.6 Appeal grounds**

- 6.6.1 The grounds for appeal are:

- That the progress meeting did not consider only unsatisfactory performance or attendance which was similar to or connected with the unsatisfactory performance or attendance referred to in the first improvement notice;
- that the finding of unsatisfactory performance or attendance is unreasonable;
- that any of the terms of the final improvement notice are unreasonable;
- that there is evidence that could not reasonably have been considered at the progress meeting which could have materially affected the finding of

- unsatisfactory performance or attendance or any of the terms of the written improvement notice;
- that there was a breach of the procedures set out in the Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or the terms of the improvement notice.
- 6.6.2 On the basis of the above grounds of appeal, the police officer may appeal against the finding of unsatisfactory performance or attendance or the terms of the final improvement notice, those being:
- the respect in which the police officer's performance or attendance is considered unsatisfactory;
  - the improvement which is required of the police officer; and/ or the length of the final improvement period.
- 6.6.3 As soon as practicable after receipt of an appeal notice the senior manager must decide whether to hold an appeal meeting or not. An appeal can only be determined without a hearing where the police officer agrees to this course of action.
- 6.6.4 If the senior manager decides to require the officer to attend a progress appeal meeting the senior manager must send to the officer a written notice giving details of:
- the procedures for determining the date and time of that meeting;
  - any proposed attendance at the meeting of a human resources professional or a police adviser to advise the senior manager on the proceedings;
  - any proposed attendance at the meeting of the second line manager;
  - any proposed attendance at the meeting of any other named person and the officer's right to refuse to consent to their attendance;
  - the officer's right to seek advice from a police representative; and
  - the officer's right to be represented at the meeting by a police representative.
- 6.6.5 Where a progress appeal meeting is to be held, the date and time should be agreed between the senior manager and the police officer. However, where agreement cannot be reached the senior manager must specify a time and date. If

the police officer or their police representative is not available at the date or time specified by the senior manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 10 working days beginning with the first working day after that specified by the senior manager, the meeting must be postponed to that time.

- 6.6.6 Once a date for the meeting is fixed, the senior manager must send to the police officer a notice in writing of the date, time and place of the appeal meeting together with the information required to be provided under the Regulations.

## **6.7 At the progress appeal meeting**

- 6.7.1 The following persons may attend the meeting:

- a human resources professional or a police adviser to advise the second line manager on the proceedings;
- the second line manager; and
- any other person whose proposed attendance was notified to the officer, provided the officer has not refused to consent to their attendance.

- 6.7.2 At the appeal meeting the senior manager must:

- provide the officer with an opportunity to make representations; and
- provide the officer's police representative (if the officer has one) with an opportunity to make representations in accordance.

- 6.7.3 The senior manager may postpone or adjourn the performance appeal meeting to a later time or date if it appears necessary or expedient to do so. The procedure for setting the date of the progress appeal meeting applies to a postponed or adjourned meeting.

## **6.8 Determination of Appeal**

- 6.8.1 Where a progress appeal meeting takes place, the senior manager must consider;

- the appeal notice submitted;
- any evidence accompanying that notice;
- the written record of the progress meeting;
- the officer's written comments on that record (if any); and
- any representations made at the meeting (if any).

6.8.2 Where no progress appeal meeting takes place, the senior manager must consider;

- the appeal notice submitted;
- any evidence accompanying that notice;
- the written record of the progress meeting; and
- the officer's written comments on that record (if any).

6.8.3 Having considered the foregoing the senior manager may

- confirm or reverse the finding of unsatisfactory performance or attendance; and
- endorse or vary the terms of the improvement notice appealed against.

6.8.4 The senior manager may deal with the police officer in any manner in which the second line manager could have dealt with them at the progress meeting. Where the second line manager has reversed the finding of unsatisfactory performance or attendance they must also revoke the written improvement notice.

6.8.5 If the senior manager reverses the finding of unsatisfactory performance; or varies any of the relevant terms of the final improvement notice against which the appeal is made, the decision of the senior manager substitutes the previous finding, from the date of that decision.

6.8.6 As soon as reasonably practicable after determining an appeal the senior manager must send to the officer a written note of their decision. In a case where a progress appeal meeting has taken place, the senior manager must also send to the officer a written record of that meeting.

## **7 The third stage – Performance Hearings**

### **7.1 Preparation and purpose**

7.1.1 Initiation of the third stage must be for matters similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

- 7.1.2 Where a first line manager refers a police officer to a performance hearing the Deputy Chief Constable must appoint a police officer of at least the rank of superintendent and of a rank higher than the officer to act as chair at the performance hearing.
- 7.1.3 The Deputy Chief Constable may appoint a human resources professional and an officer of at least the same rank as the subject officer to advise the chairing constable at the performance hearing.
- 7.1.4 A person must not be appointed as outlined above if the Deputy Chief Constable holds a reasonable concern as to whether that person could act impartially in relation to the subject police officer.
- 7.1.5 The police officer may object to the appointment of any person under this regulation. The objection must be made in writing not later than 3 working days from receipt of the notice of the arrangement of the hearing and must indicate the officer's reasons for objecting.
- 7.1.6 The Deputy Chief Constable must decide whether to uphold an objection and must notify the police officer in writing of that decision. Where the objection is upheld the Deputy Chief Constable must make a new appointment and notify the officer in writing of the name of the person appointed.
- 7.1.7 The Deputy Chief Constable must arrange for the provision to every person appointed;
- any document which was available to the first line manager in relation to the performance meeting;
  - any document which was available to the second line manager in relation to the progress meeting;
  - the records of the performance meeting and the progress meeting;
  - any submission by the police officer or their representative;
  - any documents relating to any appeal; and
  - the improvement notice and the final improvement notice.
- 7.1.8 Where the first line manager refers the police officer to a performance hearing the senior manager must send a notice in writing requiring the officer to attend such a hearing. The notification will state:
- the persons appointed to chair the hearing and the human resources advisor, where appropriate;

- the procedures for determining the date and time of the performance hearing;
- the respect in which the officer's performance is considered unsatisfactory;
- the possible outcomes of a performance hearing;
- The requirement on the police officer to respond to the notice in writing within 20 days stating whether or not they accept the first line manager's opinion.
- any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
- any proposed attendance at the hearing of any other named person and the police officer's right to refuse to consent to their attendance;
- the police officer's right to seek advice from a police representative;
- the police officer's right to be represented at the hearing by a police representative; and
- the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the officer intends to rely.

7.1.9 The notice must be accompanied by a copy of any document relied upon in coming to the view that the performance of the police officer is unsatisfactory; and copies of the documents set out in paragraph 8.1.7.

7.1.10 It is important to note that a performance hearing may not take place unless the police officer has been notified of his right to representation by a police representative.

## **7.2 Procedure on receipt of notice of performance hearing**

7.2.1 The police officer must, not later than 20 working days from receipt of the notice to attend a performance hearing, respond in writing indicating whether they accept the first line manager's opinion or not.

7.2.2 Where the police officer accepts the first line manager's opinion they may make a written submission to the Deputy Chief Constable. Where the officer does not accept that opinion they must provide a written submission explaining the reasons for not accepting that opinion. All submissions must be accompanied by any document on which the officer intends to rely at the performance hearing.

### **7.3 Witnesses**

- 7.3.1 The first line manager and the police officer must, no later than 10 working days after receipt of the officer's response, supply to each other the names and addresses of any witnesses on whom they propose to rely at the performance hearing and a summary of the evidence each witness will give; or give notice that they do not intend to rely on any witnesses.
- 7.3.2 The first line manager and the police officer must, if it is reasonably practicable to do so, agree on a joint list of witnesses and provide that list to the chairing constable. If it is not possible for the first line manager and the police officer to agree on a joint list of witnesses, they must each supply a list of proposed witnesses to the chairing constable.
- 7.3.3 As soon as reasonably practicable after receiving lists of witnesses the chairing constable must decide which, if any, of the listed witnesses should attend the performance hearing; and notify the first line manager and the officer of that decision.
- 7.3.4 The chairing constable may determine that witnesses not included in any list (whether joint or otherwise) are to attend the performance hearing.
- 7.3.5 No witnesses will give evidence at a performance hearing unless the chairing constable reasonably believes that it is necessary for the witness to do so, in which case they will:
  - a) in the case of a police officer, cause him or her to be ordered to attend the performance hearing;
  - b) in any other case, cause him or her to be given notice that their attendance at the performance hearing is necessary. Such notices will include the date, time and place of the meeting.
- 7.3.6 Where a witness attends to give evidence then any questions to that witness should be made through the chairing constable. This would not prevent the chairing constable allowing questions to be asked directly if they feel that this is appropriate.

### **7.4 Timing of performance hearing**

- 7.4.1 The performance hearing must take place not later than 35 working days after the

police officer has been given notice of the hearing. However, the chairing constable may extend this time period if it would be in the interests of fairness to do so. Where the time period is extended the chairing constable must provide written notification to both the Deputy Chief Constable and the officer of the reasons for that extension.

- 7.4.2 Where the time period is extended the chairing constable must, if reasonably practicable, agree a time and date for the performance hearing with the police officer. However, where agreement cannot be reached the chairing constable must specify a time and date. If the police officer or their police representative is not available at the date or time specified by the line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable, falls within a period of 10 working days from the date specified by the manager, and 35 working days from the notice of the performance hearing was given the hearing must be postponed to that time.
- 7.4.3 When the date and time of the performance hearing are determined in accordance with the foregoing paragraph, the chairing constable must send a notice in writing to the police officer specifying the date, time and place of that hearing.
- 7.4.4 The chairing constable may allow a police officer or their police representative (or both) who is unable, on reasonable grounds, to attend the performance hearing to participate in that hearing by video link or any other reasonable means.

## **7.5 Postponement and adjournment of performance hearing**

- 7.5.1 The chairing constable may, if satisfied that it is necessary or expedient in the circumstances postpone to a specified date a performance hearing which has not commenced; **or** adjourn to a specified date a performance hearing which has commenced. The date specified under paragraph may fall after the end of the period of 35 working days specified in the performance hearing notice.
- 7.5.2 Where a hearing is postponed or adjourned the chairing constable must notify in writing the police officer, the Deputy Chief Constable and any person appointed by the Deputy Chief Constable of the revised date, time and place of the hearing; and the reasons for the postponement or adjournment.
- 7.5.3 In cases where the police officer is absent (for example through illness or injury) a short delay may be reasonable to allow him or her to attend. If this is not possible or any delay is considered not appropriate in the circumstances then the person(s) conducting the meeting/hearing may allow the police officer to participate by telephone or video link. In these circumstances a police representative will always be permitted to attend the meeting/hearing to represent the police officer in the normal way.

## **7.6 Procedure at performance hearing**

- 7.6.1 The hearing must be conducted by the chairing constable. The following persons may attend the hearing if requested to do so by the chairing constable—
- the first line manager;
  - the second line manager;
  - the senior manager;
  - any person whose attendance was notified to the police officer, provided the officer has not refused to consent to their attendance.
- 7.6.2 The chairing constable must:
- explain to the police officer how their performance is considered to be unsatisfactory; and
  - provide the police officer or their police representative, with an opportunity to make representations in response.
- 7.6.3 The chairing constable may permit the police officer to ask questions of any witness.
- 7.6.4 An audio recording of the hearing must be made and the officer must, on request, be supplied with a copy of that recording.

## **7.7 Finding**

- 7.7.1 Following the performance hearing the chairing constable must decide whether:
- the officer has failed to make the required improvement in performance by the end of the final improvement period; or
  - in a case where the required improvement in performance has been made by the end of that period, that improvement has not been maintained during the validity period. It will be sufficient to show that the performance had not been sustained during the validity and there is no requirement to wait until the end of the period.
- 7.7.2 Not later than 3 working days from the conclusion of the performance hearing the chairing constable must give both the police officer and the first line manager written notice of
- a) the chairing constable's decision;
  - b) the reasons for that decision; and
  - c) the disposal.
- 7.7.3 Where the outcome is dismissal or demotion in rank then the police officer must be given notice of the right to appeal and of the procedure for making such an appeal.

## **7.8 Disposal**

- 7.8.1 Where the chairing constable decides that the police officer's performance is unsatisfactory they may order:
- a) dismissal of the officer with notice;
  - b) demotion in rank (but not for attendance cases); or
  - c) extension of the final improvement notice.
- 7.8.2 If dismissal of the officer with notice is ordered, the period of notice must be determined by the chairing constable, but must be not less than 28 days.
- 7.8.3 Extension of the final improvement notice may be ordered only where the chairing constable is satisfied that there are exceptional circumstances which justify such an outcome.
- 7.8.4 If extension of the final improvement notice is ordered the chairing constable must amend the final improvement notice to state that if the police officer does not make a sufficient improvement in performance within such reasonable period as the chairing constable specifies (being a period of no more than 6 months from the date of extension) the police officer may be required to attend a further performance hearing; and specify a new validity period.
- 7.8.5 The chairing constable may also amend the terms of the final improvement notice which relate to the respect in which the police officer's performance is considered to be unsatisfactory; or the improvement that is required in the officer's performance.

## **7.9 Assessment of performance following performance hearing**

- 7.9.1 Where, in exceptional cases, the chairing constable has extended a final improvement notice period, it is expected that the police officer's performance or attendance will be actively monitored by the line manager throughout the specified period of the final/extended final improvement notice. The line manager should discuss with the police officer any concerns that the line manager has during this period as regards their performance or attendance and offer advice and guidance where appropriate.
- 7.9.2 The first line manager must assess the police officers performance or attendance:
- a) at the end of the extended final improvement period specified; and
  - b) during any part of the validity period specified.
- 7.9.3 The first line manager must inform the police officer where in the first line manager's opinion:

- a) there has been a sufficient improvement in the officer's performance by the end of the extended final improvement period; and
  - b) that improvement has been maintained until the end of the validity period.
- 7.9.4 If the first line manager is of the opinion that there has been a sufficient improvement in the officer's performance by the end of the extended final improvement period, the first line manager must remind the officer of the need to maintain that improvement until the end of the validity period.
- 7.9.5 If, the first line manager is of the opinion that the officer has failed to make the required improvement in performance by the end of the extended final improvement period; or where the required improvement in performance has been made by the end of that period, that improvement has not been maintained during the validity period, the first line manager must refer the officer to a further performance hearing to consider the officer's performance. If the improvement is not maintained during the validity period there is no need to wait until the end of the period before moving on to the next stage.
- 7.9.6 A further performance hearing may consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the final improvement notice extended at the previous performance hearing.
- 7.9.7 A further performance hearing must be conducted by the chairing constable who conducted the previous performance hearing and they must be advised by the same advisor. If either of these is unable to attend the Deputy Chief Constable may appoint a replacement, and the same conditions of appointment will apply.
- 7.9.8 The Deputy Chief Constable must arrange for the provision to every person appointed;
- any document which was available to the first line manager in relation to the performance meeting;
  - any document which was available to the second line manager in relation to the progress meeting;
  - the records of the performance meeting and the progress meeting;
  - any submission by the police officer or their representative;
  - any documents relating to any appeal; and
  - the first improvement notice, final improvement notice and extended final improvement notice.
- 7.9.9 If the first line manager refers a police officer to a further performance hearing, the senior manager must send a notice in writing requiring the officer to attend such a hearing. The notice must inform the officer of the:
- the identity of the chairing constable and any person appointed to advise that constable;

- the procedures for determining the date and time of the further performance hearing;
- the respect in which the police officer's performance is considered to be unsatisfactory;
- the possible outcomes of a further performance hearing;
- the requirement on the police officer to respond to the notice in writing within 20 days stating whether or not they accept the first line manager's opinion.
- any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
- any proposed attendance at the hearing of any other named person and the officer's right to refuse to consent to their attendance;
- the officer's right to seek advice from a police representative;
- the officer's right to be represented at the hearing by a police representative; and
- the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the officer intends to rely.

7.9.10 The notice must be accompanied by a copy of any document relied upon in coming to the view that the officer's performance is unsatisfactory.

7.9.11 The further performance hearing will proceed in the same format as set out for a performance hearing.

7.9.12 A police officer may only be given an extension to a final improvement notice on one occasion. Therefore where the police officer is required to attend a further performance hearing and the chair finds that the police officers performance or attendance continues to be unsatisfactory, the only outcomes available are demotion in rank or dismissal (with notice).

## **7.10 Appeal against finding at performance hearing**

7.10.1 Where at a performance hearing or a further performance hearing, the chairing constable finds that the police officer's performance is unsatisfactory and orders dismissal or demotion in rank, the officer may appeal against;

- the finding of unsatisfactory performance; and
- the outcome ordered.

7.10.2 An appeal may be made only on one or more of the following grounds:

- that the finding of unsatisfactory performance is unreasonable;
- that the outcome ordered is unreasonable;
- that there is evidence that could not reasonably have been considered at the performance hearing or further performance hearing (as the case may be) which could have affected materially,
  - the finding of unsatisfactory performance; or

- the outcome ordered; and
- that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially,
  - the finding of unsatisfactory performance; or
  - the outcome ordered.

7.10.3 An appeal is to be commenced by the police officer submitting a written appeal notice to the Deputy Chief Constable not later than 30 working days from the date on which the officer receives the notice of the decision in relation to which the appeal is made.

7.10.4 An appeal notice must:

- set out the finding or the outcome (or both) against which the appeal is made;
- set out the grounds of appeal;
- specify whether the officer requests an appeal hearing; and
- be accompanied by any evidence on which the officer intends to rely.

7.10.5 The Chief Constable may, on the application of the police officer, extend the period allowed to submit an appeal if satisfied that it is appropriate to do so.

## **7.11 Procedure for determining appeal**

7.11.1 An appeal must be determined by a senior officer who is appointed by the Deputy Chief Constable. In a case where the appellant is a chief superintendent, the appeal must be determined by a Deputy Chief Constable other than the Deputy Chief Constable designated under these regulations.

7.11.2 If the police officer requests an appeal hearing, the person determining the appeal must decide whether to:

- a) hold an appeal hearing; or
- b) determine the appeal without holding such a hearing.

7.11.3 Where the police officer does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined on the basis of

- a) the appeal notice and any evidence sent with that notice; and
- b) the audio recording of the performance hearing or further performance hearing to which the appeal relates.

7.11.4 Where an appeal is to be held the person determining the appeal must within 30 working days of receipt of an appeal notice send a notice in writing:

- a) requiring the officer to attend an appeal hearing; and
- b) specifying a date and time for that hearing.

7.11.5 The appeal hearing is to be heard not more than 10 working days from the date on which the decision to hold that hearing was made.

7.11.6 The appeal hearing is to be conducted in such manner as the person determining the appeal decides, provided that;

- a) the officer's police representative must be permitted to attend; and
- b) the officer and the officer's police representative must be permitted to make oral representations.

## **7.12 Outcome of appeal**

7.12.1 The person determining the appeal may, whether after an appeal hearing or otherwise:

- a) confirm or reverse the finding of unsatisfactory performance;
- b) confirm the outcome; or
- c) order an outcome which is less severe than that ordered by the chairing constable of the performance hearing or further performance hearing (as the case may be).

7.12.2 In the case of an appeal against a decision or outcome ordered at a further performance hearing, the person determining the appeal may not order a further extension of the final improvement notice.

7.12.3 The person determining the appeal must notify the police officer in writing of the decision and the reasons for that decision. This notice must be given as soon as reasonably practicable and no later than 90 working days from the date the appeal notice was lodged. Where the outcome is a demotion in rank this will have effect from the date of this notice is given.

7.12.4 Where the person determining the appeal orders an extension of the final improvement notice then the procedures previously outlined for final improvement notices will apply.

7.12.5 Where the person determining the appeal confirms that the police officer's performance is unsatisfactory; and the officer is to be dismissed or demoted in rank they must be given notice in writing setting out the circumstances in which the officer may appeal to a police appeals tribunal and the procedure for making such an appeal.

## **7.13 Medical retirement under police pension legislation**

7.13.1 The Police Pensions Regulations 1987 in relation to the Police Pension Scheme

and the Police Pensions Regulations 2006 in relation to the New Police Pension Scheme provide that where a police authority is considering whether a police officer is permanently disabled it shall refer the issue to the selected medical practitioner (SMP) for a decision.

- 7.13.2 Some cases of unsatisfactory attendance may raise the need to consider whether the police officer is permanently disabled within the meaning of the Police Pension Regulations 1987 or 2006. In such cases, this guidance should be read in conjunction with the PNB Joint Guidance on Improving the Management of Ill-Health.
- 7.13.3 Where a police officer is referred to the SMP for consideration of permanent disablement under the Police Pensions Regulations, no action shall be commenced or continued under the Police Service of Scotland (Performance) Regulations 2014 with regard to the unsatisfactory attendance of a police officer until the issue of permanent disablement has been considered and the report of the SMP has been received by the SPA.
- 7.13.4 Where a police officer appeals against a decision of the SMP that they are not permanently disabled or against a decision of the SPA not to refer the permanent disablement questions to a SMP, no action shall be commenced or continued under the Police (Scotland) Performance Regulations 2013 with regard to the unsatisfactory attendance of the police officer until the appeal has been resolved.
- 7.13.5 Action can, however, be taken under the performance procedures where a case has been referred or is the subject of appeal if the unsatisfactory attendance is unrelated to the condition forming the basis of the referral or appeal. However, the Police Service of Scotland must be confident that there is no connection as a decision to proceed in such circumstances may be challenged in the courts or tribunals. If the appropriate manager is unsure whether any condition forming the basis of a referral to the SMP or an appeal is related to the unsatisfactory attendance of a police officer, then advice should be sought from the HR professional acting on behalf of the SPA before any decision is taken to commence or continue the performance procedures. Medical advice from the Police Service of Scotland medical advisor (FMA) may also be necessary.
- 7.13.6 It is important that there is a clear distinction between an officer being subject to medical discharge procedures, which should be overseen by the SPA and an officer subject to performance procedures, which are overseen by the Police Service of Scotland. There must be no confusion and an officer who is genuinely permanently disabled should leave the Police Service of Scotland using the medical discharge procedures and not the performance procedures.

## **7.14 Competency Related Threshold Payments and Promotion**

- 7.14.1 A finding or admission of unsatisfactory performance or attendance at a performance procedure meeting will not automatically result in the removal of a

police officer's competency related threshold payment. However, where a police officer has received an improvement notice or final improvement notice, this may trigger a review of the appropriateness of that police officer continuing to receive such payments. Any such review should take into account the qualifying criteria for payments under these schemes. Likewise there will not be an automatic debar on an officer from entering the promotion process, although the circumstances of each case, including the level of sustained progress made would have to be examined on its own merit.

## **7.15 The use of records under performance procedures**

7.15.1 The terms of Regulation 11 of the Police Service of Scotland Regulations will apply in regard to the recording of "performance proceedings" on personal records.

7.15.2 Records of any part of the performance procedures should not be taken into account after an improvement notice has ceased to be valid. Equally, where a police officer appeals and that appeal is successful, the record of that procedure should not be taken into consideration in any future proceedings or for any other purpose.

# POLICE SERVICE OF SCOTLAND (CONDUCT) REGULATIONS 2014

## GUIDANCE



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## **General**

### **1.1 Introduction**

- 1.1.1 These misconduct procedures have been prepared by a Scottish Government led Working Group with representatives from Police Scotland, the Scottish Police Federation (SPF) and the Association of Scottish Police Superintendents (ASPS).
- 1.1.2 This guidance covers the Police Service of Scotland (Conduct) Regulations 2014 in regard to the procedures for dealing with misconduct for Police Officers up to and including the rank of Chief Superintendent. Misconduct Procedures for Senior Officers is covered by separate legislation.
- 1.1.3 The procedures described in this guidance are designed to accord with the principles of natural justice and the basic principles of fairness, and should be administered accordingly.
- 1.1.4 The guidance on the individual procedures is designed to further the aims of being fair to the individual police officer and of arriving at a correct assessment of the matter in question and providing confidence in the system.
- 1.1.5 The misconduct procedures set out in this guidance do not apply special constables.

### **1.2 Delegated authority**

- 1.2.1 The Chief Constable must designate a Deputy Chief Constable to exercise functions under these Regulations (and references in these Regulations to the "Deputy Chief Constable" are, unless the context otherwise requires, references to that individual).
- 1.2.2 The Deputy Chief Constable may direct or authorise any of his or her functions under these Regulations to a police officer of at least the rank of Chief Inspector. References in this guidance to the Deputy Chief Constable recognise that the function may be so delegated.
- 1.2.3 The misconduct procedures are designed to be dealt with at the lowest appropriate managerial level having regard to all the circumstances of the particular matter.

