

# 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 prejudgement.
- 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 a 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 Proceedings 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:
- a) the constable or any person representing the constable to make representations;
  - b) evidence to be heard from any witnesses in attendance; and
  - c) 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;
- 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 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.