



Service Procedure

MISCONDUCT PROCEDURES FOR POLICE OFFICERS

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ABSTRACT:

This procedure provides guidance and outlines procedure in relation to misconduct matters involving Police Officers and how they should be dealt with.

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1. INTRODUCTION

- (1) The Code of Ethics 2008 for the PSNI (the Police Service), published by the Northern Ireland Policing Board (NIPB) sets out the ethical standards required and expected of police officers. This procedure outlines how the Police Service will deal with breaches of this Code.
- (2) The following procedure and guidance is applicable to all officers of the Police Service up to and including the rank of Chief Superintendent. Human Resources Department is responsible for dealing with misconduct matters relating to police staff, although S4 Anti-Corruption and Vetting Branch or S5 Discipline Branch may conduct investigations into alleged criminal behaviour by police staff.
- (3) The Disciplinary Authority for Officers of Assistant Chief Constable and above is the NIPB, and as such, arrangements for these officers are not detailed in this procedure.
- (4) The Police Ombudsman for Northern Ireland (PONI) has the responsibility for the investigation of complaints against Police made by members of the public. Service Procedure 4/13 – ‘Handling Public Complaints and the Role of the Police Ombudsman’ refers.
- (5) It is important to distinguish unsatisfactory performance from misconduct. Performance issues are those which refer to the capability or unsatisfactory attendance of an officer, and should be dealt with and recorded as such on the officer’s IPR or recourse to the formal unsatisfactory performance procedures if it is a pattern of behaviour which justifies initiation of the formal procedures.
- (6) This procedure sets out the approach which will be adopted in dealing with allegations of misconduct by police officers. Misconduct procedures should be applied consistently, whilst still having regard to individual circumstances.
- (7) The following principles underline how misconduct matters are dealt with by the Police Service:
 - (a) Misconduct issues should be managed at a local level where possible;
 - (b) Management of misconduct should be timely and proportionate;
 - (c) Outcomes of misconduct focus also on opportunity for improvement and education, not just punishment and sanction.
 - (d) The procedures here are designed to accord with the principles of natural justice and the basic principles of fairness, and should be administered accordingly.

Complaints in relation to investigations should be submitted in writing to Deputy Head of Service Improvement Department clearly setting out the nature of the complaint.

(8) Legislative Basis

The main pieces of legislation and guidance (although not exhaustive) relating to police misconduct procedures are:

- (a) Royal Ulster Constabulary (Conduct) Regulations 2000;
- (b) Royal Ulster Constabulary (Senior Officer) (Conduct) Regulations 2000;
- (c) NIO Guidance on Unsatisfactory Performance, Complaints and Discipline;
- (d) PSNI Code of Ethics 2008.

2. LOCAL MISCONDUCT ACTION

(1) Supervisory & Management Action and Escalation

- (a) It is the responsibility of all supervisors and managers to deal with issues promptly and effectively. The means of doing so includes management action such as words of advice, monitoring, development of action plans or other appropriate action.
- (b) However, there may be occasions where it is more appropriate to escalate misconduct issues to senior local management to address. These procedures are designed to ensure that less serious misconduct issues are dealt with at local level in a proportionate manner.
- (c) If a supervisor has identified behaviour amounting to misconduct that either cannot or is not appropriate to be dealt with at that level, they will submit a report on the matter to the next level of management outlining the circumstances and actions to date. This manager should again consider whether the matter can be dealt with through managerial action at their level and deal with it accordingly. If not, the matter should be referred via normal channels to the Professional Standards Champion.
- (d) Each District has a Superintendent who is the 'Professional Standards Champion' who normally deals with discipline matters for that district. Each Department also has an identified Single Point of Contact. Local Misconduct action, including Superintendents' Written Warnings, (SWWs), and any related appeals can only be imposed/conducted by a police officer. NIO Guidance states that in exceptional circumstances, a Chief Inspector may issue a written warning, and references throughout this procedure to the role of Superintendents should be interpreted accordingly. There may be rare cases where a police officer is attached to a Department in which there is no Superintending rank. In such a case, the matter will be brought to the attention of the Head of Department who will arrange for an appropriate police officer to be appointed. In Departments where there are several Superintendents, it may be more appropriate for the Superintendent with management responsibility for the officer concerned to deal with the matter, however it is for the Head of the relevant Department to ensure that standards of consistency are met.