### **1.3 Glossary**

- 1.3.1 In this guidance the following terms will be used: -
  - a) "2012 Act" means the Police and Fire Reform (Scotland) Act 2012
  - b) "Conduct Regulations" means the Police Service of Scotland (Conduct) Regulations 2014

- c) “Performance Regulations” means the Police Service of Scotland (Performance) Regulations 2014
  - d) “misconduct proceedings” means misconduct meeting or misconduct hearing
  - e) A “Senior Officer” means an officer above Chief Superintendent rank.
- 1.3.2 All timescales mentioned in the Regulations are in terms of “working days,” this term does not include Saturdays, Sundays or Public Holidays.

## **2. Misconduct**

### **2.1 Transition Arrangements**

- 2.1.1 This guidance applies to the handling of misconduct cases that have come to the notice of the Deputy Chief Constable on or after the 1st April 2014 and where the conduct giving rise to the case occurred on or after that date. For cases which occurred before this date the previous guidance will apply and these will be dealt with under the Police (Conduct) (Scotland) Regulations 2013.

### **2.2 Police Representative**

- 2.2.1 Police officers have the right to consult with, and be accompanied by, a police representative at any interview during an investigation into misconduct and at all stages of the misconduct proceedings.
- 2.2.2 The police officer concerned may choose a police officer, or a representative from the Association of Scottish Police Superintendents or Scottish Police Federation (as appropriate to their rank) as their representative. A person approached to be a police representative is entitled to decline to act as such.
- 2.2.3 A police representative cannot be appointed to act as such if he or she has had some involvement in that particular case e.g. he or she is a witness etc.
- 2.2.4 The police representative can:
- Advise the police officer concerned throughout the proceedings under the Police Service of Scotland (Conduct) Regulations 2014.
  - Unless the police officer concerned has the right to be legally represented and chooses to be so represented, represent the police officer concerned at the misconduct hearing.
  - Make representations to the Deputy Chief Constable concerning any aspect of the proceedings under the Conduct or Performance Regulations; and
  - Accompany the police officer concerned to any interview, meeting or

hearing which forms part of any proceedings under the Conduct or Performance Regulations.

- 2.2.5 It is good practice to allow the police representative to participate as fully as possible, but at an interview, meeting or hearing the police representative is not there to answer questions on the police officer's behalf. It is for the police officer concerned to speak for himself or herself when asked questions.
- 2.2.6 A police representative who has agreed to accompany a police officer is entitled to take a reasonable amount of duty time to fulfil their responsibilities as a police representative and should be considered to be on duty when attending interviews, meetings or hearings.
- 2.2.7 Subject to any timescales set out in the Regulations, at any stage of a case, up to and including a misconduct meeting or hearing, the police officer concerned or his or her police representative may submit that there are insufficient grounds upon which to base the case and/or that the correct procedures have not been followed, clearly setting out the reasons and submitting any supporting evidence. It will be for the person responsible for the relevant stage of the case to consider any such submission and determine how best to respond to it, bearing in mind the need to ensure fairness to the police officer concerned.
- 2.2.8 At a misconduct meeting or misconduct hearing under the Conduct Regulations where the police representative attends, he or she may:
  - a) confer with the police officer concerned;
  - b) put the police officer concerned's case;
  - c) sum up that case;
  - d) respond on the police officer concerned's behalf to any view expressed at the meeting;
  - e) make representations concerning any aspect of the proceedings;
  - f) in a misconduct meeting or hearing, ask questions of any witness, subject to the discretion of the person(s) conducting that hearing.
- 2.2.9 A police officer is entitled to be legally represented at a misconduct hearing under the Conduct Regulations. Where he or she decides to be so represented, the police representative can also attend and may consult with the police officer concerned, but will not carry out functions b) to f) described above.
- 2.2.10 Where a police officer is arrested or interviewed in connection with a criminal offence then the normal criminal procedure will apply subject to any additional guidance given in the relevant Lord Advocate's Guidance. The police representative has no role in a criminal investigation.

- 2.2.11 It is not the role of the police representative to conduct his or her own investigation into the matter.

### **3. Standards of Professional Behaviour**

#### **3.1 Introduction**

- 3.1.1 Police Officers are given extraordinary powers over citizens and public confidence in the police is crucial in a system that rests on the principle of policing by consent. Public confidence in the police depends on police officers demonstrating the highest level of personal and professional standards of behaviour. The standards set out below reflect the expectations that the police service and the public have of how police officers should behave. They are not intended to describe every situation but rather to set a framework which everyone can easily understand. They enable everybody to know what type of conduct by a police officer is acceptable and what is unacceptable. The standards should be read and applied having regard to this guidance.
- 3.1.2 They apply to police officers of all ranks from Constable to Chief Constable and to those subject to suspension.
- 3.1.3 The standards set out below do not restrict police officers' discretion; rather they define the parameters of conduct within which that discretion should be exercised. A breach of these high standards may damage confidence in the police service and could lead to action for misconduct, which in serious cases could involve dismissal.
- 3.1.4 The public have the right to expect the police service to protect them by upholding the law and providing a professional police service. Police officers have the right to a working environment free of harassment or discrimination from others within the service.
- 3.1.5 Those entrusted to supervise manage and lead others are role models for delivering a professional, impartial and effective policing service. They have a particular responsibility to maintain standards of professional behaviour by demonstrating strong leadership and by dealing with conduct which has fallen below these standards in an appropriate way, such as by improvement action or the formal misconduct process. Above all else police managers should lead by example.
- 3.1.6 In carrying out their duties in accordance with these standards, police officers have the right to receive the full support of the police service. It is recognised that the ability of police officers to carry out their duties to the highest professional standards may depend on the provision of appropriate training, equipment and management support.
- 3.1.7 The police service has a responsibility to keep police officers informed of changes to police regulations, local policies, laws and procedures. Police officers have a duty to keep themselves up to date on the basis of the

information provided.

- 3.1.8 Where these Standards of Professional Behaviour are being applied in any decision regarding a complaint or a misconduct meeting/hearing, they shall be applied in a reasonable, transparent, objective and proportionate manner. Due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny.
- 3.1.9 This guidance gives examples to help police officers interpret the standards expected in a consistent way. They are not intended to be an exclusive or exhaustive list.
- 3.1.10 Where the misconduct procedure is being applied, it is important to identify the actual behaviour that is alleged to have fallen below the standard expected of a police officer, with clear particulars describing that behaviour.

## **3.2 Honesty and Integrity**

- 3.2.1 Police officers are honest, act with integrity and do not compromise or abuse their position.
- 3.2.2 Police officers act with integrity and are open and truthful in their dealings with the public and their colleagues, so that confidence in the police service is secured and maintained.
- 3.2.3 Police officers do not knowingly make any false, misleading or inaccurate oral or written statements or entries in any record or document kept or made in connection with any police activity.
- 3.2.4 Police officers never accept any gift or gratuity that could compromise their impartiality. During the course of their duties police officers may be offered hospitality (e.g. refreshments) and this may be acceptable as part of their role. However, police officers always consider carefully the motivation of the person offering a gift or gratuity of any type and the risk of becoming improperly beholden to a person or organisation.

- 3.2.5 It is not anticipated that inexpensive gifts would compromise the integrity of a police officer, such as those from conferences (e.g. promotional products) or discounts aimed at the entire police Service (e.g. advertised discounts through police publications). However, all gifts and gratuities must be declared in accordance with the relevant Standard Operating Procedure where authorisation may be required from a manager or Chief to accept a gift or hospitality. If a police officer is in any doubt then they should seek advice from their manager.
- 3.2.6 Police officers never use their position or warrant card to gain an unauthorised advantage (financial or otherwise) that could give rise to the impression that the police officer is abusing his or her position. A warrant card is only to confirm identity or to express authority.

### **3.3 Authority, Respect and Courtesy**

- 3.3.1 Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.
- 3.3.2 Police officers do not abuse their powers or authority and respect the rights of all individuals.
- 3.3.3 Police officers are well placed to protect individuals and groups within society. They have been given important powers and responsibilities due to the complex and difficult situations they deal with. The public have the right to expect that such powers are used professionally, impartially and with integrity, irrespective of an individual's status.
- 3.3.4 Police officers do not harass or bully colleagues or members of the public. Challenging conduct or unsatisfactory performance or attendance in an appropriate manner would not constitute bullying.
- 3.3.5 Police officers do not, under any circumstances inflict, instigate or tolerate any act of inhuman or degrading treatment (as enshrined in Article 3 of the European Convention on Human Rights).
- 3.3.6 Police officers, recognise that some individuals who come into contact with the police, such as victims, witnesses or suspects, may be vulnerable and therefore may require additional support and assistance.
- 3.3.7 Police officers use appropriate language and behaviour in their dealings with their colleagues and the public. They do not use any language or behave in a way that is offensive or is likely to cause offence.

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

#### **3.4 Equality and Diversity**

- 3.4.1 Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.
- 3.4.2 Police officers carry out their duties in accordance with current equality legislation. In protecting others' human rights, they act in accordance with Article 14 of the European Convention on Human Rights.
- 3.4.3 Police officers need to retain the confidence of all communities and therefore respect all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.
- 3.4.4 Police officers pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups.
- 3.4.5 Police managers have a particular responsibility to support the promotion of equality and by their actions to set a positive example.
- 3.4.6 Different treatment of individuals which has an objective justification may not amount to discrimination.

#### **3.5 Use of Force**

- 3.5.1 Police officers only use Force to the extent that it is necessary, proportionate and reasonable in all the circumstances.
- 3.5.2 There will be occasions when police officers may need to use force in carrying out their duties, for example to effect an arrest or prevent harm to others.
- 3.5.3 It is for the police officer to justify his or her use of force but when assessing whether this was necessary, proportionate and reasonable all of the circumstances should be taken into account and especially the situation which the police officer faced at the time. Police officers use force only if other means are or may be ineffective in achieving the intended result.
- 3.5.4 As far as it is reasonable in the circumstances police officers act in accordance with their training in the use of force to decide what force may be necessary, proportionate and reasonable. Common law makes it clear that force may only be used when it is reasonable in the circumstances.
- 3.5.5 Article 2 (2) of the European Convention on Human Rights provides a stricter

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

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

### **3.6 Orders and Instructions**

- 3.6.1 Police officers only give and carry out lawful orders and instructions.
- 3.6.2 Police officers abide by police regulations, Service policies and lawful orders.
- 3.6.3 The police service is a disciplined body and therefore any decision not to follow an order or instruction will need to be fully justified.
- 3.6.4 There may however be instances when failure to follow an order or instruction does not amount to misconduct. This may be for example where the police officer reasonably believed that a lawful order was in fact unlawful or where a police officer had good and sufficient reason not to comply having regard to all the circumstances and possible consequences.
- 3.6.5 Police officers, to the best of their ability, support their colleagues in the execution of their lawful duty.
- 3.6.6 Police officers abide by police regulations and Service policies and accept the restrictions on their private lives as described in Schedule 1 to the Police (Scotland) Regulations 2004 (as amended) and determinations made under those Regulations.

### **3.7 Duties and Responsibilities**

- 3.7.1 Police officers are diligent in the exercise of their duties and responsibilities.
- 3.7.2 Police officers do not neglect their duties or responsibilities.
- 3.7.3 When deciding if a police officer has neglected his or her duties all of the circumstances should be taken into account. Police officers have wide discretion and may have to prioritise the demands on their time and resources. This may involve leaving a task to do a different one, which in their judgement is more important. This is accepted and in many cases essential for good policing.

- 3.7.4 Police officers ensure that accurate records are kept of the exercise of their duties and powers as required by relevant legislation, Service policies and procedures.
- 3.7.5 In carrying out their duties police officers have a responsibility to exercise reasonable care to prevent loss of life or loss or damage to the property of others (including police property).
- 3.7.6 Police supervisors, managers and leaders, are the primary promoters of good conduct and should take all reasonable steps possible to ensure a professional, impartial and effective policing service is provided.
- 3.7.7 Police supervisors, managers and leaders, should take all reasonable steps to ensure that their staff carry out their professional duties correctly.
- 3.7.8 Police supervisors, managers and leaders, have a specific responsibility to promote and maintain professional standards through their timely use of advice, remedial or other relevant informal or formal action.

### **3.8 Confidentiality**

- 3.8.1 Police officers treat information with respect and access or disclose it only in the proper course of their duties.
- 3.8.2 The police service shares information with other agencies and the public as part of its legitimate policing business. Police officers never access or disclose any information that is not in the proper course of police duties and do not access information for personal reasons. Police officers who are unsure if they should access or disclose information always consult with their manager or department that deals with data protection or freedom of information before accessing or disclosing it.
- 3.8.3 Police officers do not provide information to third parties who are not entitled to it. This includes for example, requests from family or friends, approaches by private investigators and unauthorised disclosure to the media.
- 3.8.4 Where a police officer provides any reference in a private as opposed to professional capacity, then he or she will make this clear to the intended recipient and will emphasise that it is being provided in a private capacity and no police information has been accessed or disclosed in giving such a reference.

### **3.9 Fitness for Duty**

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

- 3.9.2 Police officers do not make themselves unfit or impaired for duty as a result of drinking alcohol, using an illegal drug or using a substance for non-medical purposes or intentionally misusing a prescription drug.
- 3.9.3 Police officers who present themselves to the Service with a drink or drugs misuse problem will be supported if they demonstrate an intention to address the problem and take steps to overcome it. However, the use of illegal drugs will not be condoned.
- 3.9.4 Police officers who are aware of any health concerns that may impair their ability to perform their duties should seek guidance from the occupational health department and if appropriate reasonable adjustments can be made.
- 3.9.5 A police officer who is unexpectedly called to attend for duty and considers that he or she is not fit to perform such duty should say that this is the case.
- 3.9.6 Police officers when absent from duty, on account of sickness or injury, do not engage in activities that are likely to impair their return to duty. Police officers will engage with the Service medical officer or other member of the occupational health team if required and follow any advice given unless there are reasonable grounds not to do so.

### **3.10 Discreditable Conduct**

- 3.10.1 Police officers behave in a manner which does not discredit the police service or undermine public confidence, whether on or off duty.
- 3.10.2 Police officers report any action taken against them for a criminal offence, conditions imposed by a court or the receipt of any penalty notice.
- 3.10.3 Discredit can be brought on the police service by an act itself or because public confidence in the police is undermined. In general, it should be the actual underlying conduct of the police officer that is considered under the misconduct procedures, whether the conduct occurred on or off duty. However where a police officer has been convicted of a criminal offence that alone may lead to misconduct action irrespective of the nature of the conduct itself. In all cases it must be clearly articulated how the conduct or conviction discredits the police service.
- 3.10.4 In the interests of fairness, consistency and reasonableness the test is not solely about media coverage but has regard to all the circumstances.
- 3.10.5 Police officers are required to report as soon as reasonably practicable to the Service any occasion in the UK or elsewhere where they have been subject to arrest, received a complaint for an offence, a penalty notice for disorder, an endorsable fixed penalty notice for a road traffic offence, or a charge or caution for an offence by any enforcement agency.
- 3.10.6 They must also report as soon as reasonably practicable all convictions, including Fiscal Fines and Warning Letters, sentences and conditions

imposed by any court, whether criminal or civil (excluding matrimonial proceedings). ‘Conditions imposed by a court’ would include, for example, the issue of an Anti-Social Behaviour Order, or a restraining order.

- 3.10.7 A police officer being subject to any of these measures could discredit the police service and may result in action being taken for misconduct against him or her depending on the circumstances of the particular matter.
- 3.10.8 Police officers do not purchase or consume alcohol when on duty, unless specifically authorised to do so or it becomes necessary for the proper discharge of a particular police duty.
- 3.10.9 Police officers on duty whether in uniform or in plain-clothes, display a positive image of the police service in the standard of their appearance which is appropriate to their operational role.
- 3.10.10 Police officers attend punctually when rostered for duty or other commitment (e.g. attendance at court).
- 3.10.11 Police officers have some restrictions on their private life. These restrictions are laid down in the Police (Scotland) Regulations 2013. These restrictions have to be balanced against the right to a private life. Therefore, in considering whether a police officer has acted in a way which falls below these standards while off-duty, due regard should be given to that balance and any action should be proportionate taking into account all of the circumstances.
- 3.10.12 Even when off duty, police officers do not behave in a manner that discredits the police service or undermines public confidence.
- 3.10.13 In determining whether a police officer’s off-duty conduct discredits the police service, the test is not whether the police officer discredits herself or himself but the police service as a whole.
- 3.10.14 Police officers are particularly aware of the image that they portray when representing the police service in an official capacity even though they may be off-duty (e.g. at a conference).
- 3.10.15 When police officers produce their warrant card (other than for identification purposes only) or act in a way to suggest that they are acting in their capacity as a police officer (e.g. declaring that they are a police officer) they are demonstrating that they are exercising their authority and have therefore put themselves on duty and will act in a way which conforms to these standards. For example, during a dispute with a neighbour a police officer who decides to produce a warrant card would be considered to be on duty.

3.10.16 An approved business interest should always be carried out in a way that does not compromise or give the impression of compromising the police officer's impartiality and is not incompatible with membership of a police Service (as set out in the Police (Scotland) Regulations 2013).

3.10.17 All forms of improvement action and formal outcomes for misconduct are available in response to off-duty conduct.

### **3.11 Challenging and Reporting Improper Conduct**

- 3.11.1 Police officers report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour expected.
- 3.11.2 Police officers are expected to uphold the standards of professional behaviour in the police service by taking appropriate action if they come across the conduct of a colleague which has fallen below these standards. They never ignore such conduct.
- 3.11.3 Police officers who in the circumstances feel they cannot challenge a colleague directly, for example if they are a more junior rank and are not confident, report their concerns, preferably to a line manager. If they do not feel able to approach a line manager with their concerns, they may report the matter to the Professional Standards Department or through a confidential reporting mechanism, or to the Police Authority.
- 3.11.4 Police officers are supported by the police service if they report conduct by a police officer which has fallen below the standards expected unless such a report is found to be malicious or otherwise made in bad faith.
- 3.11.5 It is accepted that the circumstances may make immediate action difficult but police managers are expected to challenge or take action as soon as possible.
- 3.11.6 It is accepted however that it will not always be necessary to report a police officer's conduct if the matter has been dealt with appropriately by a manager in the police service.

## **4. Guidance on Police Officer Misconduct Procedures**

### **4.1 General**

- 4.1.1 This misconduct procedure applies to all police officers and underpins the Standards of Professional Behaviour which set out the high standards of behaviour that the police service and the public expect of police officers. Any failure to meet these standards may undermine the important work of the police service and public confidence in it.
- 4.1.2 The misconduct procedures aim to provide a fair, open and proportionate method of dealing with alleged misconduct. The procedures are intended to encourage a culture of learning and development for individuals and/ or the

organisation.

- 4.1.3 Disciplinary action has a part, when circumstances require this, but improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the Police Service).
- 4.1.4 The police misconduct procedures are designed to reflect what is considered to be best practice in other fields of employment while recognising that police officers have a special status as holders of the Office of Constable. The Police Service of Scotland is committed to ensuring that the procedure is applied fairly to everyone.
- 4.1.5 It is important that managers understand their responsibility to respond to, and deal promptly, and effectively with, unsatisfactory behaviour and complaints about police conduct from members of the public and/or colleagues. It is a key responsibility of all managers to understand and apply the procedure in a fair, proportionate and timely manner.
- 4.1.6 The police service will support any manager who has exercised his or her judgement reasonably and adhered to the guidance provided.
- 4.1.7 The misconduct procedures should not be used as a means of dealing with unsatisfactory performance. The unsatisfactory performance procedures exist to deal with issues of individual unsatisfactory performance and attendance.

## **4.2 Probationary Constables**

- 4.2.1 Probationary Constables are expected to abide by the Standards of Professional Behaviour and can be subject to the misconduct procedures. Probationary Constables may also be subject to the procedures set out in the Police Service of Scotland Regulations 2013. In general terms misconduct by Probationary Constables will be dealt with under the Conduct Regulations but there may be occasions where action under the Police Service of Scotland Regulations 2013 would be appropriate.

## **4.3 Suspension, restricted or change of duty**

- 4.3.1 The decision to suspend a police officer will only be taken where there is an allegation of misconduct/gross misconduct and from which it can reasonably be inferred that the conduct of the officer may constitute a criminal offence; or amount to misconduct or gross misconduct. The decision may be taken by an officer of higher rank than the officer suspended, but can only do so if:
  - a) an effective criminal or misconduct investigation may be prejudiced if the constable is not suspended; or
  - b) having regard to the nature of the allegation and any other relevant considerations, the public interest requires the officer's suspension.

- 4.3.2 The suspending officer must notify the suspended constable and the Deputy Chief Constable in writing of any decision to suspend the constable and the reasons for that decision.
- 4.3.3 A suspension under this regulation has effect from the date of the written notice given under paragraph and must be reviewed by the Deputy Chief Constable not more than 4 weeks from that date and not more than every 4 weeks thereafter. In carrying out a review the Deputy Chief Constable must consider any representations made by the officer suspended and/or their police representative.
- 4.3.4 The Deputy Chief Constable may terminate a suspension with effect either from the date of the suspension or any other date. The Deputy Chief Constable must terminate a suspension if they determine:
- that the suspension conditions are no longer satisfied;
  - not to proceed under these regulations; or
  - that proceedings under these regulations have been concluded. If the officer is subject to dismissal with notice the suspension will subsist until the end of the notice period.
- 4.3.5 While suspended, a police officer ceases to hold the office of constable and ceases to be a member of the police Service, save for the purposes of the misconduct proceedings. However, the Standards of Professional Behaviour continue to apply to individuals who are suspended from duty. The Deputy Chief Constable can also impose such other conditions or restrictions as are reasonable in the circumstances e.g. restricting access to police premises or police social functions.
- 4.3.6 Where it is decided that the police officer will be suspended from duty or moved to alternative duties, this will be with pay. The rate of any pay will be that which applied to the police officer at the time of suspension. Therefore if the police officer concerned was in receipt of a Competency Related Threshold Payment at the time of his or her suspension or temporary move to a new location or role as an alternative to suspension, those payments will continue to apply. Payment of allowances will be as outlined in Schedule 2 of the Police Service of Scotland Regulations 2013.
- 4.3.7 The police officer or his or her police representative may make representations against the initial decision to suspend at any time during the course of the suspension if they believe the circumstances have changed and that the suspension is no longer appropriate.
- 4.3.8 Suspension is not a formal misconduct outcome and does not suggest any pre-judgement.
- 4.3.9 The period of suspension should be as short as possible and any investigation into the conduct of a suspended police officer should be made a priority.

- 4.3.10 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.
- 4.3.11 The use of suspension must be reviewed at least every 4 weeks, and sooner where facts have become known which suggest that suspension is no longer appropriate. In cases where the suspension has been reviewed and a decision has been made to continue that suspension, the police officer must be informed in writing of the reasons why.
- 4.3.12 Police officers who are suspended from duty are still allowed to take their annual leave entitlement in the normal way whilst so suspended, providing they seek permission from the Deputy Chief Constable. The Deputy Chief Constable should not unreasonably withhold permission to annual leave. Any annual leave not taken by the police officer concerned within a year will still be subject to the rules governing the maximum number of days that may be carried over.

#### **4.4 Alleged offences**

- 4.4.1 Where it can reasonably be inferred that a constable may have committed a criminal offence, the Deputy Chief Constable must refer the matter to the appropriate prosecutor; and may suspend or postpone any proceedings under the Regulations until the appropriate prosecutor intimates that:
  - a) criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation; or
  - b) any criminal proceedings which have been brought have been concluded.
- 4.4.2 If proceedings are suspended or postponed the Deputy Chief Constable must inform the constable that those proceedings have been suspended or postponed; and those proceedings, or any other proceedings under the Regulations, may be taken against the constable whether or not criminal proceedings are brought against the constable and regardless of the outcome of those proceedings.

#### **4.5 Misconduct action following criminal proceedings**

- 4.5.1 Where misconduct proceedings have not been taken prior to criminal proceedings and the police officer is acquitted, consideration will then need to be given as to whether instigate misconduct proceedings. Relevant factors in deciding whether to proceed with misconduct proceedings include the following, non-exhaustive, list:
  - a) Whether it is in the public interest to take proceedings;
  - b) Whether the allegation is in substance the same as that which was

- determined during criminal proceedings;
- c) Whether the acquittal was the result of a substantive decision on the merits of the charge after the hearing of evidence; and
  - d) Whether significant further evidence is available to the misconduct meeting/hearing, because it was excluded from consideration in criminal proceedings or because it has become available since.
  - e) Where the sum of evidence available did not reach the criminal standard of proof beyond reasonable doubt, but does demonstrate sufficient evidence on the balance of probabilities.
- 4.5.2 Each case will fall to be determined on its merits and an overly-prescriptive formula should not be adopted.
- ## 4.6 Complaints
- 4.6.1 An investigation into a complaint is not automatically an investigation into whether a police officer has breached the standards of professional behaviour but rather an investigation into the circumstances that led to the dissatisfaction being expressed by the complainer of the actions of one or more persons serving with the police.
  - 4.6.2 The vast majority of complaint investigations will not result in Misconduct Proceedings being taken against Police officers. Even when an allegation has been upheld and it has been established there has been a breach of the Standards of Professional Behaviour, in the majority of cases Misconduct Proceedings will not follow.
  - 4.6.3 The local complaints handling procedure allows for complaints of a less serious nature to be resolved timeously by explanation, apology or assurance. It may be appropriate in dealing with a complaint using local procedures for a manager to take improvement action and this is perfectly acceptable. Serious and criminal complaints are dealt with in a far more rigid fashion and are investigated by formally appointed Investigators.
  - 4.6.4 A Misconduct investigation arising out of a complaint must be proportionate having regard to the nature of the allegation and any likely outcome. It is appropriate for the Deputy Chief Constable to make an assessment on whether proceedings would be justified before embarking on an investigation and legitimate for the matter to be resolved by improvement action without an investigation where the circumstances only warrant this.
  - 4.6.5 Where, following the investigation into a complaint it appears that there is a case to answer in respect of misconduct then the Deputy Chief Constable will determine whether the matter should be considered as misconduct or gross misconduct or neither.
  - 4.6.6 Where the Deputy Chief Constable determines that there is a case to answer

in respect of misconduct but not gross misconduct he/she may determine that improvement action or action under the Performance Regulations is an appropriate and proportionate response.

## 5. Misconduct Procedures

### 5.1 Definitions

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

#### ***Misconduct***

- 5.1.2 Misconduct is a breach of the Standards of Professional Behaviour.

#### ***Gross Misconduct***

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

#### ***Unsatisfactory Performance/Attendance***

- 5.1.4 Unsatisfactory performance or unsatisfactory attendance is defined in the Regulations as an inability or failure of a police officer to perform the duties of their role or rank (or both) to a satisfactory standard.

### 5.2 Assessment

- 5.2.1 Where an allegation of Misconduct is made about a police officer the Deputy Chief Constable must formally assess whether the conduct alleged, if proved, would amount to misconduct, gross misconduct or neither.

- 5.2.2 If the Deputy Chief Constable assesses that the conduct would, if proved, amount to neither misconduct nor gross misconduct, the Deputy Chief Constable may:

- a) take no further action;
- b) take improvement action; or
- c) refer the matter to be dealt with under the Performance Regulations.

### 5.3 Assessment of conduct

- 5.3.1 The assessment may determine that the conduct alleged amounts to an allegation of unsatisfactory performance rather than one of misconduct. In such circumstances the matter should be referred to be dealt with under the Performance Regulations.

- 5.3.2 The assessment may determine that the matter is more suitable to be dealt with through the grievance procedure. In such cases the procedures for dealing with such matters should be used.
- 5.3.3 The purpose of the assessment is to:
- Ensure a timely response to an allegation or an issue relating to conduct
  - Identify the police officer subject to the allegation and to eliminate those not involved.
  - Ensure that the most appropriate procedures are used.
- 5.3.4 If it is not possible to make an immediate assessment some preliminary enquiry may be made but only to the extent that it is necessary to determine which procedure should be used. It is perfectly acceptable to ask questions to seek to establish which police officers may have been involved in a particular incident and therefore to eliminate those police officers who are not involved. Usually Professional Standards Department will direct this and it may necessitate meeting with a limited number of witnesses and taking possession of items. It must be stressed that the purpose of these preliminary enquiries is to establish some facts in order to decide how best the matter should be dealt with. An Investigator does not require to be appointed to carry out these preliminary enquiries.
- 5.3.5 A formal investigation into a particular police officer's conduct affords the police officer certain safeguards in the interests of fairness such as the service of a notice informing the police officer that his or her conduct is subject to investigation and notifying the police officer of his or her right to consult with a police representative. The initial assessment and in particular preliminary enquiries should not go so far as to undermine these safeguards.
- 5.3.6 Where it is assessed that the matter is not potentially one of misconduct consideration will be given to identifying any developmental or organisational issues which may need to be addressed by the individual (e.g. through improvement action) or the organisation.
- 5.3.7 Where an allegation is made which indicates that the conduct of a police officer did not meet the Standards of Professional Behaviour, the Deputy Chief Constable must decide whether, if proven or admitted, the allegation would amount to misconduct or gross misconduct.
- 5.3.8 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 allegation is proven or admitted.
  - Give an indication of how the matter should be handled (for example,

locally or by the Service Professional Standards Department).

- 5.3.9 Where it is determined that the conduct, if proved, would constitute misconduct, it must further be determined whether it is necessary for the matter to be investigated or whether improvement action is the appropriate and proportionate response to the allegation. If the Deputy Chief Constable decides to take no action, improvement action or instigate the Performance Regulations this should be notified to the police officer concerned.
- 5.3.10 Where it is determined that the conduct if proved, would constitute gross misconduct then the matter will always be investigated.
- 5.3.11 The assessment will also determine whether, if the matter was referred to misconduct proceedings, those proceedings would be likely to be a misconduct meeting (for cases of misconduct) or a misconduct hearing (for cases of gross misconduct or if the police officer concerned has a live final written warning at the time of the assessment and there is a further allegation of misconduct).
- 5.3.12 Cases where a series of misconduct allegations come to light over a short period of time may be considered and investigated as a collective investigation rather than single incidents. The initial assessment should reflect the cumulative total of the behaviour and whether the threshold for gross misconduct would be reached if each case were proved separately.
- 5.3.13 If the initial assessment has been made incorrectly or if new evidence emerges, then a fresh assessment can be made. The matter may be moved up to a level of gross misconduct or down to a level of misconduct. In the interests of fairness to the police officer, where a further severity assessment is made which alters the original assessment then the police officer will be informed and will be provided with the reasons for the change in the assessment.
- 5.3.14 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.
- 5.3.15 Where it is assessed, following Preliminary Enquiry, that there is still insufficient information to decide whether Misconduct Proceedings would be justified an Investigation will be carried out and an Investigator will be appointed.

#### **5.4 Dealing with misconduct**

- 5.4.1 If there is sufficient information available, line managers can deal with minor matters which have been assessed as potential misconduct in a number of ways. If it is assessed that there is no need to bring Misconduct Proceedings the matter may be dealt with at a local level without the need for the

appointment of an Investigator. The following options are available for the matter to be disposed of in these circumstances:

- take no action
- take Improvement Action, which includes Advice to the Officer(s), Personal Development Review (PDR) Note, arranging training or diversion to Performance Regulations.

- 5.4.2 Unless there are good reasons to take no action, the options will be disciplinary action for misconduct and this requires that the matter should be investigated appropriately.
- 5.4.3 A decision on which action will be appropriate will be made on the basis of the information available following the severity assessment.
- 5.4.4 The Professional Standards Department should be consulted before an assessment is made or where necessary investigation is commenced to ensure that there are no other matters that need to be considered prior to any investigation (for example other investigations that may be ongoing into the conduct of the police officer concerned, or outstanding written warnings that are still live).

## **5.5 Improvement Action**

- 5.5.1 The purpose of improvement action is to:
- Deal with misconduct in a timely, proportionate and effective way that will command the confidence of staff, police officers, the police service and the public.
  - Identify any underlying causes or welfare considerations.
  - Improve conduct and to prevent a similar situation arising in the future.
- 5.5.2 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 improvement action. Even if the police officer does not agree to the improvement action it can still be imposed by the manager providing such action is reasonable and proportionate.
- 5.5.3 Improvement action 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.

- Providing further training, mentoring or guidance
  - Addressing any underlying causes of misconduct.
- 5.5.4 The police officer may in some cases be advised that any future misconduct even if it is of the same type, could be dealt with by disciplinary action rather than improvement action.
- 5.5.5 The manager may draft an improvement plan with the police officer. This should include timescales for improvement in the conduct. A written record should be made of any improvement action and placed on the police officer's PDR. Any such note should be agreed as an accurate record with the police officer concerned and copied to him or her. Where the police officer does not agree with the record then his or her comments will be recorded and kept with the record. Managers should ensure that any improvement plan recorded on the police officer's PDR is regularly reviewed and comment made as to the improvement or otherwise of the police officer.
- 5.5.6 Improvement action is considered to be part of the normal managerial responsibility of managers in the police service. Improvement action is always available, including during or after the process of resolving a complaint using Local Resolution. Improvement action does not have to be revealed to the COPFS.
- 5.5.7 Where an appropriate manager decides at the severity assessment that improvement action is the most appropriate and proportionate way to deal with an issue of misconduct, there will be no requirement to conduct a formal investigation and therefore no requirement to give a written notice to the police officer concerned in accordance with the provisions in the Conduct Regulations. Where at a later stage, either following the investigation or on withdrawal of the case, an appropriate manager decides to take improvement action, written notice of this will be given to the police officer as soon as possible.

## **5.6 Taking disciplinary proceedings**

- 5.6.1 Where it is felt that improvement action is not appropriate to deal with the alleged breach of the Standards of Professional Behaviour then an investigation into the alleged misconduct may be necessary. In cases where the allegation amounts to one of gross misconduct, then the matter will always be investigated. An assessment will be required and the result of this will determine whether or not the matter will be investigated at a local level or by the Service Professional Standards Department.
- 5.6.2 If the case has been assessed as being one that if proven or admitted amounts to Misconduct, i.e. a breach of the Standards of Professional Behaviour, the case may be dealt with at a local level. If it is subsequently established that there is a Misconduct case to answer which requires to be dealt with by Misconduct Proceedings, this would be by way of a Misconduct

Meeting. The most severe disposal is a Final Written Warning.

- 5.6.3 However, if the case is assessed as being one that if proven or admitted amounts to Gross Misconduct, i.e. a breach of the Standards of Professional Behaviour, so serious that dismissal would be justified, the Investigator shall normally be from the Professional Standards Department. Where the officer subject to the allegation already has a live Final Written Warning, the case will be treated as one of Gross Misconduct even if the circumstances suggest the case is one of Misconduct. If it is subsequently established that there is a Gross Misconduct case to answer, or Misconduct with a Live Final Written warning, the Officer would be required to attend a Misconduct Hearing. The most severe disposal is Dismissal without Notice
- 5.6.4 The purpose of taking disciplinary proceedings is to:
- Establish the facts underlying the allegation.
  - Deal with cases of misconduct in a timely, proportionate, fair and effective way such as will command the confidence of the police service and the public.
  - Identify any underlying causes or welfare considerations.
  - Identify any learning opportunities for the individual or the organisation.

## **5.7 Appointment of investigator**

- 5.7.1 Where the Deputy Chief Constable has assessed the allegation as being one of misconduct or gross misconduct and in the case of misconduct, has determined that the matter is not suitable for immediate improvement action or action under the Performance Regulations, then the Deputy Chief Constable will appoint an investigator. The investigator shall:
- a) be a Police Officer of a higher rank than the Officer subject to investigation,
  - b) have the necessary knowledge, skills and expertise to plan and manage the misconduct investigation in relation to which the appointment is made
  - c) have had no prior involvement in the matter to be investigated, and
  - d) be sufficiently independent from the Officer subject to investigation
- 5.7.2 If, during the course of the misconduct investigation, the Deputy Chief Constable considers that by reason of the scale or complexity of the case a different investigator should be appointed, they may appoint, or arrange for the appointment of, a constable to replace the investigator originally appointed.

## **5.8 Written notification to officer concerned**

- 5.8.1 As soon as practicable following appointment, an Investigator must give Notice of Investigation to the Subject Officer unless the Investigator considers that giving the notification might prejudice:
- a) the investigation, or
  - b) any other investigation (including, in particular, a criminal investigation).
- 5.8.2 This Notice of Investigation will contain the following information:
- Advise the officer that he/she is the subject of a misconduct investigation;
  - Specify the conduct forming the subject matter of the misconduct allegation;
  - Specify how that conduct is alleged to fall below the Standards of Professional Behaviour;
  - provide an initial assessment of whether, if proved, that conduct would amount to misconduct or gross misconduct;
  - provide the constable with an opportunity to make written or oral representations; and
  - inform the constable of the right to seek advice from the constable's staff association and police representative.
- 5.8.3 It should be stressed that the Notice of Investigation does not necessarily imply that Misconduct Proceedings will follow and does not imply guilt. The purpose of the form is to give the Subject Officer initial notification and an opportunity to respond. At this stage there is no requirement for the Subject Officer to make any comment.
- 5.8.4 The Notice of Investigation must be given to the police officer in person or posted by recorded delivery to his or her last known address. The Form may be provided to the officer's manager to give to the police officer concerned or where appropriate and with the agreement of the police representative it may be given to the police representative to give to the police officer concerned. The responsibility for ensuring that the notice is served rests with the investigator.
- 5.8.5 In the interests of fairness, care must be taken when an incident is being investigated to ensure that the notification is given to the police officer as soon as practicable after an investigator is appointed (subject to any prejudice to that or any other investigation).

## **5.9 Investigation**

5.9.1 The purpose of an investigation is to:

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

5.9.2 The Deputy Chief Constable should ensure that a proportionate and balanced investigation is carried out as soon as possible after any alleged misconduct comes to their attention and that the investigation is carried out as quickly as possible allowing for the complexity of the case. A frequent criticism of previous misconduct investigations was that they were lengthy, disproportionate and not always focussed on the relevant issue(s). It is therefore crucial that any investigation is kept proportionate to ensure that an overly lengthy investigation does not lead to grounds for challenge. Where the investigation identifies that the issue is one of performance rather than misconduct, the police officer should be informed as soon as possible that the matter is now being treated as an issue of performance.

5.9.3 The Deputy Chief Constable can discontinue an investigation if there is a change in circumstances which makes it appropriate to do so.

5.9.4 It is good practice to notify the police officer of the progress of the investigation at least every 4 weeks from the start of the investigation. It is also good practice to keep the designated police representative informed of progress at the same time.

5.9.5 The police officer or his or her police representative, acting on the police officer's instructions, is encouraged to suggest at an early stage any line of enquiry that would assist the investigation and to pass to the investigator any material they consider relevant to the enquiry.

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

## **5.10 Interviews During the Investigation**

- 5.10.1 Where the constable intimates, following receipt of a Notice of Investigation an intention to make oral representations, the investigator must arrange an interview with the constable. In any other case, the investigator may arrange such an interview.
- 5.10.2 While an interview must take place if the officer so requests, it will not always be necessary to conduct a formal interview in other circumstances. In some cases, particularly involving low level misconduct cases, it may be more appropriate, proportionate and timely to request a written account from the police officer.
- 5.10.3 Where an interview is to take place the investigator must try and agree a time and date for the interview with the police officer concerned and his or her police representative. If no agreement is made the investigator must specify a date and time for the interview and provide the officer with a written notice of the date, time and place of the interview. The police officer will be given written notice of the date, time and place of the interview. The police officer must attend the interview when required to do so and it may be a further misconduct matter to fail to attend.
- 5.10.4 Where a police officer is on certificated sick leave, the investigator should seek to establish when the police officer will be fit for interview. It may be that the police officer is not fit for ordinary police duty but is perfectly capable of being interviewed. Alternatively the police officer concerned may be invited to provide a written response to the allegations within a specified period and may be sent the questions that the investigator wishes to be answered.
- 5.10.5 It is important that there is a balance between the welfare of the police officer concerned and the need for the investigation to progress as quickly as possible in the interests of justice, the police service and the police officer subject to investigation.
- 5.10.6 The investigator must, in advance of the interview, provide the constable with such information as the investigator considers appropriate in the circumstances to enable the constable to prepare for the interview. This will normally include details of the allegations made against the constable, such as the dates on which (or approximate dates on which); and places at which any misconduct or gross misconduct is alleged to have occurred. The investigator should consider whether there are good reasons for withholding certain evidence obtained prior to the interview and if there are no such reasons then the police officer should normally be provided with all the relevant evidence obtained. The police officer will then have the opportunity to provide his or her version of the events together with any supporting evidence he or she may wish to provide.
- 5.10.7 An audio recording may be made of an interview and, if such a recording is made, the officer must be provided with a copy of that recording. If no audio recording is made, a written record of the interview must be prepared by the

investigator and a draft of that record must be provided to the officer. The officer must then be given the opportunity to make representations in relation to that draft and the investigator must consider any representations made; and send the final written record of the interview to the constable. Good practice suggests that where a written record is to be made it is completed and signed at the time of the interview.

- 5.10.8 Where a police officer refuses or fails to exercise his or her right to agree and sign a copy then this will be noted by the investigator. The police officer may make a note of the changes he or she wants to make to the record and a copy of this will be given to the person(s) conducting the hearing/meeting along with the investigator's account of the record.

## **5.11 Moving between Misconduct and Performance Regulations**

- 5.11.1 It may not be apparent at the outset of an investigation whether the matter is one of misconduct or unsatisfactory performance or attendance. It should be established as soon as possible which procedure is the more appropriate. In some cases it may be that it is not clear which procedure should be used until there has been some investigation of the matter.
- 5.11.2 Assessing a matter as misconduct or a matter of performance or attendance is an important distinction to make. It is normally possible to distinguish between matters of unsatisfactory performance or attendance by a particular police officer and that of personal misconduct.
- 5.11.3 A matter that appears initially to relate to misconduct may, on investigation, turn out to be a matter relating to unsatisfactory performance or attendance and should be brought to the attention of the Deputy Chief Constable for transfer to the unsatisfactory performance procedure, if appropriate, at the earliest opportunity. This can be at any time before a misconduct meeting or hearing. The police officer concerned shall be informed that the matter is no longer being investigated as a misconduct case.
- 5.11.4 It may be that the outcome of an investigation into an allegation is that an issue of unsatisfactory performance or attendance has been identified against one or more police officers who were the subject of the investigation rather than any issue of misconduct. In such cases the outcome of the allegation may be that the Deputy Chief Constable will determine that there is no case to answer in respect of misconduct or gross misconduct but it may be appropriate to take action under the performance procedures in order that the police officer concerned may learn and improve his or her performance.
- 5.11.5 There may be occasions when the matter proceeds under the misconduct procedure to a misconduct meeting or hearing and the person conducting the proceedings find that the conduct of the police officer amounts to unsatisfactory performance or attendance as opposed to one of misconduct or gross misconduct. In such cases, a finding on the facts of the case by the person conducting the meeting or hearing can be used for the purposes of the Performance Regulations. The person conducting the meeting/hearing should

in such cases make a finding that the conduct did not amount to misconduct and refer the matter for progress under the Performance Regulations.

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

## **5.12 Investigation report and supporting documents**

- 5.12.1 At the conclusion of the misconduct investigation, the investigator must determine whether, in their opinion, the police officer has a case to answer in relation to the misconduct allegation and submit a written report to the Deputy Chief Constable.
- 5.12.2 The report must contain a summary of any evidence obtained and the investigator's opinion as to whether the misconduct allegation should be referred to misconduct proceedings. The investigator must submit with the report all documents or other information relevant to that report or to the investigation including a copy of any audio recording made of an interview or any written record of such an interview.
- 5.12.3 The investigation report will also highlight any learning opportunities for either an individual or the organisation.
- 5.12.4 On receipt of the investigator's report, the Deputy Chief Constable must, as soon as reasonably practicable, determine whether the constable has a case to answer in respect of misconduct, gross misconduct or neither. The Deputy Chief Constable shall make a decision based on the report.
- 5.12.5 Where the Deputy Chief Constable determines that the officer has no case to answer in respect of either misconduct or gross misconduct, the Deputy Chief Constable may take no further action, take improvement action or refer the matter to be dealt with under the procedures established by the Performance Regulations.
- 5.12.6 In cases where it is decided that there is a misconduct case to answer, the Deputy Chief Constable will need to determine whether the matter can be dealt with by means of immediate improvement action without the need to refer the case to a misconduct meeting. In reaching such a determination they will consider the proportionality of further proceedings against the nature of the misconduct. It would also be appropriate to consider whether the police officer concerned has accepted that his or her conduct fell below the standards expected of a police officer and demonstrates a commitment to improve his or her conduct in the future and to learn from that particular case. In addition the Deputy Chief Constable will need to be satisfied that this is the case and that improvement action is an adequate and sufficient outcome having regard to all the circumstances of the case.
- 5.12.7 Where the Deputy Chief Constable determines that the constable has a case

to answer in respect of misconduct, and it is proportionate to do so, they must refer the misconduct allegation to a misconduct meeting. However, if, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a final written warning which was in effect then they must refer the matter to a misconduct hearing.

- 5.12.8 Where the Deputy Chief Constable determines that the constable has a case to answer in respect of gross misconduct; they must refer the misconduct allegation to a misconduct hearing.

### **5.13 Arrangements for misconduct meetings/hearings**

- 5.13.1 Where a case has been referred to misconduct proceedings the Deputy Chief Constable must send a misconduct form to the subject officer giving notice of
- a) the conduct forming the subject matter of the misconduct allegation;
  - b) the date, time and location of the misconduct proceedings;
  - c) in summary, the facts established by the investigator;
  - d) why, in the Deputy Chief Constable's opinion, it can be inferred from the established facts that the conduct which is the subject matter of the misconduct allegation amounts to—
    - I. misconduct; or
    - II. gross misconduct;
  - e) the officer's right to seek advice from a staff association;
  - f) the officers right in regard to a Police Representative and right to legal representation at a misconduct hearing;
  - g) the requirement for the officer to respond
  - h) the name of the person appointed to conduct the misconduct proceedings and the name of any assessor.
- 5.13.2 The Deputy Chief Constable must send with the misconduct form:
- a) copies of any statements made by the officer during the investigation; and
  - b) the report submitted by the investigator; and
  - c) any other relevant documents obtained during the course of the misconduct investigation.

- d) The names and addresses of any witnesses on whom the DCC proposes to rely at the misconduct proceedings and a summary of the evidence each witness will give.
- 5.13.3 However, the documents referred to at b) and c) will not be supplied where the Deputy Chief Constable considers that preventing the disclosure is:
- a) necessary to avoid prejudicing current or future criminal proceedings;
  - b) necessary in the interests of national security;
  - c) necessary for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders;
  - d) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff;
  - e) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
  - f) otherwise in the public interest.
- 5.13.4 Where the above paragraph applies the Deputy Chief Constable must, so far as is reasonably possible without prejudicing any of the matters mentioned in that paragraph, provide the officer with a summary of the content of that document.
- 5.13.5 Not more than 10 working days from the date of receipt of the misconduct form, the officer must provide to the Deputy Chief Constable written notice of whether they accept that:
- a) the conduct which is the subject matter of the misconduct allegation is conduct of the officer; and
  - b) that conduct amounts to misconduct or (as the case may be) gross misconduct.
- 5.13.6 The officer's response must give their account of the circumstances giving rise to the misconduct allegation and must include:
- a) in a case where the constable accepts that any conduct of the constable amounts to misconduct or (as the case may be) gross misconduct, any written submissions in mitigation;
  - b) in a case where the constable does not accept that any conduct of the constable amounts to misconduct or (as the case may be) gross misconduct, details of any allegation which the constable denies;
  - c) the details of any legal arguments (if any) the constable wishes the person conducting the misconduct proceedings to consider; and

- d) the names and addresses of any witnesses on whom the constable proposes to rely at the misconduct proceedings and a summary of the evidence each witness will give (or notice that the constable does not intend to rely on any witnesses).
- 5.13.7 The officer must send with their response a copy of any document or other information on which they intend to rely at the misconduct proceedings.
- 5.13.8 Following receipt of the officer's response the Deputy Chief Constable must, by notice in writing, require the constable to attend misconduct proceedings. The notice must:
- a) specify the time, date and place of the misconduct proceedings; and
  - b) be sent not less than 15 working days before the date of those proceedings. Although the officer may waive in writing the entitlement to 15 working days' notice of the date of the misconduct proceedings.
- 5.13.9 The time limit for holding a misconduct meeting or a misconduct hearing can be extended if in the interests of justice the person conducting or chairing the misconduct proceedings considers it appropriate to extend beyond that period. Any decision to extend or not to extend the time limit for a meeting/hearing and the reasons for it will be documented by that person and communicated to the Deputy Chief Constable and the police officer concerned. It is also good practice to inform the police representative of the police officer concerned (if applicable).
- 5.13.10 In order to maintain confidence in the misconduct procedures it is important that the misconduct meetings/hearings are held as soon as practicable and extensions to the timescales should be an exception rather than the rule. To that end, managers appointed to conduct or chair misconduct meetings/hearings are to ensure that a robust stance is taken in managing the process whilst ensuring the fairness of the proceedings. Extensions may be appropriate for example if the case is particularly complex. It will not normally be considered appropriate to extend the timescale on the grounds that the police officer concerned wishes to be represented by a particular lawyer.