(2) Assessment by Superintendent

- (a) Upon receipt of a report, the Superintendent will consider the facts of the matter, and on the basis of the available information, make an initial assessment of whether the matter is one of misconduct, or unsatisfactory performance. If it is unsatisfactory performance, it will be dealt with and recorded as such.
- (b) If it is assessed as being a misconduct matter, the Superintendent will consider whether it is a matter which is suitable for being dealt with at local level, or whether it should be referred to Discipline Branch. (Some cases may have already been referred to local management by Discipline Branch, following either a Discipline Branch or PONI investigation, and therefore already be deemed as being suitable for local misconduct action. Paragraph 3 below refers). Misconduct involving the commission of criminal offences is not normally suitable for local misconduct action.
- (c) For practical guidance, consideration should be given as to whether the matter is sufficiently serious that a subsequent misconduct hearing would be likely. Discipline Branch can provide advice to Professional Standards Champions in making assessments, if required, and should be consulted to ensure that there are no other matters that need to be considered (for example other investigations that may be ongoing into the conduct of the police officer concerned, or outstanding written warnings that are still live).
- (d) The Superintendent may have local enquiries conducted to assist in decision making.

- (e) If the behaviour in question is linked to a perceived equality/harassment issue, the Superintendent must consult with Human Resources Service Centre prior to completing the initial assessment.

(3) Directed Local Action

There may be some instances, following a PONI or Discipline Branch investigation, where the Supervising Member in Discipline Branch will direct local misconduct action. In doing so, the Supervising Member will consider all relevant information, including the officer's responses and explanation during any misconduct interview. In determining this, the Supervising Member may also direct that the most appropriate sanction is a SWW. In these cases, the purpose of the misconduct meeting is to discuss the matter and to administer the warning. The purpose of the meeting is not to reinvestigate the matter under consideration as an investigation has already been conducted. Discussion regarding development plans, learning and any welfare matters should still take place, if appropriate, to prevent a recurrence. The appeals process is still available in such instances. Where the local Superintendent disagrees with the assessment of the Supervising Member, (either before or after meeting with the officer) they should make contact with the Supervising Member for further discussion before imposing any misconduct outcome. In the rare occurrence where agreement cannot be reached, the matter will be referred to Deputy Head of Service Improvement Department, who will direct on the matter.

(4) Mandatory Referral to Discipline Branch

Where an officer's failure to meet standards would normally be dealt with by way of a SWW, but two valid written warnings are already recorded (i.e. received within the previous 12 months of the date that the decision is made that a SWW would otherwise be imposed), the matter must be referred to Discipline Branch for formal investigation. This applies whether or not the previous warnings related to similar conduct.¹

(5) Notification to Officer

If the Superintendent has assessed the matter as being suitable for local misconduct action, they will advise the officer concerned (and the officer's line manager) in writing, and arrange a meeting with the individual concerned to discuss the matter. It may also be appropriate for the officer's line manager to attend. Written notification may be by email if appropriate. The notification must include the following:

- (a) Time and place of the meeting;
- (b) That the meeting is to discuss an alleged misconduct matter, and clearly describe the conduct that is the subject of the meeting;
- (c) That the matter has been assessed as being suitable for local misconduct action;
- (d) The officer is entitled to bring a police 'friend' i.e. a serving police officer, not involved in the matter.
- (e) The officer is not obliged to comment on the issues during any meeting;
- (f) Copies of any relevant documentation should be provided to the officer, subject to a harm test;
- (g) The harm test assesses whether documents can be supplied to the officer concerned. Documents will not be supplied when it is:
 - (i) Necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;

¹ Regulation 11 of the PSNI (Conduct) Regulations 2000.

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- (ii) Necessary in the interests of national security;
- (iii) Necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (iv) Necessary for the purpose of the prevention or detection of misconduct by police officers or police staff members or their apprehension for such matters;
- (v) Justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegation against the officer concerned;
- (vi) Necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (vii) Otherwise in the public interest.

(6) Meeting

- (a) The meeting should take place within 20 working days of receipt of the report, unless there are exceptional reasons for delay, which should be appropriately recorded.
- (b) The purpose of a local misconduct meeting is to:
 - (i) Establish the facts and circumstances of the matter;
 - (ii) Give the police officer a fair opportunity to make their case and to put forward any factors they wish to be considered in mitigation;
 - (iii) Decide if the conduct of the police officer breached the Code of Ethics based on the balance of probabilities and having regard to all of the evidence and circumstances;
 - (iv) Identify any underlying causes or welfare considerations;
 - (v) Identify any learning opportunities for the individual or the organisation;
 - (vi) Consider what the outcome should be if misconduct is proven or admitted. Consideration will be given to any previous written warnings or misconduct sanctions which have not expired, and any early admission of the conduct by the police officer.
- (c) In some cases, it may be necessary for a second meeting to take place in order to allow for checking of facts.