#### **5.14 Attendance of third parties**

- 5.14.1 With limited exceptions Misconduct proceedings are to be held in private. The exceptions will not apply to any part of the proceedings where disciplinary action is being considered and no person who is to be called as a witness should be admitted prior to giving their evidence.
- 5.14.2 The person conducting the proceedings may allow third parties access in the following circumstances:
- a) where the proceedings have arisen from a complaint made by a member of the public, that member of the public shall be informed of the time, date

and location of the proceedings; and may attend, as an observer, those proceedings, or such part or parts of those proceedings as the person conducting them considers appropriate.

- b) If a witness is giving evidence, they may be allowed such other persons to attend those proceedings as seem reasonable by virtue of any special circumstances (and, in particular, a parent or guardian may be allowed to attend where a child is giving evidence).
- c) any other person with the agreement of the officer.

## **5.15 Documents for the meeting/hearing**

5.15.1 The person(s) conducting the misconduct meeting/hearing shall be supplied with: -

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

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

## **5.16 Witnesses**

- 5.16.1 No person is to give evidence at proceedings unless the person conducting the proceedings reasonably considers it is necessary for the witness to do so. Generally speaking a witness will only be required at the proceedings if the person conducting the proceedings reasonably believes the attendance of the witness is necessary to resolve disputed issues in the case.
- 5.16.2 Where it is reasonably practicable to do so, the officer and the Deputy Chief Constable must not more than 10 working days after receipt of the officer's response to the misconduct form agree a joint list of witnesses. This joint list will be based on the lists provided in the misconduct notice and officer's response. Any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce and their address.
- 5.16.3 If it is not possible for the officer and the Deputy Chief Constable to agree a joint list of witnesses, they must each supply to the person conducting the misconduct proceedings a list of proposed witnesses.
- 5.16.4 Not more than 10 working days after receiving lists of witnesses the person conducting the misconduct proceedings must decide which, if any, of the listed witnesses should give evidence at those proceedings; and notify the officer and the Deputy Chief Constable of that decision.
- 5.16.5 The person conducting the misconduct proceedings may determine that witnesses not included in any list are to give evidence at those proceedings.
- 5.16.6 The Deputy Chief Constable must notify in writing any witness who is to give evidence at misconduct proceedings, not less than 5 working days before the date of the misconduct proceedings.
- 5.16.7 Where the person conducting the proceedings rejects the request for a particular witness(es), he/she shall provide the Subject Officer and the Deputy Chief Constable with their reasons.
- 5.16.8 Where a witness does attend to give evidence then any questions to that witness should be made through the person conducting the proceedings. This does not prevent him/her allowing questions to be asked directly if that is felt appropriate. The person conducting the proceedings must always maintain control and focus on the key issues to ensure the proceedings are fair for all.

## **6. Misconduct meetings/hearings**

### **6.1 Types of misconduct proceedings**

- 6.1.1 There are two types of misconduct proceedings:

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

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

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

## **6.2 Purpose of misconduct meeting/hearing**

- 6.2.1 The purpose of the proceedings is to:
- Establish the truth.
  - Give the Subject Officer a fair opportunity to make his/her case having considered the Investigation Report, any supporting documents and all other factors.
  - Enable the Subject Officer to put forward factors to be considered in mitigation, in addition to those already submitted in response to the Misconduct Form.
  - On the balance of probabilities having regard to all the circumstances, decide if the conduct of the Subject Officer fell below the Standards of Professional Behaviour.
  - Consider what the outcome should be if the Misconduct/Gross Misconduct is proven or admitted.

- 6.2.2 In order to achieve this it is clear that the Subject Officer is required to participate fully in the process. Whilst these are formal Misconduct Proceeding they should be carried out in a non threatening atmosphere which will encourage the involvement of the Subject Officer.

## **6.3 Person(s) appointed to hold misconduct meetings/hearings**

- 6.3.1 The Deputy Chief Constable will appoint a person to conduct misconduct proceedings and any assessor.
- 6.3.2 The person appointed to conduct a Misconduct Meeting will be a Police Officer of at least one rank higher than the Subject Officer, and will normally be Chief Inspector rank. Another officer may also be appointed to be an assessor.
- 6.3.3 The person appointed to conduct a misconduct hearing, must be of at least

the rank of superintendent and must be at least two ranks higher than the subject officer. Another constable of at least the rank of superintendent; and an advocate or a solicitor may be appointed as an assessor.

- 6.3.4 Any person appointed as an assessor may provide the person conducting the proceedings with such advice as that person requests but does not have any involvement in decision making or other role in the proceedings. The assessor must not have had any previous involvement in the matter being considered at the meeting.
- 6.3.5 The Deputy Chief Constable must not appoint as an assessor or to conduct any misconduct proceedings any officer whose appointment could give rise to a reasonable concern as to whether they could act impartially in relation to those proceedings.
- 6.3.6 The subject officer may object to the appointment of any assessor or individual to conduct misconduct proceeding. An objection must be made not later than 3 working days from receipt of the misconduct form and must indicate the officer's reasons for objecting. Where such an objection is made the Deputy Chief Constable will decide whether or not to uphold the objection and must notify the officer in writing of that decision. If the objection is upheld the Deputy Chief Constable will appoint a new person to act as an assessor or conduct the proceeding and notify the subject officer in writing of the name of the individual appointed.

#### **6.4 Joint meetings/hearings**

- 6.4.1 There will be cases where more than one Subject Officer is required to appear at proceedings for a matter stemming from the same incident. In such cases, each police officer may have played a different part and any alleged misconduct may be different for each police officer involved. However, it will normally be appropriate for the Subject Officers to attend the same proceedings in order that the alleged misconduct can be considered in context. A Subject Officer may request separate proceedings if he/she can demonstrate that there would be unfairness if there was to be joint proceedings. It will be for the person conducting the proceedings to decide whether to hold separate proceedings.
- 6.4.2 Where a joint meeting/hearing is held it will be the duty of the person conducting the meeting/hearing to consider the case against each police officer and where a breach of the Standards of Professional Behaviour is found or admitted, to deal with each police officer's mitigation and circumstances individually and decide on the outcome accordingly. The person conducting the proceedings may decide to exclude the other Subject Officer(s) during certain parts if he/she deems it appropriate to do so, e.g. when hearing each of the Officers' mitigation.

#### **6.5 Meeting/hearing in absence of officer concerned**

- 6.5.1 It is in the interests of fairness to ensure that the misconduct meeting/hearing

is held as soon as possible. A meeting/hearing may take place if the police officer fails to attend.

- 6.5.2 In cases where the police officer is absent (for example through illness or injury) a short delay may be reasonable to allow him or her to attend. If this is not possible or any delay is considered not appropriate in the circumstances then the person(s) conducting the meeting/hearing may allow the police officer to participate by video link or other suitable means. In these circumstances a police representative will always be permitted to attend the meeting/hearing to represent the police officer in the normal way (and in the case of a misconduct hearing the police officer's legal representative where appointed). However, proceedings may still proceed without any such person being present.
- 6.5.3 If a police officer is detained in prison or other institution by order of a court, there is no requirement on the Deputy Chief Constable to have the officer concerned produced for the purposes of the misconduct meeting/hearing. The proceedings may proceed and be concluded in the absence of the Subject Officer whether or not he/she is represented. The person conducting the proceedings will have to document his/her reasons and justification for doing so.

## **6.6 Conduct of misconduct meeting/hearing**

- 6.6.1 It will be for the person conducting the meeting/hearing to determine the procedures and course of the meeting/hearing in accordance with the principles of natural justice and fairness.
- 6.6.2 The person conducting the meeting/hearing will have read the investigator's report together with any account given by the police officer concerned during the investigation. The person conducting the meeting/hearing will also have had the opportunity to read the relevant documents attached to the investigator's report.
- 6.6.3 Any document or other material that was not submitted in advance of the meeting/hearing by the Deputy Chief Constable or the police officer concerned may still be considered at the meeting/hearing at the discretion of the person(s) conducting the meeting/hearing. However the presumption should be that such documents will not be permitted unless it can be shown that they were not previously available to be submitted in advance.
- 6.6.4 Where any such document or other material is permitted to be considered, a short adjournment may be necessary to enable the person conducting the meeting/hearing or police officer concerned, as the case may be, to read or consider the document or other material and consider its implications.
- 6.6.5 Material that will be allowed, although not submitted in advance, will include mitigation where the police officer concerned denied the conduct alleged but the person(s) conducting the meeting/hearing found that the conduct had amounted to misconduct or gross misconduct and are to decide on outcome.

- 6.6.6 The person conducting the misconduct proceedings must permit:
- the constable or any person representing the constable to make representations;
  - evidence to be heard from any witnesses in attendance; and
  - the constable or any person representing the constable to ask questions of any witness.
- 6.6.7 Whether any question is to be put to a witness is to be determined by the person conducting the proceedings and any questions to that witness should be made through that person. This does not prevent the person conducting the proceedings allowing questions to be asked directly if they feel that is appropriate. It is for them to control the proceedings and focus on the issues to ensure a fair meeting/hearing.
- 6.6.8 The person conducting the proceedings may, with the agreement of the constable, permit the admission of written statements in lieu of oral evidence.
- 6.6.9 An audio recording may be made of the misconduct proceedings and, where such a recording is made, the officer must be provided with a copy of that recording as soon as reasonably practicable after the conclusion of the proceedings. Best practice suggests that where the option to dismiss an officer or demote in rank is available then the proceedings should be recorded. Where no audio recording is made a written record of the misconduct proceedings must be prepared and;
- the person conducting the misconduct proceedings must provide a draft of that record to the constable;
  - the constable must be given the opportunity to make representations in relation to that draft;
  - the person conducting the misconduct proceedings must consider any representations made; and
  - having considered those representations (if any), that person must send the final written record of the proceedings to the constable.
- 6.6.10 The person(s) conducting misconduct meetings/hearings will consider the facts of the case and will decide (on the balance of probabilities) whether the police officer's conduct amounted to misconduct, gross misconduct (in the case of a misconduct hearing) or neither.

## 6.7 Standard of proof

- 6.7.1 In deciding matters of fact the misconduct meeting/hearing must apply the standard of proof required in civil cases, that is, the balance of probabilities.

Conduct will be proved on the balance of probabilities if the person conducting the meeting/hearing is satisfied by the evidence that it is more likely than not that the conduct occurred. The more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be in order to meet that standard.

- 6.7.2 Misconduct meetings/hearings should bear in mind the fact that police officers may be required to deal with some people who may have a particular motive for making false or misleading allegations against the police officer.
- 6.7.3 Therefore in making a decision whether the alleged conduct of a police officer is found or not, the person conducting the misconduct meeting/hearing will need to exercise reasonable judgement having regard to all the circumstances of the case.

## **6.8 Outcomes of meetings/hearings**

- 6.8.1 If the person conducting the misconduct meeting/hearing find that the police officer's conduct did fail to meet the Standards of Professional Behaviour, then the person conducting the meeting/hearing will then determine the most appropriate outcome.
- 6.8.2 In considering the question of outcome the person conducting the meeting/hearing will need to take into account any previous written warnings that were live at the time of the initial assessment of the conduct in question, any aggravating or mitigating factors and have regard to the police officer's record of service, including any previous disciplinary outcomes in accordance with the transition arrangements set out in Regulation 22 (9). The person conducting the meeting/hearing may (only if deemed necessary and at the person conducting the meeting/hearings discretion) receive evidence from any witness whose evidence would in their opinion assist them in this regard.
- 6.8.3 The person conducting the meeting/hearing is also entitled to take account of any early admission of the conduct on behalf of the police officer concerned and attach whatever weight to this as he or she consider appropriate in the circumstances of the case.
- 6.8.4 In addition, the police officer concerned and his or her 'police representative' (or where appropriate legal representative) will be given the opportunity to make representations on the question of the most appropriate outcome of the case.

## **6.9 Outcomes available at misconduct meetings/hearings**

- 6.9.1 The person conducting the proceedings will consider the facts of the case and will decide on the balance of probabilities whether the Subject Officer's conduct amounted to Misconduct/Gross Misconduct or neither.

## **6.10 Misconduct Meeting**

- 6.10.1 The following options are available:-

Where no Misconduct has been established

**No Further Action**

**Improvement Action**

**Refer the matter to be dealt with under the Performance Regulations**

Where Misconduct has been established

**Improvement Action**

**A Verbal Warning**

**A Written Warning** – which remains live for 12 months from the date of the warning.

**A Final Written Warning** - which remains live for 18 months from the date of the warning.

- 6.10.2 Where the person conducting the meeting finds more than one breach of the Standards of Professional Behaviour then they will be entitled to impose a separate disposal for each, but the cumulative total effect of the outcome will not exceed the maximum available sanction for the highest disposal used, e.g. the person conducting the meeting finds that an officer has breached 3 separate standards, improvement action is taken in regard to 1 and the other 2 are disposed by way of a written warning, both warnings will run concurrently from that day for a maximum of 12 months.
- 6.10.3 Where the outcome is a written warning, the Subject Officer will be told the reason for the warning, the right to appeal and the name of the person to whom the appeal should be addressed. He/she should also be advised that the warning will be put on his or her personal file and will remain live for twelve months from the date the warning is given. This means that any misconduct in the next 12 months is likely to lead to (at least) a final written warning.
- 6.10.4 Where the outcome is a final written warning, the subject officer will be advised that the final written warning will be put on his or her personal file and will remain live for eighteen months from the date the warning is given. This means that unless there are exceptional circumstances any further misconduct (that justifies more than management advice) will result in dismissal. (In exceptional circumstances only, the final written warning may be extended for a further 18 months on one occasion only).

## **6.11 Misconduct Hearing**

- 6.11.1 The following options are available:-

Where no Gross Misconduct/Misconduct has not been established

**No Further Action**

**Improvement Action****Refer the matter to be dealt with under the Performance Regulations**

Where Misconduct has been established as opposed to Gross Misconduct

**Improvement Action****A Verbal warning**

**A Written Warning** – as previous

**A Final Written Warning** – as previous

**Extension to a Final Written Warning** - In exceptional circumstances only, a final written warning may be extended for a further 18 months on one occasion only

**Where Gross Misconduct has been established****A Verbal warning**

**A Written Warning** – as previous

**A Final Written Warning** – as previous

**Demotion in rank**

**Dismissal with notice**

**Dismissal without notice**

- 6.11.2 Where the outcome is demotion in rank, rank can be reduced by one or more levels, and it will be for the person conducting the hearing to decide on the level of reduction having considered all the circumstances on their own merit.
- 6.11.3 Where the outcome is dismissal with notice, the notice period will be determined by the persons conducting the meeting subject to a minimum of 28 days.
- 6.11.4 Where the outcome is dismissal without notice, the police officer is dismissed from the police service with immediate effect.
- 6.11.5 Where a police officer appears before a misconduct hearing for an alleged act of gross misconduct, and the person(s) conducting the hearing find that the conduct amounts to misconduct rather than gross misconduct, then (unless the police officer already has a live final written warning) the disciplinary outcomes available to the panel are those that are available at a misconduct meeting only.
- 6.11.6 If during the preceding 12 months the subject officer has received one of the following disposals under regulation 24 of the Police Service of Scotland Regulations 2013 they are to be treated as if they were a written warning which remains in effect:
  - a) reduction in pay for a specified period;
  - b) fine; or
  - c) admonition.

- 6.11.7 Where a case is referred to a misconduct meeting and the police officer concerned has a live written warning and the police officer either admits or is found at the meeting to have committed a further act of misconduct, then the person conducting the misconduct meeting cannot impose another written warning. The person conducting the meeting will need to decide whether to take no action, give management advice or if he or she determines that either type of written warning is appropriate shall impose a final written warning.
- 6.11.8 Where a case is referred to a misconduct hearing on the grounds that the police officer concerned has a live final written warning and at the hearing the police officer either admits or is found to have committed a further act of misconduct, then the persons conducting the misconduct hearing cannot impose another written or a final written warning. The persons conducting the hearing may give management advice. However if the persons conducting the hearing determine that the misconduct admitted or found should attract a further written or final written warning they will dismiss the police officer unless they are satisfied that there are exceptional circumstances that warrant the police officer concerned remaining in the police service.
- 6.11.9 Where the persons conducting the misconduct hearing determine that such exceptional circumstances exist, they will extend the current final written warning that the police officer has for a further 18 months from the date the warning would otherwise expire (so that the original final written warning will last for 36 months in total). An extension to a final written warning can only be given on one occasion. In other words, if a further act of misconduct comes before a misconduct hearing after an extension has been imposed, unless it is sufficiently minor to justify management advice, the police officer will be dismissed.
- 6.11.10 The exceptional circumstances may include where the misconduct which is subject of the latest hearing pre-dates the misconduct for which the police officer received his or her original final written warning or the misconduct in the latest case is significantly less serious than the conduct that led to the current final written warning being given.

## **6.12 Notification of the outcome**

- 6.12.1 The person conducting the misconduct proceedings must, as soon as reasonably practicable after the conclusion of those proceedings (and not later than 10 working days from the date of conclusion of the proceedings), notify the constable in writing of:
- a) the determination as to whether any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct;
  - b) what improvement or, as the case may be, disciplinary action is ordered; and
  - c) the reasons for the determination and the action ordered.

- 6.12.2 In a case where a written warning is given the notification must advise the officer that a neither a verbal or written warning can be given for a period of 12 months from the date of that warning.
- 6.12.3 In a case where a final written warning is given the notification must advise the officer that except in exceptional circumstance a verbal, written or final written warning cannot be given for a period of 18 months from the date of that warning.
- 6.12.4 Where it is determined that any conduct of the officer amounts to misconduct or, as the case may be, gross misconduct, the notice must advise of:
  - a) the officer's right to appeal; and
  - b) the name of the person to whom an appeal should be submitted.
- 6.12.5 If the misconduct proceedings have arisen out of a complaint made by a member of the public, the Deputy Chief Constable must notify that member of the public in writing of the determination and any disciplinary action ordered.

## **6.13 Expiry of Warnings**

- 6.13.1 The terms of Regulation 11 of the Police Service of Scotland Regulations 2013 will apply in regard to the recording of Misconduct disposals on personal records.
- 6.13.2 Notification of written warnings issued, including the date issued and expiry date will be recorded on the police officer's personal record, along with a copy of the written notification of the outcome and a summary of the matter.
- 6.13.3 Where a police officer who has a live written warning or final written warning takes a career break in accordance with Police Regulations then any time on such a break will not count towards the 12 months (in the case of a written warning) or 18 months (in the case of a final written warning) or 36 months (in the case of an extended final written warning) that the warning is live.
- 6.13.4 For example if a police officer has a written warning that has been live for six months and then goes on a career break for 12 months and then returns to the Service, he or she will still have six months before the written warning expires on re-joining the Service.

## **6.14 Promotion**

- 6.14.1 Where a Police Officer has been subjected to misconduct proceedings and issued with a disciplinary warning, they will not normally be eligible for promotion whilst the warning remains live.

## **6.15 Competency Related Threshold Payment**

- 6.15.1 A finding or admission of misconduct at a misconduct meeting or hearing will

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

## 7. Right of appeal

- 7.1.1 Where it has been determined at misconduct proceedings, that any conduct of the officer amounts to misconduct or, as the case may be, gross misconduct then the officer may appeal against:
  - a) the determination; and
  - b) any disciplinary action ordered.
- 7.1.2 Where the officer has admitted the conduct or as the case may be gross misconduct they may appeal against any disciplinary action ordered.
- 7.1.3 An appeal may be made only on the grounds that:
  - a) any determination or any disciplinary action ordered is unreasonable;
  - b) there is evidence that could not reasonably have been considered at the misconduct proceedings which could have affected materially such a determination or the decision to order particular disciplinary action; or
  - c) there was a breach of the procedures set out in the Regulations which could have affected materially such a determination or decision.
- 7.1.4 An appeal may be requested by the officer sending a written appeal notice to the Deputy Chief Constable not more than 30 working days from the date on which they received a notice of determination in their case. The appeal notice must specify:
  - a) whether the officer appeals against:
    - I. the determination;
    - II. the disciplinary action; or
    - III. both;
  - b) the grounds of appeal; and
  - c) whether the officer requests an appeal hearing.

- 7.1.5 The officer must send with the appeal notice a copy of any document or other information which it is considered supports their appeal. Where the grounds of appeal are on evidence that could not reasonably have been considered at the misconduct proceedings then the officer must submit with the appeal notice details of that evidence.
- 7.1.6 The officer may request that appeal is postponed by submitting a written notice to the person appointed to determine the appeal.

## **7.2 Appeal procedure**

- 7.2.1 The appeal must be determined by an officer (other than the officer who conducted the misconduct proceedings) who is:
  - a) appointed by the Deputy Chief Constable;
  - b) in a case where the appellant is a chief superintendent, a Deputy Chief Constable other than the Deputy Chief Constable designated by the regulations; and
  - c) in any other case, of a higher rank than the constable who conducted the misconduct proceedings.
- 7.2.2 Where the officer requests an appeal hearing, the person determining the appeal must decide whether to hold an appeal hearing; or determine the appeal without holding such a hearing.
- 7.2.3 Where the officer does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined on the basis of:
  - a) the appeal notice and any documents or other information sent with that notice;
  - b) the audio or written record of the misconduct hearing;
  - c) any notices, submissions or other documents or information provided by the Deputy Chief Constable or the subject officer.
- 7.2.4 Where the person determining the appeal decides to hold an appeal hearing, they must send a notice in writing:
  - a) requiring the constable to attend an appeal hearing; and
  - b) specifying a date and time for that hearing.

- 7.2.5 The appeal hearing is to be conducted in such manner as the person determining the appeal determines, provided that:
- a) the officer's police representative must be permitted to attend;
  - b) in a case where any disciplinary involving demotion or dismissal has been ordered, any advocate or solicitor representing the constable must be permitted to attend; and
  - c) the officer (or any person representing the officer) must be permitted to make oral representations.

### **7.3 Outcome of appeal**

- 7.3.1 Whether after an appeal hearing or otherwise, the person determining the appeal may:
- a) confirm or reverse any determination made;
  - b) confirm the disciplinary action ordered;
  - c) order disciplinary action to be taken which is less serious than that which was ordered;
  - d) require improvement action to be taken instead of disciplinary action;
  - e) refer the matter to be dealt with under the procedures established by the Performance Regulations; or
  - f) in a case where the grounds of appeal in regard to evidence that could not have reasonably been considered at the proceedings is found to be established, remit the misconduct allegation back to the person who conducted the misconduct proceedings.
- 7.3.2 The person determining the appeal must notify the officer in writing of the decision and the reasons for that decision. This notice must be given as soon as practicable and no later than 60 working days from the date the appeal notice was submitted. However, this period can be extended to 120 working days in exceptional circumstances. Where dismissal is confirmed; or demotion in rank is confirmed or ordered, the notification must inform the officer of the right to appeal to a police appeals tribunal and the procedure for making such an appeal.

### **7.4 Procedure where misconduct allegation remitted back to person who conducted misconduct proceedings**

- 7.4.1 Where a misconduct allegation is remitted back to the person who conducted the misconduct proceedings following appeal, the person who conducted the

misconduct proceedings must:

- a) consider the evidence submitted by the officer in regard to the appeal; and determine whether to
  - I. confirm the original determination made and any disciplinary action ordered; or
  - II. reverse any determination made;
  - III. order disciplinary action which is less serious than that originally ordered;
  - IV. require improvement action to be taken instead of disciplinary action; or
  - V. refer the matter to be dealt with under the procedures established by the Performance Regulations.

- 7.4.2 Before making a determination the person conducting the misconduct proceedings may, by notice in writing, require the constable to attend a further meeting or hearing and the rules for such a hearing will apply as if it were a new hearing.
- 7.4.3 As soon as reasonably practicable after a determination is made the person conducting the misconduct proceedings must notify the constable of that determination.

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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 67**

**POLICE**

**The Police Service of Scotland (Performance) Regulations 2014**

<i>Made</i>	- - - - -	<i>28th February 2014</i>
<i>Laid before the Scottish Parliament</i>		<i>3rd March 2014</i>
<i>Coming into force</i>	- - -	<i>1st April 2014</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 54(2) of that Act, the Scottish Ministers have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) and have considered any representations made.

**PART 1**

General

**Citation and commencement**

**1.** These Regulations may be cited as the Police Service of Scotland (Performance) Regulations 2014 and come into force on 1st April 2014.

**Interpretation**

**2.—(1)** In these Regulations—

“audio recording” means a recording made on any disc, tape or other device on which sounds are recorded so as to be capable of being reproduced;

“chairing constable” means the person appointed to act as chairing constable at a performance hearing or, as the case may be, further performance hearing;

“disposal” means any of the actions mentioned in regulation 40(1);

“extended final improvement notice” means a final improvement notice extended under regulation 40(1)(c);

“extended final improvement period” means the period specified by the chairing constable under regulation 40(4)(a)(i);

“final improvement notice” means a notice prepared under regulation 25(2)(a);

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<sup>(a)</sup> 2012 asp 8.

“final improvement period” has the meaning given by regulation 24(6)(c);  
“first improvement notice” means a notice prepared under regulation 16(2)(a);  
“first improvement period” has the meaning given by regulation 15(7)(c);  
“first line manager” means the constable or the member of the police staff with immediate supervisory responsibility for the constable;  
“further performance hearing” means a hearing arranged under regulation 42 to consider the constable’s performance following a performance hearing;  
“human resources professional” means a member of the police staff who has responsibility for personnel matters relating to the Police Service;  
“improvement notice” includes a first improvement notice, a final improvement notice and an extended final improvement notice;  
“improvement period” means the period within which the constable’s performance is required to improve specified in an improvement notice and includes a first improvement period, a final improvement period and an extended final improvement period (see regulation 10);  
“performance appeal meeting” means a meeting arranged under regulation 19 to consider an appeal by the constable against the finding and outcome of a performance meeting;  
“performance hearing” means a hearing arranged under regulation 33 to consider the constable’s performance following a progress meeting;  
“performance meeting” means a meeting arranged under regulation 14 to consider a constable’s performance;  
“person determining the appeal” means the senior officer appointed by the deputy chief constable under regulation 45(2) to determine an appeal under regulation 44;  
“police adviser” means a constable appointed to give advice on the proceedings to—

- the first line manager at a performance meeting;
- the second line manager at a performance appeal meeting or a progress meeting;
- the senior manager at a progress appeal meeting; or
- the chairing constable at a performance hearing or a further performance hearing;

  
“police representative” must be construed in accordance with regulation 6;  
“progress appeal meeting” means a meeting arranged under regulation 28 to consider an appeal by the constable against the finding and outcome of a progress meeting;  
“progress meeting” means a meeting arranged under regulation 23 to consider the constable’s performance following a performance meeting;  
“second line manager” means—

- in a case where the constable holds the rank of chief superintendent, an assistant chief constable, or a member of the police staff at least equivalent to the rank of assistant chief constable, designated for that purpose by the constable’s senior manager; or
- in any other case, a constable or a member of the police staff who has immediate supervisory responsibility for the first line manager;

  
“senior manager” means a constable or a member of the police staff who (in either case) has supervisory responsibility for the second line manager;  
“the Act” means the Police and Fire Reform (Scotland) Act 2012;  
“the constable” means, unless the context otherwise requires, a constable to whom these Regulations apply and whose performance is being assessed in accordance with these Regulations;  
“validity period” means the period for which an improvement notice is valid (see regulation 10);  
“working day” means any day other than—

- a Saturday or Sunday;

- (b) a day which is a bank holiday in Scotland within the meaning given by paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(a); or
  - (c) a day which is a public holiday in Scotland; and
- “writing” includes electronic communications within the meaning given by section 15 of the Electronic Communications Act 2000(b) (and “written” is to be construed accordingly).

(2) In these Regulations, references to—

- (a) unsatisfactory performance; and
- (b) the performance of the constable being unsatisfactory,

are references to an inability or failure of the constable to perform the duties of the constable’s role or rank (or both) to a satisfactory standard.

## **Application**

**3.—(1)** These Regulations apply only in relation to the performance of constables below the rank of assistant chief constable who have completed their period of probation.

(2) These Regulations do not apply to—

- (a) constables on temporary service outwith the Police Service (either under arrangements made under section 15 of the Act or by virtue of paragraph 8(4) of schedule 5 to the Act);
- (b) persons engaged on temporary service as constables of the Police Service (either under arrangements made under section 16 of the Act or by virtue of paragraph 8(2) of schedule 5 to the Act); or
- (c) special constables appointed under section 9 of the Act.

## **Revocation and transitional provision**

**4.—(1)** Subject to paragraphs (2) and (3), the 2013 Regulations are revoked.

(2) The 2013 Regulations continue to have effect in relation to the performance of a constable if, before 1st April 2014, that constable has received a notice in pursuance of regulation 5 of those Regulations requiring the constable to attend a first interview.

(3) Paragraph (1) does not revoke regulations 23 and 24 of, or the Schedule to, the 2013 Regulations.

(4) In this regulation—

- “first interview” has the meaning given by regulation 2 of the 2013 Regulations; and
- “the 2013 Regulations” means the Police Service of Scotland (Performance) Regulations 2013(c).

## **Designation of deputy chief constable**

**5.—(1)** The chief constable must designate a deputy chief constable to exercise the functions of the deputy chief constable under these Regulations (and references in these Regulations to “the deputy chief constable” are, unless the context otherwise requires, references to that person).

(2) The deputy chief constable may direct or authorise a constable of at least the rank of sergeant to carry out any of the deputy chief constable’s functions under these Regulations.

(3) A direction or authorisation under paragraph (2) does not affect the deputy chief constable’s—

- (a) responsibility for the carrying out of delegated functions; or

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(a) 1971 c.80. Paragraph 2 of Schedule 1 has been amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(b) 2000 c.7. Section 15 has been amended by Schedule 17 to the Communications Act 2003 (c.21).

(c) S.S.I. 2013/61, relevantly amended by S.S.I. 2013/125.

- (b) ability to carry out delegated functions.

### **Police representative**

**6.—(1)** The constable may choose a person mentioned in paragraph (2) to act as the constable's police representative.

(2) The persons are—

- (a) in a case where the constable is a superintendent or a chief superintendent, another constable or a representative of any person representing the interests of superintendents (including chief superintendents); and
- (b) in any other case, another constable or a representative of the Police Federation for Scotland.

(3) But the constable may not choose as a police representative any person who is otherwise involved in any aspect of the constable's performance being considered in accordance with these Regulations.

(4) A police representative may—

- (a) advise the constable throughout any proceedings under these Regulations;
- (b) accompany the constable to any meeting or hearing which the constable is required to attend under these Regulations;
- (c) make representations on the constable's behalf at any meeting or hearing under these Regulations (including asking questions of any witnesses where the constable would be entitled to do so); and
- (d) make representations to the deputy chief constable concerning any aspect of the proceedings under these Regulations.

(5) The chief constable must permit any constable acting as a police representative under these Regulations to use a reasonable amount of duty time for the purpose of performing the functions mentioned in paragraph (4).

### **Procedure in constable's absence**

**7.—(1)** This regulation applies if the constable—

- (a) does not attend a meeting or hearing under these Regulations; or
- (b) participates in a performance hearing or further performance hearing by video link or other means under regulation 36(9).

(2) If this regulation applies—

- (a) the constable may be represented at the meeting or hearing by a police representative; and
- (b) the fact that the constable is not represented by a police representative does not prevent the meeting or hearing being conducted and concluded in the constable's absence.

### **Standard of proof**

**8.** A finding at any meeting or hearing under these Regulations as to whether the constable's performance has been unsatisfactory must be made on a balance of probabilities.

### **Consideration of documents**

**9.** Despite the failure by any person to provide any document in accordance with these Regulations in advance of any meeting or hearing, the person conducting or chairing that meeting or hearing may allow that document to be considered at the meeting or hearing if it is considered appropriate to do so.

## **Improvement periods and validity periods**

- 10.**—(1) Every improvement notice given under these Regulations must specify—
- (a) an improvement period; and
  - (b) a validity period.
- (2) An improvement period must be a period of not more than 12 months.
- (3) A validity period must—
- (a) commence on the same day as the improvement period specified in the improvement notice to which it relates;
  - (b) end on or after the day on which that improvement period ends; and
  - (c) subject to regulation 11(5), be a period of 12 months.
- (4) If the constable makes a sufficient improvement in performance during the improvement period specified in any improvement notice, that improvement must be maintained until the end of the validity period of that notice (if longer than the improvement period).

## **Extension of improvement and validity periods**

- 11.**—(1) A first improvement period or a final improvement period may, on the application of the constable or otherwise, be extended by a constable above the rank of chief inspector and of a rank higher than the constable.
- (2) An extended final improvement period may, on the application of the constable or otherwise, be extended by the deputy chief constable.
- (3) But an extension made under paragraph (1) or (2) must not result in any improvement period exceeding 12 months.
- (4) If an improvement period is extended, the validity period specified in the relevant improvement notice must also be extended, provided that the validity period must end not later than 6 months after the end of the improvement period as extended.
- (5) An extension of a validity period under paragraph (4) may result in that validity period, as extended, exceeding 12 months.
- (6) If any improvement period or validity period is extended, any reference in these Regulations to that improvement period or validity period must be read as a reference to that period as extended.

## **Suspension of improvement and validity periods**

- 12.**—(1) An improvement period or validity period must—
- (a) be suspended where the constable is absent from duty for a continuous period of 4 weeks or more; and
  - (b) resume when the constable returns to duty.
- (2) But paragraph (1) does not apply where the constable's absence is the subject of the proceedings under these Regulations.

## **PART 2**

### **Performance Meetings**

#### **Circumstances in which a performance meeting may be required**

- 13.** If the constable's first line manager considers that the performance of the constable is unsatisfactory, that line manager may refer the constable to a performance meeting.

## **Arrangement of performance meeting**

**14.**—(1) A first line manager who refers a constable to a performance meeting must send a notice in writing requiring the constable to attend such a meeting.

(2) A notice under paragraph (1) must give details of—

- (a) the procedures for determining the date and time of the performance meeting;
- (b) the respect in which the constable's performance is considered to be unsatisfactory;
- (c) the possible outcomes of a performance meeting, progress meeting and performance hearing;
- (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the first line manager on the proceedings;
- (e) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (f) the constable's right to seek advice from a police representative;
- (g) the constable's right to be represented at the meeting by a police representative; and
- (h) the requirement to provide to the first line manager, in advance of the meeting, a copy of any document on which the constable intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon by the first line manager in coming to the view that the performance of the constable is unsatisfactory.

(4) The first line manager must, if reasonably practicable, agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the first line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the constable or the constable's police representative will not be available at that date and time; and
- (b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the first line manager under paragraph (5).

(8) When the date and time of the meeting are determined in accordance with paragraphs (4) to (7), the first line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

## **Procedure at performance meeting**

**15.**—(1) The procedure at a performance meeting is as follows.

(2) The meeting must be conducted by the first line manager.

(3) A human resources professional or a police adviser may attend the meeting to advise the first line manager on the proceedings.

(4) Any other person whose proposed attendance was notified to the constable in accordance with regulation 14(2)(e) may attend the meeting provided the constable has not refused to consent to their attendance.

(5) The first line manager must—

- (a) explain how the constable's performance is considered to be unsatisfactory;
- (b) provide the constable with an opportunity to respond; and

- (c) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.
- (6) If, having considered any representations made in accordance with paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the first line manager is satisfied that the constable's performance is satisfactory, the first line manager must inform the constable that no further action is to be taken.
- (7) If, having considered any representations made in accordance with paragraph (5)(b) and (c) and any other representations made at the meeting (if any), the first line manager is satisfied that the constable's performance is unsatisfactory, the first line manager must inform the constable as to—
  - (a) the respect in which the constable's performance is considered unsatisfactory;
  - (b) the improvement that is required in the constable's performance;
  - (c) the period within which that improvement is required to take place (to be known as "the first improvement period");
  - (d) the fact that the constable will receive a written improvement notice;
  - (e) the validity period of that notice and the effect of regulation 10(4); and
  - (f) the circumstances in which the constable may be required to attend a progress meeting.
- (8) The first line manager may postpone or adjourn the performance meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 14(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Procedure following performance meeting**

- 16.**—(1) As soon as reasonably practicable after the date of the conclusion of the performance meeting the first line manager must prepare and send to the constable a written record of that meeting.
- (2) If at a performance meeting the performance of the constable is found to be unsatisfactory, the first line manager must, as soon as reasonably practicable after the date of the conclusion of that meeting—
  - (a) prepare and send to the constable a first improvement notice; and
  - (b) give to the constable written notice of—
    - (i) the constable's right to appeal under regulation 18;
    - (ii) the name of the person to whom an appeal notice must be sent;
    - (iii) the matters in relation to which an appeal may be made and the grounds of appeal;
    - (iv) the last date for lodging an appeal; and
    - (v) the constable's right to submit comments on the written record of the meeting.
- (3) Subject to paragraph (4), the constable may submit written comments on the written record of the meeting to the first line manager not later than 7 working days from the date on which the copy of that record is received by the constable.
- (4) The first line manager may, at the constable's request, extend the period mentioned in paragraph (3).
- (5) The first line manager must ensure that the following are retained together and filed appropriately—
  - (a) the first improvement notice;
  - (b) the written record of the performance meeting; and
  - (c) the constable's written comments on that record.

## **First improvement notices**

- 17.** A first improvement notice prepared under regulation 16(2)(a) must—
- (a) record—
    - (i) the respect in which the constable’s performance is considered to be unsatisfactory;
    - (ii) the improvement that is required in the constable’s performance; and
    - (iii) the length of the first improvement period;
  - (b) specify a validity period;
  - (c) inform the constable of the circumstances in which attendance at a progress meeting may be necessary; and
  - (d) be signed and dated by the first line manager.

## **Appeal against the finding and outcome of a performance meeting**

**18.—(1)** If at a performance meeting the first line manager finds that the performance of the constable is unsatisfactory, the constable may appeal against—

- (a) that finding; and
  - (b) any term of the first improvement notice specified in paragraph (3) (referred to in this regulation and regulation 21 as “the relevant terms”).
- (2) An appeal under paragraph (1) may only be made on one or more of the grounds of appeal specified in paragraph (4).
- (3) The relevant terms are—
- (a) the respect in which the constable’s performance is considered unsatisfactory;
  - (b) the improvement that is required in performance; and
  - (c) the length of the first improvement period.
- (4) The grounds of appeal are—
- (a) that the finding of unsatisfactory performance is unreasonable;
  - (b) that any of the relevant terms are unreasonable;
  - (c) that there is evidence that could not reasonably have been considered at the performance meeting which could have affected materially—
    - (i) the finding of unsatisfactory performance; or
    - (ii) any of the relevant terms; and
  - (d) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
    - (i) the finding of unsatisfactory performance; or
    - (ii) any of the relevant terms.

(5) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the second line manager not later than 7 working days from the date of receipt of the first improvement notice.

- (6) A notice under paragraph (5) must—
- (a) set out the finding or the relevant terms (or both) against which the appeal is made;
  - (b) set out the grounds of appeal; and
  - (c) be accompanied by any evidence on which the constable intends to rely.
- (7) The second line manager may, at the constable’s request, extend the period mentioned in paragraph (5) if satisfied that it is appropriate to do so.
- (8) The submission of an appeal notice under paragraph (5) does not affect the continuing operation of a first improvement notice sent under regulation 16(2)(a).

## **Arrangement of performance appeal meeting**

**19.**—(1) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 18(5), the second line manager must decide whether to—

- (a) require the constable to attend a performance appeal meeting; or
- (b) determine the appeal without such a meeting.

(2) The second line manager may determine the appeal without a performance appeal meeting only with the agreement of the constable.

(3) If the second line manager decides to require the constable to attend a performance appeal meeting the second line manager must send to the constable a written notice giving details of—

- (a) the procedures for determining the date and time of that meeting;
- (b) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
- (c) any proposed attendance at the meeting of the first line manager;
- (d) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (e) the constable's right to seek advice from a police representative; and
- (f) the constable's right to be represented at the meeting by a police representative.

(4) The second line manager must, if reasonably practicable, seek to agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the second line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the constable or the constable's police representative will not be available at that date and time; and
- (b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the second line manager under paragraph (5).

(8) When the date and time of a performance appeal meeting are determined in accordance with paragraphs (4) to (7), the second line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

## **Procedure at performance appeal meeting**

**20.**—(1) The procedure at a performance appeal meeting is as follows.

(2) The meeting must be conducted by the second line manager.

(3) The following persons may attend the meeting—

- (a) a human resources professional or a police adviser to advise the second line manager on the proceedings;
- (b) the first line manager; and
- (c) any other person whose proposed attendance was notified to the constable in accordance with regulation 19(3)(d), provided the constable has not refused to consent to their attendance.

(4) The second line manager must—

- (a) provide the constable with an opportunity to make representations; and

(b) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) The second line manager may postpone or adjourn the performance appeal meeting to a later time or date if it appears necessary or expedient to do so and the procedure mentioned in regulation 19(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Determination of appeal**

**21.**—(1) The second line manager must determine an appeal under regulation 18 in accordance with this regulation.

(2) In a case where a performance appeal meeting takes place, the second line manager must consider—

- (a) the appeal notice submitted under regulation 18(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the performance meeting;
- (d) the constable's written comments on that record (if any); and
- (e) any representations made at the performance appeal meeting.

(3) In a case where no performance appeal meeting takes place, the second line manager must consider—

- (a) the appeal notice submitted under regulation 18(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the performance meeting; and
- (d) the constable's written comments on that record (if any).

(4) Having considered the things mentioned in paragraph (2) or, as the case may be, (3), the second line manager may—

- (a) confirm or reverse the finding of unsatisfactory performance; and
- (b) confirm or vary any of the relevant terms against which the appeal is made.

(5) A reversal of the finding of unsatisfactory performance revokes the first improvement notice.

(6) If the second line manager—

- (a) reverses the finding of unsatisfactory performance; or
- (b) varies any of the relevant terms of the first improvement notice against which the appeal is made,

the decision of the second line manager replaces, from the date of that decision, the finding, the first improvement notice or the relevant terms against which the appeal is made.

(7) As soon as reasonably practicable after determining an appeal under regulation 18, the second line manager must—

- (a) send to the constable a written note of the second line manager's decision; and
- (b) in a case where a performance appeal meeting has taken place, send to the constable a written record of that meeting.

## PART 3

### Progress meetings

#### Circumstances in which a progress meeting may be required

**22.**—(1) The first line manager of a constable who has received a first improvement notice must assess the constable's performance—

- (a) at the end of the first improvement period specified in that notice; and
- (b) during any part of the validity period specified in that notice which continues after the end of the first improvement period.

(2) The first line manager must inform the constable in writing as to whether, in the first line manager's opinion—

- (a) there has been a sufficient improvement in the constable's performance by the end of the first improvement period; and
- (b) that improvement has been maintained until the end of the validity period.

(3) If the first line manager is of the opinion that there has been a sufficient improvement in the constable's performance by the end of the first improvement period, the first line manager must remind the constable of the need to maintain that improvement until the end of the validity period.

(4) If the first line manager is of the opinion that—

- (a) the constable has failed to make the required improvement in performance by the end of the first improvement period; or
- (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the first line manager must refer the constable to a progress meeting to consider the constable's performance.

(5) A progress meeting may only consider unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the first improvement notice.

#### Arrangement of progress meeting

**23.**—(1) If the first line manager refers the constable to a progress meeting under regulation 22(4), the second line manager must send a notice in writing requiring the constable to attend such a meeting.

(2) A notice under paragraph (1) must give details of—

- (a) the procedures for determining the date and time of the progress meeting;
- (b) the respect in which the constable's performance is considered to be unsatisfactory;
- (c) the possible outcomes of a progress meeting and a performance hearing;
- (d) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
- (e) any proposed attendance at the meeting of the first line manager;
- (f) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (g) the constable's right to seek advice from a police representative;
- (h) the constable's right to be represented at the meeting by a police representative; and
- (i) the requirement to provide to the second line manager, in advance of the meeting, a copy of any document on which the constable intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon in coming to the view that the performance of the constable is unsatisfactory.

(4) The second line manager must, if reasonably practicable, seek to agree a date and time for the progress meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the second line manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

(a) the constable or the constable's police representative will not be available at that date and time; and

(b) the constable proposes an alternative date and time which satisfy paragraph (7),

the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

(a) be reasonable; and

(b) fall not later than 10 working days from the date specified by the second line manager under paragraph (5).

(8) When the date and time of a progress meeting are determined in accordance with paragraphs (4) to (7), the second line manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

## **Procedure at progress meeting**

**24.**—(1) The procedure at a progress meeting is as follows.

(2) The meeting must be conducted by the second line manager.

(3) The following persons may attend the meeting if requested to do so by the second line manager—

(a) a human resources professional or a police adviser to advise the second line manager on the proceedings;

(b) the first line manager; and

(c) any other person whose proposed attendance was notified to the constable in accordance with regulation 23(2)(f), provided the constable has not refused to consent to their attendance.

(4) The second line manager must—

(a) explain how the constable's performance is considered to be unsatisfactory;

(b) provide the constable with an opportunity to make representations in response; and

(c) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) Paragraph (6) applies if, having considered any representations made in accordance with paragraph (4)(b) or (c) and any other representations made at the meeting (if any), the second line manager is satisfied that—

(a) the constable has failed to make the required improvement in performance by the end of the first improvement period; or

(b) in a case where the required improvement in performance has been made by the end of the first improvement period, that improvement has not been maintained until the end of the validity period.

(6) If this paragraph applies, the second line manager must inform the constable as to—

(a) the respect in which the constable's performance is considered to be unsatisfactory;

(b) the improvement that is required in the constable's performance;

(c) the period within which that improvement is required to take place (to be known as "the final improvement period");

(d) the fact that the constable will receive a written final improvement notice;

- (e) the validity period of that notice and the effect of regulation 10(4); and
- (f) the circumstances in which the constable may be required to attend a performance hearing.

(7) The second line manager may postpone or adjourn the meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 23(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Procedure following progress meeting**

**25.**—(1) As soon as reasonably practicable after the date of the conclusion of the progress meeting the second line manager must prepare and send to the constable a written record of that meeting.

(2) Where at a progress meeting the performance of the constable is found to be unsatisfactory, the second line manager must, as soon as reasonably practicable after the date of the conclusion of that meeting—

- (a) prepare and send to the constable a final improvement notice; and
- (b) give to the constable written notice of—
  - (i) the constable's right to appeal under regulation 27;
  - (ii) the name of the person to whom an appeal notice must be sent;
  - (iii) the matters in relation to which an appeal may be made and the grounds of appeal;
  - (iv) the last date for lodging an appeal; and
  - (v) the constable's right to submit comments on the written record of the meeting.

(3) Subject to paragraph (4), the constable may submit written comments on the written record of the meeting to the second line manager not later than 7 working days from the date on which the copy of that record is received by the constable.

(4) The second line manager may, at the constable's request, extend the period mentioned in paragraph (3).

(5) The second line manager must ensure that the following are retained together and filed appropriately—

- (a) the final improvement notice;
- (b) the written record of the progress meeting; and
- (c) the constable's written comments on that record.

### **Final improvement notices**

**26.** A final improvement notice prepared under regulation 25(2)(a) must—

- (a) record—
  - (i) the respect in which the constable's performance is considered to be unsatisfactory;
  - (ii) the improvement that is required in the constable's performance; and
  - (iii) the final improvement period;
- (b) specify a validity period;
- (c) inform the constable as to the circumstances in which attendance at a performance hearing may be required; and
- (d) be signed and dated by the second line manager.

## **Appeal against the finding and outcome of a progress meeting**

**27.**—(1) Where at a progress meeting the second line manager finds that the performance of the constable is unsatisfactory, the constable may appeal against—

- (a) that finding;
- (b) any term of the final improvement notice specified in paragraph (3) (referred to in this regulation and regulation 30 as “the relevant terms”); and
- (c) the decision of the second line manager to require the constable to attend the progress meeting.

(2) An appeal under paragraph (1) may be made on one or more of the grounds of appeal specified in paragraph (4).

(3) The relevant terms are—

- (a) the respect in which the constable’s performance is considered unsatisfactory;
- (b) the improvement that is required in performance; and
- (c) the length of the final improvement period.

(4) The grounds of appeal are—

- (a) that, in relation to an appeal against the decision mentioned in paragraph (1)(c), the progress meeting did not consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the first improvement notice;
- (b) that the finding of unsatisfactory performance is unreasonable;
- (c) that any of the relevant terms are unreasonable;
- (d) that there is evidence that could not reasonably have been considered at the progress meeting which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms; and
- (e) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) any of the relevant terms.