(7) Outcomes

- (a) Once the Superintendent has considered all the information they may decide to:
 - (i) Take no further action;
 - (ii) Give words of advice and guidance, which could include a recommendation for a development plan if appropriate;
 - (iii) Impose a SWW, which may also be accompanied by a recommendation for a development plan if appropriate;
 - (iv) Direct that the matter is a performance issue and that it be dealt with and recorded as such.
- (b) Exceptionally it may be necessary to refer the matter to Discipline Branch if it becomes apparent that the issue is significantly more serious than first assessed. In deciding whether to accept a referral in these circumstances, the Supervising Member within

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Discipline Branch will carefully consider the facts and circumstances and ensure fairness and proportionality are paramount.

- (c) The Superintendent will advise the officer of their decision, and confirm it in writing. If the decision is to issue a written warning, the written warning itself will serve as the written confirmation.

(8) Development Plan

- (a) The management of misconduct issues should not be just about imposing punishments or sanctions, but achieving learning and development, and supporting the officer to improve future behaviour. As a result, it may be appropriate for the Superintendent to consider recommending a development plan. This could include interventions such as training, monitoring, providing additional support etc.
- (b) Any identified development plan should be agreed with the officer (and line manager if present), and, if a written warning was issued, recorded on the SWW form. The line manager will be responsible for ensuring implementation of any plan and monitoring progress.

(9) Record keeping

- (a) A minute will be kept of all substantive issues discussed during the meeting, and a copy given to the officer concerned, either during or after the meeting. Depending on the complexity of the issue to be discussed, it may be appropriate to arrange for someone to sit in on the meeting to record minutes. The officer may submit written comments in relation to the minutes to the Superintendent within 7 days of receiving them. Any written comment will be retained with the minutes.
- (b) The outcome of local misconduct meetings should be copied to Discipline Branch for information, in order for Discipline Branch to retain an overview of the management of misconduct issues within the Service and to discharge their duties in providing statistical information to the NIPB.
- (c) A SWW is recorded on an officer's personal record and SAP and is valid for 12 months from the date of receipt, after which it will be expunged from the officer's personal record on request.

(10) Appeal

- (a) A police officer has a right of appeal against the finding and/or the outcome imposed at a local misconduct meeting. The officer concerned must submit written notice of appeal to the Superintendent who conducted the meeting, clearly setting out the grounds for the appeal, within 7 working days beginning with the first working day after the receipt of the written outcome of the misconduct meeting. (This period may be extended in exceptional circumstances.)
- (b) The police officer concerned may only appeal on the grounds that:
 - (i) the finding or disciplinary action imposed was unreasonable;
 - (ii) there is material that could not reasonably have been considered at the local misconduct meeting which could have materially affected the finding or decision on disciplinary action; or
 - (iii) there was a serious breach of procedures or other unfairness which could have materially affected the finding or decision on disciplinary action.

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- (c) The person conducting any appeal will be a police officer of a higher rank than the person who conducted the local misconduct meeting. It is anticipated that this will be the C/Superintendent of the relevant District/Department, however, it is recognised that in some Departments, this management structure may not exist, and in that case, the Head of Department will appoint a suitable C/Superintendent to conduct the appeal. A police officer or member of police staff may be present to advise the person conducting the appeal on procedural matters. The person conducting the appeal must record the rationale for their decision-making.
- (d) The C/Superintendent conducting the appeal will be provided with the following documents:
 - (i) The notice of appeal from the police officer concerned setting out their grounds of appeal.
 - (ii) The written record of the original misconduct meeting, along with any additional written comments from the officer.
 - (iii) The documents that were given to the person who conducted the original misconduct meeting.
 - (iv) Any information that the police officer concerned wishes to submit in support of their appeal that was not considered at the original local misconduct meeting. Any new material may be shared with the Superintendent who conducted the initial meeting for their comment.
- (e) The officer appointed to deal with the appeal must first decide whether the notice of appeal sets out arguable grounds of appeal. If they determine that there are no arguable grounds then they shall dismiss the appeal and inform the police officer concerned accordingly setting out their reasons.
- (f) Where the officer appointed to conduct the appeal determines that there are arguable grounds of appeal and the police officer concerned has requested to be present at the appeal meeting, the officer appointed to conduct the appeal will hold a meeting with the police officer concerned. The officer concerned may also be accompanied by a 'friend'. Where the police officer fails to attend the meeting, the appeal procedure may proceed in their absence.
- (g) The C/Superintendent conducting the appeal may consider:
 - (i) Whether the finding of the original local misconduct meeting was unreasonable having regard to all the information considered or if the finding could now be in doubt due to material which has emerged since the meeting.
 - (ii) Any outcome imposed by the local misconduct meeting which may not have been appropriate having regard to all the circumstances of the case.
 - (iii) Whether the finding or outcome could be unsafe due to procedural unfairness and prejudice to the police officer (although the person conducting the appeal must also take into account whether the unfairness or prejudice could have materially influenced the outcome).
 - (iv) In cases in which a SWW was directed by the Supervising Member, Discipline Branch, the person conducting the appeal must also make contact with the Supervising Member prior to making their decision.
- (h) The person determining the appeal may:
 - (i) Rescind the original finding – no further action;
 - (ii) Rescind a SWW, and give words of advice;