(5) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the senior manager not later than 7 working days from the date of receipt of the final improvement notice.

(6) A notice under paragraph (5) must—

- (a) set out the finding or the relevant terms (or both) against which the appeal is made;
- (b) set out the grounds of appeal; and
- (c) be accompanied by any evidence on which the constable intends to rely.

(7) The senior manager may, at the constable’s request, extend the period mentioned in paragraph (5) if satisfied that it is appropriate to do so.

(8) The submission of an appeal notice under paragraph (5) does not affect the continuing operation of a final improvement notice sent under regulation 25(2)(a).

## **Arrangement of progress appeal meeting**

**28.**—(1) As soon as reasonably practicable after receipt of an appeal notice submitted under regulation 27(5), the senior manager must decide whether to—

- (a) require the constable to attend a progress appeal meeting; or
- (b) determine the appeal without such a meeting.

(2) The senior manager may determine the appeal without a progress appeal meeting only with the agreement of the constable.

(3) If the senior manager decides to require the constable to attend a progress appeal meeting the senior line manager must send to the constable a written notice giving details of—

- (a) the procedures for determining the date and time of that meeting;
- (b) any proposed attendance at the meeting of a human resources professional or a police adviser to advise the senior manager on the proceedings;
- (c) any proposed attendance at the meeting of the second line manager;
- (d) any proposed attendance at the meeting of any other named person and the constable's right to refuse to consent to their attendance;
- (e) the constable's right to seek advice from a police representative; and
- (f) the constable's right to be represented at the meeting by a police representative.

(4) The senior manager must, if reasonably practicable, seek to agree a date and time for the meeting with the constable.

(5) If no date and time are agreed under paragraph (4), the senior manager must specify a date and time for the meeting.

(6) If a date and time are specified under paragraph (5) and—

- (a) the constable or the constable's police representative will not be available at that date and time; and
- (b) the constable proposes an alternative date and time which satisfy paragraph (7),  
the meeting must be postponed to the date and time proposed.

(7) An alternative date and time must—

- (a) be reasonable; and
- (b) fall not later than 10 working days from the date specified by the senior manager under paragraph (5).

(8) When the date and time of a progress appeal meeting are determined in accordance with paragraphs (4) to (7), the senior manager must send a notice in writing to the constable specifying the date, time and place of that meeting.

### **Procedure at progress appeal meeting**

**29.**—(1) The procedure at a progress appeal meeting is as follows.

(2) The meeting must be conducted by the senior manager.

(3) The following persons may attend the meeting—

- (a) a human resources professional or a police adviser to advise the senior manager on the proceedings;
- (b) the second line manager; and
- (c) any other person whose proposed attendance was notified to the constable in accordance with regulation 28(3)(d), provided the constable has not refused to consent to their attendance.

(4) The senior manager must—

- (a) provide the constable with an opportunity to make representations; and
- (b) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) The senior manager may postpone or adjourn the progress appeal meeting to a later time or date if satisfied that it is necessary or expedient to do so and the procedure mentioned in regulation 28(4) to (8) applies to a postponed or adjourned meeting as it applies to the meeting postponed or adjourned.

### **Determination of appeal**

**30.**—(1) The senior manager must determine an appeal under regulation 27 in accordance with this regulation.

(2) In a case where a progress appeal meeting takes place, the senior manager must consider—

- (a) the appeal notice submitted under regulation 27(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the progress meeting;
- (d) the constable’s written comments on that record (if any); and
- (e) any representations made at the progress appeal meeting.

(3) In a case where no progress appeal meeting takes place, the senior manager must consider—

- (a) the appeal notice submitted under regulation 27(5);
- (b) any evidence accompanying that notice;
- (c) the written record of the progress meeting; and
- (d) the constable’s written comments on that record (if any).

(4) Having considered the things mentioned in paragraph (2) or, as the case may be, (3), the senior manager may—

- (a) confirm or reverse the finding of unsatisfactory performance; and
- (b) confirm or vary any of the relevant terms against which the appeal is made.

(5) A reversal of the finding of unsatisfactory performance revokes the final improvement notice.

(6) Where the senior manager—

- (a) reverses the finding of unsatisfactory performance; or
- (b) varies any of the relevant terms against which an appeal was made,

the decision of the senior manager substitutes, from the date of the progress appeal meeting, the finding, the final improvement notice or the relevant terms against which an appeal was made.

(7) As soon as reasonably practicable after determining an appeal under regulation 27 the senior manager must—

- (a) send to the constable a written record of the senior manager’s decision; and
- (b) in a case where a progress appeal meeting has taken place, send to the constable a written record of that meeting.

## **PART 4**

### **Performance hearings**

#### **Circumstances in which a performance hearing may be required**

**31.**—(1) The first line manager of a constable who has received a final improvement notice must assess the constable’s performance—

- (a) at the end of the final improvement period specified in that notice; and
- (b) during any part of the validity period specified in that notice which continues after the end of the final improvement period.

(2) The first line manager must inform the constable in writing as to whether, in the first line manager’s opinion—

- (a) there has been a sufficient improvement in the constable’s performance by the end of the final improvement period; and

(b) that improvement has been maintained until the end of the validity period.

(3) If the first line manager is of the opinion that there has been a sufficient improvement in the constable's performance by the end of the final improvement period, the first line manager must remind the constable of the need to maintain that improvement until the end of the validity period.

(4) If the first line manager is of the opinion that—

- (a) the constable has failed to make the required improvement in performance by the end of the final improvement period; or
- (b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the first line manager must refer the constable to a performance hearing to consider the constable's performance.

(5) A performance hearing may only consider unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the final improvement notice.

#### **Appointment of chairing constable, etc.**

**32.**—(1) The deputy chief constable must appoint a constable of at least the rank of superintendent and of a rank higher than the constable to act as chairing constable at the performance hearing.

(2) The deputy chief constable may in addition appoint—

- (a) a police adviser of at least the same rank as the constable; and
- (b) a human resources professional,

to advise the chairing constable at the performance hearing.

(3) A person must not be appointed under this regulation if the deputy chief constable holds a reasonable concern as to whether that person could act impartially in relation to the constable.

(4) The constable may object to the appointment of any person under this regulation.

(5) An objection under paragraph (4) must be submitted in writing not later than 3 working days from receipt of the notice under regulation 33(1) and must indicate the constable's reasons for objecting.

(6) The deputy chief constable must decide whether to uphold an objection and must—

- (a) notify the constable in writing of that decision; and
- (b) if the objection is upheld—
  - (i) make a new appointment in accordance with this regulation; and
  - (ii) notify the constable in writing of the name of the person appointed.

(7) The deputy chief constable must arrange for the provision to every person appointed under this regulation of—

- (a) any document which was available to the first line manager in relation to the performance meeting;
- (b) any document which was available to the second line manager in relation to the progress meeting;
- (c) the records of the performance meeting and the progress meeting;
- (d) any submission made under regulation 34;
- (e) documents relating to any appeal under these Regulations; and
- (f) the first improvement notice and the final improvement notice.

#### **Arrangement of the performance hearing**

**33.**—(1) If the first line manager refers the constable to a performance hearing the senior manager must send a notice in writing requiring the constable to attend such a hearing.

- (2) A notice under paragraph (1) must inform the constable as to—
- (a) the persons appointed under regulation 32(1) and (2);
  - (b) the procedures for determining the date and time of the performance hearing;
  - (c) the respect in which the constable's performance is considered unsatisfactory;
  - (d) the possible outcomes of a performance hearing;
  - (e) the effect of regulation 34;
  - (f) any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
  - (g) any proposed attendance at the hearing of any other named person and the constable's right to refuse to consent to their attendance;
  - (h) the constable's right to seek advice from a police representative;
  - (i) the constable's right to be represented at the hearing by a police representative; and
  - (j) the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the constable intends to rely.
- (3) A notice under paragraph (1) must be accompanied by—
- (a) a copy of any document relied upon in coming to the view that the performance of the constable is unsatisfactory; and
  - (b) a copy of the documents mentioned in regulation 32(7).

### **Procedure on receipt of notice of performance hearing**

- 34.**—(1) The constable must, not later than 20 working days from receipt, respond in writing to a notice under regulation 33(1) indicating either—
- (a) that the constable accepts the first line manager's opinion under regulation 31(4); or
  - (b) that the constable does not accept that opinion.
- (2) A constable who accepts the first line manager's opinion may make a written submission to the deputy chief constable.
- (3) A constable who does not accept that opinion must provide a written submission explaining the reasons for not accepting that opinion.
- (4) A submission under this regulation must be accompanied by any document on which the constable intends to rely at the performance hearing.

### **Witnesses**

- 35.**—(1) The first line manager and the constable must, no later than 10 working days after receipt by the first line manager of the constable's response under regulation 34, supply to each other—
- (a) the name and address of any witness on whom they propose to rely at the performance hearing and a summary of the evidence each witness will give; or
  - (b) notice that they do not intend to rely on any witnesses.
- (2) The first line manager and the constable must then seek to agree a joint list of witnesses and provide that list to the chairing constable.
- (3) If it is not possible for the first line manager and the constable to agree on a joint list of witnesses, they must each supply to the chairing constable a list of proposed witnesses.
- (4) As soon as reasonably practicable after receiving lists of witnesses under paragraphs (2) or (3), the chairing constable must—
- (a) decide which, if any, of the listed witnesses should attend the performance hearing; and
  - (b) notify the first line manager and the constable of that decision.

(5) The chairing constable may determine that witnesses not included in any list under this regulation (whether joint or otherwise) are to attend the performance hearing.

(6) The chairing constable must not decide, in pursuance of paragraphs (4) or (5), that any witness is to give evidence at the performance hearing unless the chairing constable reasonably considers that it is necessary for the witness to do so.

(7) The chairing constable must notify in writing any witness who is to attend the performance hearing.

### **Timing of performance hearing**

**36.**—(1) The performance hearing must take place not later than 35 working days after a notice has been sent under regulation 33(1).

(2) But the chairing constable may extend the time period mentioned in paragraph (1) if it would be in the interests of fairness to do so.

(3) If the time period is extended under paragraph (2), the chairing constable must provide written notification to both the deputy chief constable and the constable of the reasons for that extension.

(4) The chairing constable must, if reasonably practicable, agree a time and date for the performance hearing with the constable.

(5) If no date and time are agreed under paragraph (4), the chairing constable must specify a time and date for that hearing.

(6) If a date and time are specified under paragraph (5) and—

(a) the constable or the constable's police representative will not be available at that date and time; and

(b) the constable proposes an alternative date and time which satisfy paragraph (7),

the hearing must be postponed to the date and time proposed by the constable.

(7) An alternative date and time must—

(a) be reasonable;

(b) fall not later than 10 working days from the date specified by the chairing constable under paragraph (4); and

(c) fall not later than—

(i) 35 working days from the date of a notice given under regulation 33(1); or

(ii) the end of any extended period specified under paragraph (2).

(8) When the date and time of the performance hearing are determined in accordance with paragraphs (4) to (7), the chairing constable must send a notice in writing to the constable specifying the date, time and place of that hearing.

(9) The chairing constable may allow a constable or a constable's police representative (or both) who is unable, on reasonable grounds, to attend the performance hearing to participate in that hearing by video link or any other reasonable means.

### **Postponement and adjournment of performance hearing**

**37.**—(1) The chairing constable may, if satisfied that it is necessary or expedient in the circumstances—

(a) postpone to a specified date a performance hearing which has not commenced; or

(b) adjourn to a specified date a performance hearing which has commenced.

(2) A date specified under paragraph (1) may fall after the end of the period of 35 working days mentioned in regulation 36(1).

(3) If a hearing is postponed or adjourned under paragraph (1) the chairing constable must notify in writing the constable, any person appointed under regulation 32(2) and the deputy chief constable of—

- (a) the revised date, time and place of the hearing; and
- (b) the reasons for the postponement or adjournment.

### **Procedure at performance hearing**

**38.**—(1) The procedure at a performance hearing is as follows.

(2) The hearing must be conducted by the chairing constable.

(3) The following persons may attend the hearing if requested to do so by the chairing constable—

- (a) the first line manager;
  - (b) the second line manager;
  - (c) the senior manager;
  - (d) any person whose attendance was notified to the constable in accordance with regulation 33(2)(g), provided the constable has not refused to consent to their attendance.
- (4) The chairing constable must—
- (a) explain to the constable how the constable's performance is considered to be unsatisfactory; and
  - (b) provide the constable with an opportunity to make representations in response; and
  - (c) provide the constable's police representative (if the constable has one) with an opportunity to make representations in accordance with regulation 6(4)(c) or (if applicable) 7.

(5) The chairing constable may permit the constable to ask questions of any witness.

(6) An audio recording of the hearing must be made and the constable must, on request, be supplied with a copy of that recording.

### **Finding**

**39.**—(1) Following the performance hearing the chairing constable must decide whether—

- (a) the constable has failed to make the required improvement in performance by the end of the final improvement period; or
- (b) in a case where the required improvement in performance has been made by the end of that period, that improvement has been maintained until the end of the validity period.

(2) Not later than 3 working days from the conclusion of the performance hearing the chairing constable must give both the constable and the first line manager written notice of—

- (a) the chairing constable's decision;
- (b) the reasons for that decision; and
- (c) any disposal ordered under regulation 40.

(3) If regulation 44(1) applies, the notice given under paragraph (2) must notify the constable of the right to appeal under that regulation and of the procedure for making such an appeal.

### **Disposal**

**40.**—(1) If the chairing constable decides under regulation 39(1) that the constable's performance is unsatisfactory the chairing constable may, subject to paragraph (3) and (4), order—

- (a) dismissal of the constable with notice;
- (b) demotion in rank; or

(c) extension of the final improvement notice.

(2) If dismissal of the constable with notice is ordered, the period of notice must be determined by the chairing constable, but must be not less than 28 days.

(3) Extension of the final improvement notice may be ordered only where the chairing constable is satisfied that there are exceptional circumstances which justify such a disposal.

(4) If extension of the final improvement notice is ordered—

(a) the chairing constable must amend the final improvement notice—

(i) to state that if the constable does not make a sufficient improvement in performance within such reasonable period as the chairing constable specifies (being a period of no more than 6 months from the date of extension) the constable may be required to attend a further performance hearing; and

(ii) to specify a new validity period; and

(b) the chairing constable may amend the terms of the final improvement notice which relate to—

(i) the respect in which the constable's performance is considered to be unsatisfactory; or

(ii) the improvement that is required in the constable's performance.

### **Assessment of performance following performance hearing**

**41.**—(1) If the final improvement notice is extended under regulation 40(1)(c), the first line manager must assess the constable's performance—

(a) at the end of the extended final improvement period specified in that notice; and

(b) during any part of the validity period specified in that notice which continues after the end of the extended final improvement period.

(2) The first line manager must inform the constable in writing as to whether, in the first line manager's opinion—

(a) there has been a sufficient improvement in the constable's performance by the end of the extended final improvement period; and

(b) that improvement has been maintained until the end of the validity period.

(3) If the first line manager is of the opinion that there has been a sufficient improvement in the constable's performance by the end of the extended final improvement period, the first line manager must remind the constable of the need to maintain that improvement until the end of the validity period.

(4) If, following an assessment under paragraph (1), the first line manager is of the opinion that—

(a) the constable has failed to make the required improvement in performance by the end of the extended final improvement period; or

(b) where the required improvement in performance has been made by the end of that period, that improvement has not been maintained until the end of the validity period,

the first line manager must refer the constable to a further performance hearing to consider the constable's performance.

(5) A further performance hearing may consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the final improvement notice extended under regulation 40(1)(c).

(6) Subject to paragraph (7)—

(a) a further performance hearing must be conducted by the chairing constable who conducted the performance hearing; and

(b) the chairing constable must be advised at the further performance hearing by any person appointed under regulation 32(2) to advise at the performance hearing.

(7) If any person mentioned in paragraph (6) is unable to attend a further performance hearing the deputy chief constable may appoint a replacement in accordance with regulation 32(1) and (2) (and paragraphs (3) to (6) of that regulation apply in relation to such an appointment).

(8) The deputy chief constable must arrange for the provision to every person mentioned in paragraph (6) (or any replacement for such a person appointed under paragraph (7)) of—

- (a) any document which was available to the first line manager in relation to the performance meeting;
- (b) any document which was available to the second line manager in relation to the progress meeting;
- (c) any document which was available to the chairing constable in relation to the performance hearing;
- (d) the records of the performance meeting, the progress meeting and the performance hearing;
- (e) any submission made under regulation 34;
- (f) documents relating to any appeal under these Regulations; and
- (g) the first improvement notice, final improvement notice and extended final improvement notice.

#### **Arrangement of further performance hearing**

**42.**—(1) If the first line manager refers a constable to a further performance hearing, the senior manager must send a notice in writing requiring the constable to attend such a hearing.

(2) A notice under paragraph (1) must inform the constable as to—

- (a) the identity of the chairing constable and any person appointed to advise that constable;
- (b) the procedures for determining the date and time of the further performance hearing;
- (c) the respect in which the constable’s performance is considered to be unsatisfactory;
- (d) the possible outcomes of a further performance hearing;
- (e) the effect of regulation 34 (as modified by regulation 43);
- (f) any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
- (g) any proposed attendance at the hearing of any other named person and the constable’s right to refuse to consent to their attendance;
- (h) the constable’s right to seek advice from a police representative;
- (i) the constable’s right to be represented at the hearing by a police representative; and
- (j) the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the constable intends to rely.

(3) A notice under paragraph (1) must be accompanied by a copy of any document relied upon in coming to the view that the constable’s performance is unsatisfactory.

#### **Application of Regulations to further performance hearing**

**43.** Regulations 34 and 36 to 40 apply in relation to a further performance hearing as they apply in relation to a performance hearing, subject to the following modifications—

- (a) regulation 34 applies as if—
  - (i) in the opening words of paragraph (1), for “33(1)” there were substituted “42(1)”; and
  - (ii) in sub-paragraph (a) of that paragraph, for “31(4)” there were substituted “41(4)”;
- (b) regulation 36 applies as if for “33(1)”, where it appears in paragraphs (1) and (7)(c)(i), there were substituted “42(1)”;

- (c) regulation 38(3)(d) applies as if for “33(2)(g)” there were substituted “42(2)(g)”;
- (d) regulation 39(1)(a) applies as if for “final improvement period”, there were substituted “extended final improvement period”; and
- (e) regulation 40 applies as if—
  - (i) paragraphs (1)(c), (3) and (4) were omitted; and
  - (ii) in paragraph (1) the words “, subject to paragraphs (3) and (4),” were omitted.

## PART 5

### Appeal against finding at performance hearing

#### **Appeal against finding at performance hearing**

**44.**—(1) If at a performance hearing or a further performance hearing, the chairing constable finds that the constable’s performance is unsatisfactory and orders dismissal or demotion in rank, the constable may appeal against—

- (a) the finding of unsatisfactory performance; and
- (b) the disposal ordered.

(2) An appeal under paragraph (1) may be made only on one or more of the grounds of appeal specified in paragraph (3).

(3) The grounds of appeal are—

- (a) that the finding of unsatisfactory performance is unreasonable;
- (b) that the disposal ordered is unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the performance hearing or further performance hearing (as the case may be) which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) the disposal ordered; and
- (d) that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially—
  - (i) the finding of unsatisfactory performance; or
  - (ii) the disposal ordered.

(4) An appeal under paragraph (1) is to be commenced by the constable submitting a written appeal notice to the deputy chief constable not later than 30 working days from the date on which the constable receives the notice under regulation 39(2) of the decision in relation to which the appeal is made.

(5) A notice under paragraph (4) must—

- (a) set out the finding or the disposal (or both) against which the appeal is made;
- (b) set out the grounds of appeal;
- (c) specify whether the constable requests an appeal hearing; and
- (d) be accompanied by any evidence on which the constable intends to rely.

(6) The chief constable may, on the application of the constable, extend the period mentioned in paragraph (4) if satisfied that it is appropriate to do so.

#### **Procedure for determining appeal**

**45.**—(1) An appeal under regulation 44 must be determined in accordance with this regulation.

(2) The appeal must be determined by a senior officer who is—

- (a) appointed by the deputy chief constable;
  - (b) in a case where the appellant is a chief superintendent, a deputy chief constable other than the deputy chief constable designated by virtue of regulation 5.
- (3) If the constable requests an appeal hearing, the person determining the appeal must decide whether to—
- (a) hold an appeal hearing; or
  - (b) determine the appeal without holding such a hearing.
- (4) If the constable does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined on the basis of—
- (a) the appeal notice and any evidence sent with that notice; and
  - (b) the audio recording of the performance hearing or further performance hearing to which the appeal relates.
- (5) If the person determining the appeal decides to hold an appeal hearing, the following paragraphs of this regulation apply.
- (6) The person determining the appeal must within 30 working days of receipt of an appeal notice sent under regulation 44(4) send a notice in writing—
- (a) requiring the constable to attend an appeal hearing; and
  - (b) specifying a date and time for that hearing.
- (7) The appeal hearing is to be heard not more than 10 working days from the date on which the decision to hold that hearing was made.
- (8) The appeal hearing is to be conducted in such manner as the person determining the appeal decides, provided that—
- (a) the constable's police representative must be permitted to attend; and
  - (b) the constable and the constable's police representative must be permitted to make oral representations.

### **Outcome of appeal**

- 46.**—(1) The person determining the appeal may, whether after an appeal hearing or otherwise—
- (a) confirm or reverse the finding of unsatisfactory performance;
  - (b) confirm the disposal ordered; or
  - (c) order a disposal which is less severe than that ordered by the chairing constable of the performance hearing or further performance hearing (as the case may be).
- (2) But in the case of an appeal against a decision or disposal ordered at a further performance hearing, the person determining the appeal may not order a further extension of the final improvement notice.
- (3) The person determining the appeal must notify the constable in writing of the decision under paragraph (1) and the reasons for that decision.
- (4) A notice under paragraph (3) must be given as soon as reasonably practicable and no later than 90 working days from the date the appeal notice was submitted.
- (5) A demotion in rank ordered under paragraph (1)(c) has effect from the date of the notice given under paragraph (3).
- (6) Where the person determining the appeal orders under paragraph (1)(c) an extension of the final improvement notice regulation 40(3) and (4) apply to that extension, except that references to the “chairing constable” are to be read as references to the person determining the appeal.
- (7) Where the person determining the appeal confirms that—
- (a) the constable's performance is unsatisfactory; and
  - (b) the constable is to be dismissed or demoted in rank,

the notice given under paragraph (3) must be accompanied by a notice in writing setting out the circumstances in which the constable may appeal to a police appeals tribunal and the procedure for making such an appeal.

## PART 6

### Consequential modifications

#### **Police Appeals Tribunal (Scotland) Rules 2013**

**47.** In rule 2 (interpretation) of the Police Appeals Tribunal (Scotland) Rules 2013(a), in the definition of “Performance Regulations”, for “2013” substitute “2014”.

#### **Police Service of Scotland Regulations 2013**

**48.** In regulation 11(3)(d) (personal records) of the Police Service of Scotland Regulations 2013(b), after “2013” insert “or the Police Service of Scotland (Performance) Regulations 2014.”.

*KENNY MACASKILL*  
A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
28th February 2014

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(a) S.S.I. 2013/63.  
(b) S.S.I. 2013/35.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the procedures for dealing with cases where the performance of a constable of the Police Service of Scotland below the rank of assistant chief constable (who has completed their probationary period) is considered to be unsatisfactory.

Part 1 makes general provision. Regulations 1 to 3 make provision about the commencement, interpretation and application of the Regulations. Regulation 4 revokes the majority of the Police Service of Scotland (Performance) Regulations 2013 dealing with police performance and makes transitional provision in relation to that revocation. Regulation 5 requires the chief constable to designate a deputy chief constable to carry out functions under the Regulations and authorises that deputy chief constable to delegate those functions to other constables of the rank of sergeant and above.

Regulation 6 sets out the representation to which a constable is entitled during the performance process. Regulation 7 specifies that meetings or hearings under these Regulations may take place when the constable does not attend and how the constable may be represented at those meetings and hearings.

Regulation 8 provides that the question of whether a constable's performance is unsatisfactory is to be determined on a balance of probabilities.

Regulation 9 entitles the person conducting or chairing a meeting or hearing under the Regulations to consider documents notice of which has not been given in advance of that meeting or hearing.

Regulations 10 to 12 make provision about the "improvement periods" and "validity periods" to be specified in improvement notices given under these Regulations. Regulation 10 requires every improvement notice to specify an improvement period and a validity period. Those periods must be no more than 12 months (although a validity period may be extended beyond 12 months if the associated improvement period is extended – regulation 11(5)). A constable's performance must improve by the end of the improvement period and that improvement must be maintained until the end of the validity period. Regulation 10 also makes provision about when a validity period must start and end and in particular provides that such a period must end on or after the date on which the associated improvement period ends.

Regulation 11 allows for improvement and validity periods to be extended. An extended improvement period must not exceed 12 months in total, while an extended validity period may exceed 12 months. Regulation 12 allows for improvement and validity periods to be suspended where the constable is absent from duty for 4 weeks or more.

Part 2 establishes the first stage in the performance process, known as "performance meetings". Regulation 13 permits a constable's first line manager to refer a constable to such a meeting if that constable's performance is considered to be unsatisfactory.

Where a constable is referred to a performance meeting, regulation 14 sets the process for arranging that meeting. The line manager must send a notice to the constable requiring attendance at the meeting specifying, among other things, the respect in which the constable's performance is considered unsatisfactory. Regulation 14 also establishes a process for the constable and the line manager to agree a date and time for the meeting.

The procedure at a performance meeting is set out in regulation 15, including provision about who may attend that meeting, the right of the constable (and any person representing the constable) to make representations and notifying the constable of the decision as to whether the constable's performance is unsatisfactory.

Regulation 16 provides for what is to happen following a performance meeting. In particular, the line manager must send a record of the meeting to the constable and, where the constable's performance has been found to be unsatisfactory, prepare and send to the constable a first improvement notice. The constable must also be informed of the right to appeal and the procedure

for making an appeal. Regulation 17 makes provision about what must be contained in a first improvement notice.

The process for appealing the decision taken at a performance meeting is set out in regulation 18. That appeal may be made against the finding of unsatisfactory performance or against certain terms of the first improvement notice. Regulation 18 also sets out the grounds on which an appeal can be made and specifies that the appeal must be made by submission of a written appeal notice. An appeal is to be determined by the constable's second line manager and may be determined with or without a further meeting. Where a meeting is required, regulation 19 details how that meeting is to be arranged and the procedure at that meeting is set out in regulation 20. Regulation 21 specifies the way in which the second line manager must decide the appeal, whether or not a meeting takes place.

Part 3 makes provision about the analysis of the constable's performance following the first stage in the process.

Regulation 22 requires the constable's line manager, at the end of the first improvement and validity periods, to decide whether the constable's performance has been satisfactory during those periods. If it has not been satisfactory, the constable must be referred to a progress meeting to consider the matter further.

Regulation 23 makes provision as to how the progress meeting is to be arranged. Regulations 24 and 25 make provision as to the procedure at and following that meeting respectively. The process is broadly similar to that for performance meetings.

Where, at a progress meeting, a constable's performance is considered to be unsatisfactory, a final improvement notice must be given. The content of that notice is specified in regulation 26.

As with performance meetings, the outcome of a progress meeting can be appealed by the constable. Regulations 27 to 30 make provision as to how an appeal is to be lodged, what can be appealed against, the arrangement of an appeal hearing (if needed), the procedure at such a meeting and the way in which an appeal is to be determined.

Part 4 sets out what is to happen at the end of the improvement and validity periods set out in a final improvement notice.

Regulation 31 requires the constable's line manager to assess the constable's performance at the end of the final improvement period and validity period specified in the final improvement notice. If the constable's performance has been unsatisfactory, the line manager must refer the constable to a performance hearing.

Where a constable has been referred under regulation 31, regulation 32 requires the deputy chief constable to appoint another constable of at least the rank of superintendent (and of a rank higher than the constable) to act as chairing constable at the performance hearing. The deputy chief constable may in addition appoint advisers to advise the chairing constable at that hearing. The constable has a right to object to any person appointed under this regulation.

Regulation 33 requires the constable's senior manager to send a notice in writing requiring the constable to attend a performance hearing. Not more than 20 working days from receipt of that notice, the constable must respond in writing indicating whether it is accepted that the constable's performance has been unsatisfactory (regulation 34). Regulation 35 sets out a process for agreeing a list of witnesses to appear at the performance hearing and regulation 36 details the timescales within which such a hearing must take place. A performance hearing may be postponed by the chairing constable in accordance with regulation 37.

Regulation 38 provides that the performance hearing must be conducted by the chairing constable, specifies who may attend that hearing and requires the constable, or a person representing the constable, to be given an opportunity to make representations.

At the end of the performance hearing, the chairing constable must decide whether or not the constable's performance is unsatisfactory and give written notice of that decision and any disposal

ordered (regulation 39). Regulation 40 sets out the disposals available, which include dismissal, demotion and extension of the final improvement notice.

Regulation 41 sets out a further process for assessment of the constable's performance where a final improvement notice has been extended. This includes referral to a further performance hearing where the constable's performance remains unsatisfactory. The arrangement of and procedure at a further performance hearing are set out in regulations 42 and 43 and are similar to those relating to an initial performance hearing.

Part 5 makes provision about appealing the outcome of a performance hearing.

Regulation 44 provides that the constable may appeal against a finding at a performance meeting of unsatisfactory performance and any disposal ordered and sets out the grounds of appeal. An appeal is to be made by submission of a written appeal notice.

Regulation 45 requires an appeal to be determined by a constable of the rank of assistant chief constable or above appointed for that purpose by the deputy chief constable. The person determining the appeal must decide whether to hold an appeal hearing for that purpose. If a hearing is required, a notice must be sent requiring the constable to attend such a meeting.

Regulation 46 specifies the possible outcomes of an appeal. These include confirmation or reversal of the finding of unsatisfactory performance, confirmation of the disposal ordered or the ordering of a less severe disposal. The outcome must be notified to the constable in writing no more than 90 working days from the date the appeal notice was submitted.

Part 6 contains consequential modifications to the Police Service of Scotland Regulations 2013 and the Police Appeals Tribunal (Scotland) Rules 2013. These modifications update references in those instruments to the now revoked Police Service of Scotland (Performance) Regulations 2013.

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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 68**

**POLICE**

**The Police Service of Scotland (Conduct) Regulations 2014**

*Made* - - - - - *28th February 2014*

*Laid before the Scottish Parliament* *3rd March 2014*

*Coming into force* - - - *1st April 2014*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 54(2) of that Act, the Scottish Ministers have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) and have considered any representations made.

**PART 1**

General

**Citation and commencement**

**1.** These Regulations may be cited as the Police Service of Scotland (Conduct) Regulations 2014 and come into force on 1st April 2014.

**Interpretation**

**2.** In these Regulations—

“appeal hearing” means a hearing held to determine an appeal under regulation 24;

“appeal notice” means a written appeal notice sent under regulation 24(4);

“audio recording” means a recording made on any disc, tape or other device on which sounds are recorded so as to be capable of being reproduced;

“conduct” includes acts and omissions;

“disciplinary action” means the action mentioned in regulation 22(3);

“gross misconduct” means a breach of the Standards of Professional Behaviour so serious that demotion in rank or dismissal may be justified;

“investigator” means a constable appointed under regulation 10(4)(a);

“improvement action” means action intended to improve the conduct of the constable;

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<sup>(a)</sup> 2012 asp 8.

“misconduct” means, unless the context otherwise requires, conduct which amounts to a breach of the Standards of Professional Behaviour (but does not, unless the context otherwise requires, include gross misconduct);

“misconduct allegation” means any report, allegation or complaint from which it can reasonably be inferred that any conduct of the constable may amount to misconduct or gross misconduct;

“misconduct form” means the form sent in accordance with regulation 15(2);

“misconduct hearing” means a hearing to which a misconduct allegation is referred under regulation 14(3) where the deputy chief constable determines that the constable has a case to answer in respect of misconduct or gross misconduct;

“misconduct investigation” means an investigation into whether the constable has a case to answer in relation to a misconduct allegation;

“misconduct meeting” means a meeting to which a misconduct allegation is referred under regulation 14(2) where the deputy chief constable determines that the constable has a case to answer in respect of misconduct;

“misconduct proceedings” means a misconduct meeting or a misconduct hearing;

“Performance Regulations” means the Police Service of Scotland (Performance) Regulations 2014(a);

“person conducting the misconduct proceedings” means the constable appointed under regulation 16 to conduct the misconduct proceedings;

“person determining the appeal” means the constable appointed under regulation 25(2) to determine an appeal under regulation 24;

“police representative” means an individual chosen by the constable in accordance with regulation 6;

“proved” means established on a balance of probabilities;

“Standards of Professional Behaviour” means the standards set out in Schedule 1;

“the 2013 Regulations” means the Police Service of Scotland (Conduct) Regulations 2013(b);

“the Act” means the Police and Fire Reform (Scotland) Act 2012(c);

“the constable” means, unless the context otherwise requires, a constable in respect of whom a misconduct allegation has been made and who is subject, in relation to that allegation, to any proceedings under these Regulations;

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) a day which is a bank holiday in Scotland within the meaning given by paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(d); or
- (c) a day which is a public holiday in Scotland; and

“writing” includes electronic communications within the meaning given by section 15 of the Electronic Communications Act 2000(e) (and “written” is to be construed accordingly).

## Application

**3.—(1)** These Regulations apply only in relation to conduct on the part of constables below the rank of assistant chief constable.

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(a) S.S.I. 2014/67.

(b) S.S.I. 2013/60. This instrument has been amended by S.S.I. 2013/125.

(c) 2012 asp 8.

(d) 1971 c.80. Paragraph 2 of Schedule 1 has been amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(e) 2000 c.7. Section 15 has been amended by the Schedule 17 to the Communications Act 2003 (c.21).

- (2) These Regulations do not apply in relation to—
- (a) conduct occurring before 1st April 2014;
  - (b) conduct on the part of any person engaged in service as a constable of the Police Service—
    - (i) under arrangements made under section 16 of the Act; or
    - (ii) by virtue of paragraph 8(2) of schedule 5 to the Act; or
  - (c) conduct of a special constable appointed under section 9 of the Act.

### **Revocation and transitional provision**

- 4.**—(1) Subject to paragraph (2) and (4), the 2013 Regulations are revoked.
- (2) The 2013 Regulations continue to have effect in cases where—
- (a) it can reasonably be inferred from a report, allegation or complaint made before 1st April 2014 that any conduct of a constable to whom those Regulations applied may amount to misconduct and any proceedings under those Regulations in relation to that report, allegation or complaint have not been concluded before that date; and
  - (b) it can reasonably be inferred from a report, allegation or complaint made on or after 1st April 2014 that any conduct of a constable to whom those Regulations applied occurring before that date may amount to misconduct.
- (3) In paragraph (2), “misconduct” has the meaning given by regulation 5 of, and Schedule 1 to, the 2013 Regulations as they had effect immediately before 1st April 2014.
- (4) Paragraph (1) does not revoke regulation 29 of, or Schedule 2 to, the 2013 Regulations.

### **Designation of deputy chief constable**

- 5.**—(1) The chief constable must designate a deputy chief constable to exercise functions under these Regulations (and references in these Regulations to the “deputy chief constable” are, unless the context otherwise requires, references to that individual).
- (2) The deputy chief constable may direct or authorise another constable of at least the rank of chief inspector to carry out any of the deputy chief constable’s functions under these Regulations.
- (3) A direction or authorisation under paragraph (2) does not affect the deputy chief constable’s—
- (a) responsibility for the carrying out of delegated functions; or
  - (b) ability to carry out delegated functions.

### **Police representative**

- 6.**—(1) The constable may choose a person mentioned in paragraph (2) to act as the constable’s police representative.
- (2) The persons are—
- (a) in a case where the constable is of the rank of superintendent or chief superintendent, another constable or a representative of any person representing the interests of superintendents (including chief superintendents); and
  - (b) in any other case, another constable or a representative of the Police Federation for Scotland.
- (3) But the constable may not choose as a police representative any person who is otherwise involved in the conduct under investigation in accordance with these Regulations.
- (4) A police representative may—
- (a) advise the constable throughout any proceedings under these Regulations;

- (b) accompany the constable to any interview, meeting or hearing which the constable attends under these Regulations;
- (c) unless the constable is entitled to be legally represented and chooses to be so represented, make representations on the constable's behalf at any meeting or hearing under these Regulations (including asking questions of any witness where the constable would be entitled to do so); and
- (d) make representations to the deputy chief constable concerning any aspect of the proceedings under these Regulations.

(5) The chief constable must permit any constable acting as a police representative under these Regulations to use a reasonable amount of duty time for the purpose of performing the functions mentioned in paragraph (4).

### **Legal representation**

**7.**—(1) The constable is, in accordance with this regulation, entitled to be legally represented by a solicitor or advocate of the constable's choice at any—

- (a) misconduct hearing; or
  - (b) appeal hearing, provided that the appeal relates to the outcome of a misconduct hearing.
- (2) If the constable intends to be legally represented, the constable must notify the person conducting the misconduct hearing or appeal hearing (as the case may be) of that intention not less than 5 working days before the date of that hearing.
- (3) If the constable does not make a notification under paragraph (2), the constable—
- (a) is not entitled to be legally represented; and
  - (b) may be dismissed or receive, in accordance with these Regulations, any other disciplinary or improvement action without being so represented.

### **Suspension**

**8.**—(1) A constable may be suspended from the office of constable by a senior constable if an allegation comes to the senior constable's attention from which it can reasonably be inferred that any conduct of the constable may—

- (a) constitute a criminal offence; or
- (b) amount to misconduct or gross misconduct.

(2) But a senior constable must not suspend another constable unless at least one of the conditions mentioned in paragraph (3) ("the suspension conditions") is satisfied.

(3) The suspension conditions are that—

- (a) an effective criminal or misconduct investigation may be prejudiced if the constable is not suspended; and
- (b) having regard to the nature of the allegation and any other relevant considerations, the public interest requires the constable's suspension.

(4) A senior constable must notify the suspended constable and the deputy chief constable in writing of any decision to suspend a constable and the reasons for that decision.

(5) A suspension under this regulation—

- (a) has effect from the date of the written notice given under paragraph (4); and
- (b) must be reviewed by the deputy chief constable—
  - (i) not more than 4 weeks from that date;
  - (ii) not more than 4 weeks from the date of the previous review (if any); and
  - (iii) if the deputy chief constable is notified that circumstances relevant to the suspension conditions may have changed.

(6) In carrying out a review in accordance with paragraph (5)(b), the deputy chief constable must consider any representations made by the suspended constable.

(7) The deputy chief constable may terminate a suspension imposed under paragraph (1) with effect either from the date of the suspension or any other date and must do so if—

- (a) the deputy chief constable determines that the suspension conditions are no longer satisfied;
- (b) a decision is taken not to proceed with proceedings under these Regulations; or
- (c) subject to paragraph (8), proceedings under these Regulations have concluded.

(8) If a constable who is suspended is dismissed with notice, that suspension is to subsist until the end of the notice period.

(9) In this regulation “senior constable” means a constable of a higher rank than the suspended constable.

### **Alleged offences**

**9.**—(1) If the deputy chief constable considers that it can reasonably be inferred that a constable may have committed a criminal offence, the deputy chief constable—

- (a) must refer the matter to the appropriate prosecutor; and
- (b) may suspend or postpone any proceedings under these Regulations until the appropriate prosecutor intimates that—
  - (i) criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation; or
  - (ii) any criminal proceedings which have been brought have been concluded.

(2) If proceedings are suspended or postponed under paragraph (1)(b), the deputy chief constable must inform the constable that—

- (a) those proceedings have been suspended or postponed; and
- (b) those proceedings, or any other proceedings under these Regulations, may be taken against the constable whether or not criminal proceedings are brought against the constable and regardless of the outcome of those proceedings.

(3) In this regulation, “appropriate prosecutor” means—

- (a) where the offence is alleged to have been committed in Scotland, the procurator fiscal; or
- (b) where the offence is alleged to have been committed in any other part of the United Kingdom, Channel Islands or Isle of Man the person who—
  - (i) has responsibility for deciding whether to institute criminal proceedings in that place; or
  - (ii) has instituted such proceedings in relation to the offence.

## **PART 2**

### **Misconduct investigations**

#### **Preliminary assessment**

**10.**—(1) This regulation applies if a misconduct allegation comes to the attention of the deputy chief constable.

(2) The deputy chief constable must assess whether the conduct which is the subject matter of the misconduct allegation would, if that conduct were proved, amount to—

- (a) misconduct;
- (b) gross misconduct; or

(c) neither.

(3) If the deputy chief constable assesses that the conduct would, if proved, amount to neither misconduct nor gross misconduct, the deputy chief constable may—

- (a) take no further action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under the procedures established by the Performance Regulations.

(4) If the deputy chief constable assesses that the conduct would, if proved, amount to either misconduct or gross misconduct, the deputy chief constable must decide whether the misconduct allegation is to be investigated and—

- (a) if it is to be investigated, appoint an investigator; and
- (b) if it is not to be investigated—
  - (i) take no further action; or
  - (ii) take improvement action.

(5) An investigator appointed under paragraph (4)(a) must—

- (a) be a constable of a higher rank than the constable being investigated; and
- (b) have the necessary knowledge, skills and expertise to plan and manage the misconduct investigation in relation to which the appointment is made.

(6) The deputy chief constable must not appoint as an investigator any constable whose appointment could give rise to a reasonable concern as to whether that constable could act impartially in relation to the misconduct investigation.

(7) If, during the course of the misconduct investigation, the deputy chief constable considers that by reason of the scale or complexity of the case a different investigator should be appointed, the deputy chief constable may appoint, or arrange for the appointment of, a constable to replace the investigator originally appointed.

(8) Paragraph (5) and (6) apply to the appointment of a replacement investigator under paragraph (7).

### **Notice of investigation**

**11.**—(1) The investigator must, as soon as reasonably practicable following appointment, give the constable written notice—

- (a) that the constable is the subject of a misconduct investigation;
- (b) specifying—
  - (i) the conduct forming the subject matter of the misconduct allegation; and
  - (ii) how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (c) providing an initial assessment of whether, if proved, that conduct would amount to misconduct or gross misconduct;
- (d) providing the constable with an opportunity to make written or oral representations; and
- (e) informing the constable of the right to seek advice from the constable's staff association and police representative.

(2) If, at any time after the notice mentioned in paragraph (1) is issued but before the report mentioned in regulation 13(1) is issued, the investigator's assessment of whether the constable's conduct would amount to misconduct or gross misconduct changes, the investigator must issue a further notice of investigation in accordance with this regulation notifying the constable of that change.

## **Misconduct interview**

**12.—(1)** The investigator—

(a) must arrange an interview with the constable in a case where the constable intimates, following receipt of a notice under regulation 11(1), an intention to make oral representations; and

(b) in any other case, may arrange such an interview.

(2) The investigator must seek to agree with the constable a time and date for the interview.

(3) If no agreement is made under paragraph (2), the investigator must specify a date and time for the interview.

(4) The constable must be provided with a written notice of the date, time and place of the interview.

(5) The investigator must, in advance of the interview, provide the constable with such information as the investigator considers appropriate in the circumstances to enable the constable to prepare for the interview.

(6) Without prejudice to the generality of paragraph (5), the information provided to the constable in advance of the interview must include details of the allegations made against the constable, including—

(a) the dates on which (or approximate dates on which); and

(b) the places at which,

any misconduct or gross misconduct is alleged to have occurred.

(7) An audio recording may be made of an interview and, if such a recording is made, the constable must be provided with a copy of that recording.

(8) If no audio recording is made under paragraph (7), a written record of the interview must be prepared by the investigator and—

(a) a draft of that record must be provided to the constable;

(b) the constable must be given the opportunity to make representations in relation to that draft;

(c) the investigator must consider any representations made; and

(d) having considered those representations (if any), the investigator must send a copy of the final written record of the interview to the constable.

## **Investigator's report**

**13.—(1)** At the conclusion of the misconduct investigation, the investigator must—

(a) determine whether, in the investigator's opinion, the constable has a case to answer in relation to the misconduct allegation; and

(b) submit a written report to the deputy chief constable.

(2) A report submitted in accordance with paragraph (1) must contain—

(a) a summary of any evidence obtained by the investigator; and

(b) the investigator's opinion as to whether the misconduct allegation should be referred to misconduct proceedings.

(3) The investigator must send with the report mentioned in paragraph (1) any documents or other information relevant to that report or to the investigation including, in particular—

(a) a copy of any audio recording made of an interview under regulation 12(7); and

(b) a copy of any written record of such an interview prepared under regulation 12(8).

### **Referral to misconduct proceedings**

**14.**—(1) On receipt of the investigator’s report, the deputy chief constable must, as soon as reasonably practicable, determine whether the constable has a case to answer in respect of—

- (a) misconduct;
- (b) gross misconduct; or
- (c) neither.

(2) If the deputy chief constable determines that the constable has a case to answer in respect of misconduct and paragraph (4) does not apply, the deputy chief constable must refer the misconduct allegation to a misconduct meeting.

(3) If—

- (a) the deputy chief constable determines that the constable has a case to answer in respect of gross misconduct; or
- (b) the deputy chief constable determines that the constable has a case to answer in respect of misconduct and paragraph (4) applies,

the deputy chief constable must refer the misconduct allegation to a misconduct hearing.

(4) This paragraph applies if, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a final written warning which was in effect.

(5) If the deputy chief constable determines that the constable has no case to answer in respect of either misconduct or gross misconduct, the deputy chief constable may—

- (a) take no further action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under the procedures established by the Performance Regulations.

## **PART 3**

### **Misconduct proceedings**

#### **Arrangement of misconduct proceedings**

**15.**—(1) This regulation applies if the deputy chief constable has referred a case to misconduct proceedings.

(2) The deputy chief constable must send a misconduct form to the constable.

(3) A misconduct form sent in accordance with paragraph (2) must give notice of—

- (a) the conduct forming the subject matter of the misconduct allegation;
- (b) the date, time and location of the misconduct proceedings;
- (c) in summary, the facts established by the investigator;
- (d) why, in the deputy chief constable’s opinion, it can be inferred from the established facts that the conduct which is the subject matter of the misconduct allegation amounts to—
  - (i) misconduct; or
  - (ii) gross misconduct;
- (e) the constable’s right to seek advice from a staff association;
- (f) the effect of regulations 6 and 7;
- (g) the requirement to provide a notice in response to the misconduct form in accordance with paragraphs (5) to (7);
- (h) the name of the person appointed to conduct the misconduct proceedings.

- (4) The deputy chief constable must send with the misconduct form—
- (a) copies of any statements made by the constable during the investigation;
  - (b) the name and address of any witness on whom the deputy chief constable proposes to rely at the misconduct proceedings and a summary of the evidence each witness will give (or notice that the deputy chief constable does not intend to rely on any witnesses); and
  - (c) unless paragraph (13) applies, a copy of—
    - (i) the report submitted by the investigator in accordance with regulation 13(1)(b); and
    - (ii) any other relevant documents obtained during the course of the misconduct investigation.

(5) Not more than 10 working days from the date of receipt of the misconduct form, the constable must provide to the deputy chief constable written notice of whether the constable accepts that—

- (a) the conduct which is the subject matter of the misconduct allegation is conduct of the constable; and
- (b) that conduct amounts to misconduct or (as the case may be) gross misconduct.

(6) A notice provided under paragraph (5) must give the constable's account of the circumstances giving rise to the misconduct allegation and must include—

- (a) in a case where the constable accepts that any conduct of the constable amounts to misconduct or (as the case may be) gross misconduct, any written submissions in mitigation;
- (b) in a case where the constable does not accept that any conduct of the constable amounts to misconduct or (as the case may be) gross misconduct, details of any allegation which the constable denies;
- (c) the details of any legal arguments (if any) the constable wishes the person conducting the misconduct proceedings to consider; and
- (d) the names and addresses of any witnesses on whom the constable proposes to rely at the misconduct proceedings and a summary of the evidence each witness will give (or notice that the constable does not intend to rely on any witnesses).

(7) The constable must send with the notice sent under paragraph (5) a copy of any document or other information on which the constable intends to rely at the misconduct proceedings.

(8) Following receipt of a notice under paragraph (5), the deputy chief constable must, by notice in writing, require the constable to attend misconduct proceedings.

(9) A notice under paragraph (8) must—

- (a) specify the time, date and place of the misconduct proceedings;
- (b) be sent not less than 15 working days before the date of those proceedings.

(10) But a constable may waive in writing the entitlement to 15 working days' notice of the date of the misconduct proceedings.

(11) If, having sent a notice in accordance with paragraph (8), the deputy chief constable considers it necessary or expedient to do so, the misconduct proceedings may be postponed to such later date as the deputy chief constable determines.

(12) If the misconduct proceedings are postponed, the deputy chief constable must send a further written notice requiring the constable to attend those proceedings at a specified time, date and place (and paragraph (9)(b) does not apply to such a notice).

(13) This paragraph applies if the deputy chief constable considers that preventing the disclosure of any document mentioned in paragraph (4)(c) is—

- (a) necessary to avoid prejudicing current or future criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders;

- (d) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff;
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (f) otherwise in the public interest.

(14) If any document is withheld by virtue of the application of paragraph (13), the deputy chief constable must, so far as is reasonably possible without prejudicing any of the matters mentioned in that paragraph, provide the constable with a summary of the content of that document.

### **Appointment of person to conduct misconduct proceedings**

**16.**—(1) If the deputy chief constable refers a misconduct allegation to misconduct proceedings, the deputy chief constable must appoint another constable to conduct those proceedings.

- (2) In the case of a misconduct meeting, a constable appointed under paragraph (1)—
  - (a) must be of a higher rank than the constable who is the subject of the misconduct allegation; and
  - (b) may appoint another constable to be an assessor.
- (3) In the case of a misconduct hearing, a constable appointed under paragraph (1)—
  - (a) must be of at least the rank of superintendent;
  - (b) must be at least two ranks higher than the constable who is the subject of the misconduct allegation; and
  - (c) may appoint as an assessor—
    - (i) another constable of at least the rank of superintendent; and
    - (ii) an advocate or a solicitor.

(4) An assessor appointed under paragraph (2) or (3) may provide the person conducting the proceedings with such advice as that person requests, but may not otherwise participate in the proceedings.

(5) The deputy chief constable must not appoint to conduct any misconduct proceedings any constable whose appointment could give rise to a reasonable concern as to whether that constable could act impartially in relation to those proceedings.

(6) The constable may object to the appointment of any person under this regulation.

(7) An objection under paragraph (6) must be made not later than 3 working days from receipt of the misconduct form and must indicate the constable's reasons for objecting.

(8) The deputy chief constable must decide whether to uphold an objection and must—

- (a) notify the constable in writing of that decision; and
- (b) if the objection is upheld—
  - (i) make a new appointment in accordance with this regulation; and
  - (ii) notify the constable in writing of the name of the individual appointed.

### **Witnesses**

**17.**—(1) The constable and the deputy chief constable must, not more than 10 working days after a notice is given under regulation 15(5), seek to agree a joint list of witnesses based on the lists provided under regulation 15(4) and (6) and provide that list to the person conducting the misconduct proceedings.

(2) If it is not possible for the constable and the deputy chief constable to agree a joint list of witnesses, they must each supply to the person conducting the misconduct proceedings the lists provided under regulation 15(4) and (6).

(3) Not more than 10 working days after receiving lists of witnesses under paragraph (2), the person conducting the misconduct proceedings must—

- (a) decide which, if any, of the listed witnesses should give evidence at those proceedings; and
- (b) notify the constable and the deputy chief constable of that decision.

(4) The person conducting the misconduct proceedings may determine that witnesses not included in any list under this regulation or regulation 15(4) and (6) (whether joint or otherwise) are to give evidence at those proceedings.

(5) The person conducting the misconduct proceedings must not decide, in pursuance of paragraphs (3) or (4), that any witness is to give evidence at those proceedings unless the person conducting the misconduct proceedings reasonably considers that it is necessary for the witness to do so.

(6) The deputy chief constable must, not less than 5 working days before the date of the misconduct proceedings, notify in writing any witness who is to give evidence at those proceedings.

### **Procedure at misconduct proceedings**

**18.**—(1) Subject to the following paragraphs of this regulation and regulations 19 and 20, the person conducting the misconduct proceedings is to determine the procedure at those proceedings.

(2) The person conducting the misconduct proceedings must permit—

- (a) the constable or any person representing the constable to make representations;
- (b) evidence to be heard from any witnesses in attendance; and
- (c) subject to paragraph (3), the constable or any person representing the constable to ask questions of any witness.

(3) Whether any question is to be put to a witness is to be determined by the person conducting the proceedings.

(4) The person conducting the proceedings may, with the agreement of the constable, permit the admission of written statements in lieu of oral evidence.

(5) An audio recording may be made of the misconduct proceedings and, where such a recording is made, the constable must be provided with a copy of that recording as soon as reasonably practicable after the conclusion of the proceedings.

(6) Where no audio recording is made under paragraph (5), a written record of the misconduct proceedings must be prepared and—

- (a) the person conducting the misconduct proceedings must provide a draft of that record to the constable;
- (b) the constable must be given the opportunity to make representations in relation to that draft;
- (c) the person conducting the misconduct proceedings must consider any representations made; and
- (d) having considered those representations (if any), that person must send a copy of the final written record of the proceedings to the constable.

### **Proceedings in the constable's absence**

**19.**—(1) The person conducting the misconduct proceedings may permit the constable to participate in those proceedings by video link or other suitable means if satisfied that the constable is unable, on reasonable grounds, to attend those proceedings.

(2) Paragraph (3) applies where the constable—

- (a) participates in the misconduct proceedings in accordance with paragraph (1); or

- (b) otherwise does not attend those proceedings.
- (3) Where this paragraph applies—
  - (a) the constable may be represented at the misconduct proceedings by the constable's police representative or, in the case of a misconduct hearing, an advocate or a solicitor; and
  - (b) the proceedings may be proceeded with and concluded in the constable's absence (whether or not the constable is so represented).

### **Attendance of third parties**

**20.**—(1) Subject to the following paragraphs of this regulation, the misconduct proceedings are to be held in private.

(2) Where the misconduct proceedings have arisen from a complaint made by a member of the public, the person conducting the misconduct proceedings may—

- (a) inform that member of the public of the time, date and location of the proceedings; and
- (b) permit that member of the public to attend, as an observer, those proceedings, or such part or parts of those proceedings as the person conducting them considers appropriate.

(3) If a witness is giving evidence, the person conducting the misconduct proceedings may allow such other persons to attend those proceedings as seem reasonable by virtue of any special circumstances (and, in particular, a parent or guardian may be allowed to attend where a child is giving evidence).

(4) The person conducting the misconduct proceedings may, with the agreement of the constable, allow any other person to attend the misconduct proceedings.

(5) Paragraphs (2) to (4) do not apply to any part of the misconduct proceedings at which the determination under regulation 21 or disciplinary action is being considered.

### **Determination**

**21.**—(1) At the conclusion of the misconduct proceedings, the person conducting those proceedings must—

- (a) determine whether the conduct which is the subject matter of the misconduct allegation is conduct of the constable;
- (b) in a case where the deputy chief constable has determined, in accordance with regulation 14(1)(a), that the constable has a case to answer in respect of misconduct, determine whether it is established that any conduct of the constable amounts to misconduct; and
- (c) in a case where the deputy chief constable has determined, in accordance with regulation 14(1)(b), that the constable has a case to answer in respect of gross misconduct, determine whether it is established that any conduct of the constable amounts to—
  - (i) gross misconduct;
  - (ii) misconduct; or
  - (iii) neither.

(2) A determination under paragraph (1) is to be made on a balance of probabilities.

(3) In a case mentioned in paragraph (1)(b), the person conducting the misconduct proceedings may not determine that any conduct of the constable amounts to gross misconduct.

(4) If the person conducting the misconduct proceedings determines that the conduct of the constable amounts to neither misconduct nor gross misconduct the person conducting those proceedings may—

- (a) take no further action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures established by the Performance Regulations.

## **Disciplinary action**

**22.**—(1) This regulation applies if—

- (a) the person conducting the misconduct proceedings determines that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct; or
- (b) the constable admits misconduct or, as the case may be, gross misconduct.

(2) If this regulation applies, the person conducting the misconduct proceedings must order—

- (a) in a case where the constable's conduct amounts to misconduct—
  - (i) improvement action; or
  - (ii) subject to paragraphs (4) to (7), any such disciplinary action as is mentioned in paragraph (3); or

- (b) in a case where the constable's conduct amounts to gross misconduct, subject to paragraphs (4) to (7), any such disciplinary action as is mentioned in paragraph (3).

(3) The disciplinary action is—

- (a) a verbal warning;
- (b) a written warning;
- (c) a final written warning;
- (d) demotion in rank;
- (e) dismissal with notice; or
- (f) dismissal without notice.

(4) If, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a written warning which was in effect, neither a verbal warning nor a written warning may be given.

(5) If, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a final written warning which was in effect—

- (a) none of a verbal warning, a written warning or a final written warning may be given; but
- (b) in exceptional circumstances, the final written warning may be extended, provided that such a warning may be extended on one occasion only and for a period of no more than 18 months.

(6) If the person conducting the misconduct proceedings determines that any conduct of the constable amounts to misconduct, the disciplinary action mentioned in paragraph (3)(d) to (f) may be taken only if, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a final written warning which was in effect.

(7) A written warning remains in effect for a period of 12 months from the date on which it is given.

(8) A final written warning remains in effect for a period of 18 months from the date on which it is given (unless extended under paragraph (5)(b)).

(9) For the purposes of this regulation and regulation 14(4), the following disposals, if ordered under regulation 24 of the 2013 Regulations in relation to the constable in the period of 12 months preceding the earliest occurrence of any conduct forming the subject matter of a misconduct allegation under these Regulations, are to be treated as if they were a written warning ordered under paragraph (2) which remains in effect—

- (a) reduction in pay for a specified period;
- (b) fine; or
- (c) admonition.

### **Notification of determination and action to be taken**

**23.**—(1) The person conducting the misconduct proceedings must, as soon as reasonably practicable after the conclusion of those proceedings (and not later than 10 working days from the date of conclusion of the proceedings), notify the constable in writing of—

(a) the determination as to whether any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct;

(b) what improvement or, as the case may be, disciplinary action is ordered; and

(c) the reasons for the determination and the action ordered.

(2) A notification under paragraph (1) must—

(a) in a case where a written warning is given, explain the effect of regulation 22(4) and (7) in relation to any future misconduct allegation; and

(b) in a case where a final written warning is given, explain the effect of regulation 22(5), (6) and (8) in relation to such an allegation.

(3) If it is determined that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct, a notice under paragraph (1) must give notice of—

(a) the constable's right to appeal under regulation 24; and

(b) the name of the person to whom an appeal should be submitted.

(4) If the misconduct proceedings have arisen out of a complaint made by a member of the public, the deputy chief constable must notify that member of the public in writing of the determination and any disciplinary action ordered.

## **PART 4**

### **Appeals**

#### **Appeals**

**24.**—(1) This regulation applies where—

(a) it has been determined at misconduct proceedings that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct; or

(b) the constable has admitted that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct and disciplinary action has been ordered.

(2) Where this regulation applies, the constable may appeal against—

(a) in a case mentioned in paragraph (1)(a)—

(i) any determination made under regulation 21(1); and

(ii) any disciplinary action ordered; or

(b) in a case mentioned in paragraph (1)(b), any disciplinary action ordered.

(3) An appeal under this regulation may be made only on the grounds that—

(a) any determination under regulation 21(1) or any disciplinary action ordered is unreasonable;

(b) there is evidence that could not reasonably have been considered at the misconduct proceedings which could have affected materially such a determination or the decision to order particular disciplinary action; or

(c) there was a breach of the procedures set out in these Regulations which could have affected materially such a determination or decision.

(4) An appeal may be requested by the constable sending a written appeal notice to the deputy chief constable not more than 30 working days from the date on which the constable received a notice under regulation 23(1).

(5) The appeal notice must specify—

- (a) whether the constable appeals against;
  - (i) a determination made under regulation 21(1);
  - (ii) the disciplinary action ordered; or
  - (iii) both;
- (b) the grounds of appeal; and
- (c) whether the constable requests an appeal hearing.

(6) The constable must—

- (a) send with the appeal notice a copy of any document or other information which it is considered supports the constable's appeal; and
- (b) without prejudice to the generality of sub-paragraph (a), where the constable seeks to rely on the ground of appeal mentioned in paragraph (3)(b), submit with the appeal notice details of the evidence which the constable considers could have affected materially any determination or decision of the person conducting the misconduct proceedings.

### **Appeal procedure**

**25.**—(1) An appeal under regulation 24 is to be determined in accordance with this regulation.

(2) The appeal must be determined by a constable (other than the constable who conducted the misconduct proceedings) who is—

- (a) appointed by the deputy chief constable;
- (b) in a case where the appellant is a chief superintendent, a deputy chief constable other than the deputy chief constable designated by virtue of regulation 5; and
- (c) in any other case, of a higher rank than the constable who conducted the misconduct proceedings.

(3) If the constable requests an appeal hearing, the person determining the appeal must decide whether to—

- (a) hold an appeal hearing; or
- (b) determine the appeal without holding such a hearing.

(4) If the constable does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined on the basis of—

- (a) the appeal notice and any documents or other information sent with that notice;
- (b) the audio or written record of the misconduct hearing; and
- (c) any notices, submissions or other documents or information provided by the deputy chief constable or the constable in accordance with regulation 15.

(5) If the person determining the appeal decides to hold an appeal hearing, the following paragraphs of this regulation apply.

(6) The person determining the appeal must send a notice in writing—

- (a) requiring the constable to attend an appeal hearing; and
- (b) specifying a date and time for that hearing.

(7) The constable may, by notice in writing to the person determining the appeal, request the postponement of the appeal hearing to a later date and time.

(8) The appeal hearing is to be conducted in such manner as the person determining the appeal determines, provided that—

- (a) the constable's police representative must be permitted to attend;
- (b) in a case where any disciplinary action mentioned in regulation 22(3)(d) to (f) has been ordered, any advocate or solicitor representing the constable must be permitted to attend; and

- (c) the constable (or any person representing the constable) must be permitted to make oral representations.

### **Outcome of appeal**

**26.**—(1) The person determining the appeal may, whether after an appeal hearing or otherwise—

- (a) confirm or reverse any determination made under regulation 21(1);
- (b) confirm the disciplinary action ordered under regulation 22(2);
- (c) order disciplinary action to be taken which is less severe than that which was ordered under that regulation;
- (d) require improvement action to be taken instead of disciplinary action;
- (e) refer the matter to be dealt with under the procedures established by the Performance Regulations; or
- (f) in a case where the ground of appeal mentioned in regulation 24(3)(b) is found to be established, remit the misconduct allegation back to the person who conducted the misconduct proceedings.

(2) The person determining the appeal must notify the constable in writing of the decision under paragraph (1) and the reasons for that decision.

(3) A notice under paragraph (2) must be given not more than 60 working days from the date the appeal notice was submitted under regulation 24(4).

(4) But the period mentioned in paragraph (3) may be extended to not more than 120 working days if the person determining the appeal considers there to be exceptional circumstances to justify doing so.

(5) In a case where—

- (a) dismissal of the constable is confirmed; or
- (b) demotion in rank of the constable is confirmed or ordered,

a notice under paragraph (2) must inform the constable of the right to appeal to a police appeals tribunal and the procedure for making such an appeal.

### **Procedure where misconduct allegation remitted back to person who conducted misconduct proceedings**

**27.**—(1) This regulation applies where a misconduct allegation is remitted back to the person who conducted the misconduct proceedings in accordance with regulation 26(1)(f).

(2) Where this regulation applies, the person who conducted the misconduct proceedings must—

- (a) consider the evidence submitted by the constable in accordance with regulation 24(6)(b); and
- (b) determine whether to—
  - (i) confirm the original determination made under regulation 21(1) and any disciplinary action ordered;
  - (ii) reverse any determination made under regulation 21(1);
  - (iii) order disciplinary action which is less serious than that originally ordered;
  - (iv) require improvement action to be taken instead of disciplinary action; or
  - (v) refer the matter to be dealt with under the procedures established by the Performance Regulations.

(3) Before making a determination under paragraph (2), the person conducting the misconduct proceedings may, by notice in writing, require the constable to attend a further meeting or hearing (and regulations 7, 16, 18, 19 and 21 apply to such a meeting or hearing).

(4) As soon as reasonably practicable after a determination is made under paragraph (2), the person conducting the misconduct proceedings must notify the constable of that determination.

## PART 5

### Modifications

**28.** Schedule 2 modifies certain Scottish instruments.

*KENNY MACASKILL*  
A member of the Scottish Government

St Andrew's House,  
Edinburgh  
28th February 2014

## SCHEDULE 1

### Standards of Professional Behaviour

Regulation 2

#### **Honesty and integrity**

Constables are honest, act with integrity and do not compromise or abuse their position.

#### **Authority, respect and courtesy**

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

Constables do not abuse their powers or authority and respect the rights of all individuals.

#### **Equality and diversity**

Constables act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

#### **Use of force**

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

#### **Orders and instructions**

Constables give and carry out only lawful orders and instructions.

#### **Duties and responsibilities**

Constables are diligent in the exercise of their duties and responsibilities.

#### **Confidentiality**

Constables treat information with respect and access or disclose it only in the proper course of their duties.

#### **Fitness for duty**

Constables when on duty or presenting themselves for duty are fit to carry out their responsibilities.

#### **Discreditable conduct**

Constables behave in a manner which does not discredit the Police Service or undermine public confidence in it, whether on or off duty.

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

#### **Challenging and reporting improper conduct**

Constables report, challenge or take action against the conduct of other constables which has fallen below the Standards of Professional Behaviour.

## SCHEDULE 2

### Modifications

Regulation 28

#### The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

1.—(1) The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013(a) are modified as follows.

(2) In regulation 2 (interpretation)—

- (a) in the definition of “misconduct”, at the end insert “(but does not, unless the context otherwise requires, include gross misconduct)”; and
- (b) for “police friend” substitute “police representative”.

(3) In regulation 4 (police friend), for “police friend”, in each place it occurs, substitute “police representative”.

(4) In regulation 5(4) (legal representation), for “police friend” substitute “police representative”.

(5) In regulation 6(1)(b) (suspension), after “misconduct” insert “or gross misconduct”.

(6) In regulation 16(3) (arrangement of misconduct hearing), for sub-paragraph (g) substitute—

“(g) the requirement to provide a notice in response to the misconduct form in accordance with paragraphs (5) to (7);”.

(7) In regulation 20(3)(a) (proceedings in senior officer’s absence), for “police friend” substitute “police representative”.

(8) In regulation 23 (disciplinary action)—

(a) for paragraph (2)(a) and (b) substitute—

“(a) improvement action; or

(b) subject to paragraphs (4) to (7), any such disciplinary action as is mentioned in paragraph (3).”;

(b) in paragraphs (4) and (5)—

(i) for “on” to “22(1)(b)” substitute “at a time when any of the conduct forming the subject matter of the misconduct allegation occurred”; and

(ii) for “remains” substitute “was”; and

(c) in paragraph (6)—

(i) for “is” substitute “was”;

(ii) for “on” to “22(1)(b)” substitute “at a time when any of the conduct forming the subject matter of the misconduct allegation occurred”; and

(iii) for “remains” substitute “was”.

(9) In regulation 25(4) (appeals), for “10” substitute “30”.

(10) In regulation 26 (appeal procedure)—

(a) for paragraph (6) substitute—

“(6) The senior officer may, by notice in writing to the Authority, request the postponement of the appeal hearing to a later date and time.”;

(b) in paragraph (7)(a), for “police friend” substitute “police representative”;

(c) in paragraph (9), for “as soon as reasonably practicable” substitute “not more than 60 working days from the date the appeal notice was submitted under regulation 25(4)”;

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(a) S.S.I. 2013/62.

(d) after that paragraph, insert—

“(9A) The period mentioned in paragraph (9) may be extended to not more than 120 working days if the Authority considers there to be exceptional circumstances to justify doing so.”.

### **The Police Service of Scotland Regulations 2013**

**2.** In regulation 2 (interpretation and application) of the Police Service of Scotland Regulations 2013(a), in the definition of “Conduct Regulations”, for “2013”, where it first appears, substitute “2014”.

### **The Police Appeals Tribunal (Scotland) Rules 2013**

**3.** In rule 2 (interpretation) of the Police Appeals Tribunal (Scotland) Rules 2013(b), in the definition of “Conduct Regulations”, for “2013” substitute “2014”.

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(a) S.S.I. 2013/35. This instrument has been amended by S.S.I 2013/122, 2013/125 and 2014/1.

(b) S.S.I. 2013/63.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the procedures for dealing with cases where the conduct of constables of the Police Service of Scotland (“the Police Service”) below the rank of assistant chief constable are alleged to amount to misconduct.

Part 1 makes general provision. Regulations 1 to 3 make provision about the commencement, interpretation and application of the Regulations including, with Schedule 1, setting out the meaning of misconduct and gross misconduct. Regulation 4 revokes the existing Regulations dealing with the conduct of constables and makes transitional provision in relation to that revocation.

Regulation 5 requires the chief constable of the Police Service to designate a deputy chief constable to carry out certain functions under the Regulations and allows that deputy chief constable, in turn, to delegate those functions to another constable of chief inspector rank or above.

Regulations 6 and 7 make provision about the representation to which a constable is entitled in relation to proceedings under these Regulations.

Regulation 8 provides constables with a power to suspend other constables who are junior in rank where those junior constables are suspected of misconduct or of commission of a criminal offence. Certain conditions must be satisfied before suspension is permitted. Regulation 9 requires the deputy chief constable to report to an appropriate prosecutor in cases where a constable is suspected of having committed an offence. Proceedings under these Regulations may be suspended or postponed in such circumstances.

Part 2 deals with the investigation of misconduct allegations. Regulation 10 requires the deputy chief constable to carry out a preliminary assessment as to whether an allegation, if proved, would amount to misconduct or gross misconduct. Where the deputy chief constable considers the allegation would not amount to misconduct, no further action may be taken, action to improve the constable’s conduct may be ordered or the matter may be referred to be dealt with under procedures relating to performance. If the deputy chief constable assesses that the conduct would amount to misconduct an investigator may be appointed to investigate the allegation.

Regulation 11 requires an investigator to notify the constable that a misconduct investigation is to take place. Regulation 12 makes provision for the investigator to interview the constable as part of that investigation. Regulation 13 requires the investigator to report to the deputy chief constable on whether the constable has a case to answer in relation to the misconduct allegation. The deputy chief constable must then determine, in accordance with regulation 14, whether to refer the matter to a misconduct meeting or a misconduct hearing. The former is available where the misconduct allegation infers misconduct and no final written warning is in effect in respect of the constable. The latter is available only where gross misconduct is alleged or where simple misconduct is alleged and such a warning is in effect. Meetings and hearings are referred to collectively as “misconduct proceedings”.

Part 3 makes provision about misconduct proceedings and the sanctions available in those proceedings. Regulation 15 requires a misconduct form to be sent to the constable detailing the conduct forming the subject matter of the misconduct allegation and the date, time and location of the misconduct hearing or meeting. Copies of the investigator’s report and a list of witnesses are among the items which must be sent with the form. The constable is required to respond to the misconduct form indicating whether the misconduct allegation is accepted and any information the constable intends to rely on at the misconduct proceedings.

By virtue of regulation 16 the deputy chief constable must appoint another constable to conduct the misconduct proceedings and regulation 17 makes provision about the witnesses who may be asked to attend those proceedings. The process to be followed at the proceedings themselves is set out in regulations 18 to 20 which make provision in particular about proceedings when the constable is not present (regulation 19) and the attendance of third parties (regulation 20).

At the conclusion of the misconduct proceedings the person conducting those proceedings must determine whether the conduct forming the subject matter of the misconduct allegation is conduct of the constable and whether it amounts to misconduct or (as the case may be) gross misconduct (regulation 21).

Where the constable is found to be guilty of misconduct or gross misconduct, regulation 22 sets out the disciplinary action which may be taken. This includes a verbal warning, a written warning, a final written warning, demotion and dismissal (with or without notice). The constable must be notified in writing both of the finding in relation to the misconduct allegation and the disciplinary action to be taken.

Part 4 sets out the process for appealing against the outcome of misconduct proceedings. The constable is, by virtue of regulation 24, entitled to appeal against the finding that the constable is guilty of misconduct, the disciplinary action ordered or both. Such an appeal may be made by submission of an appeal notice to the deputy chief constable. Regulation 25 provides that the deputy chief constable must appoint another constable to determine the appeal. This may be done either with or without holding an appeal hearing. Regulation 26 specifies the possible outcomes of an appeal which include confirming or reversing the finding that the constable is guilty of misconduct, confirming the disciplinary action ordered, ordering less severe disciplinary action, requiring improvement action to be taken instead of disciplinary action, referring the matter to be dealt with under performance procedures or remitting the case back to the person who conducted the misconduct proceedings. Regulation 27 sets out the procedure to be followed when a case is remitted back.

Part 5 and Schedule 2 modify the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, the Police Service of Scotland Regulations 2013 and the Police Appeals Tribunal (Scotland) Rules 2013.

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