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- (iii) Uphold the original decision;
- (iv) Direct that the matter is a performance matter which should be dealt with and recorded as such.
- (i) In cases of (i) - (iii) above, the person conducting the appeal may also make a recommendation to rescind, amend or vary any related development plan.
- (j) Exceptionally it may be necessary to refer the matter to Discipline Branch if it becomes apparent that the issue is significantly more serious than originally assessed. In deciding whether to accept a referral in these circumstances, the Supervising Member within Discipline Branch will carefully consider the facts and circumstances and ensure fairness and proportionality are paramount.
- (k) An appeal is not a repeat of the local misconduct meeting. It is to examine the particular part of the misconduct case which is under question and which may affect the finding or the outcome.
- (l) The appeal will normally be heard within 10 working days beginning with the working day after the determination that the officer concerned has arguable grounds of appeal.
- (m) The person conducting the appeal must advise Discipline Branch of the appeal and its outcome, regardless of whether the local misconduct meeting arose as a result of a local, PONI or Discipline Branch matter.

(11) Impact of Local Misconduct Action, including Superintendents' Written Warnings

- (a) Local Misconduct action, including written warnings, will be considered and referred to during an officer's Individual Performance Review. Any improvement by the officer following a development plan issued as a result of local misconduct action should also be acknowledged and recorded.
- (b) The relevant date for IPR purposes is the date on which the SWW was imposed. If a SWW is to be issued towards the end of the IPR reporting period, every effort should be made to ensure that this is done promptly within the timescales set out in this procedure and ideally before the end of the reporting year. This may include delegating the task to C/Inspector level if required.
- (c) Receipt of a SWW will not automatically result in the removal of a police officer's special priority payment or competency related threshold payment. However, where a police officer has received a written warning, this may trigger a review of the appropriateness of that officer continuing to receive such payments. In such cases 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.
- (d) In determining eligibility for promotion or appointment to a specialist post, the criteria may include a 'general suitability declaration' by the officer's local management. Receipt of a SWW may be considered as part of the overall assessment of suitability for promotion or appointment to a specialist post, however it is not an automatic bar to eligibility.
- (e) A live SWW may be revealed to a discipline panel in any later misconduct hearing.²

(11) Miscellaneous Guidance

- (a) This procedure has identified time limits as guidance – however in recognition of operational necessities and other circumstances, non-adherence to time limits is not in itself an automatic ground for a grievance. Reference to working days in this Service Procedure should be construed as Monday to Friday (regardless of shift patterns worked by individual officers), disregarding public holidays.

² Regulation 32(a) RUC (Conduct) Regulations 2000

- (b) A written warning is not normally a matter that needs to be disclosed on Form 17/23.

3. FORMAL INVESTIGATION

- (1) There may be occasions where matters need to be referred to Discipline Branch, for example due to the seriousness or complexity of the matter, or if the officer concerned is already in receipt of 2 SWWs. The Supervising Member within Discipline Branch decides whether or not to commence a formal investigation.
- (2) When a formal investigation is commenced, an Investigating Officer (IO) is appointed (usually from within Discipline Branch, although Discipline Branch may also 'shadow' an investigation conducted at District/Dept level). The IO should be of at least Inspector rank, and of a higher rank to the officer concerned. In the event that a member of Discipline Branch or Anti-Corruption Unit is to be investigated, the Deputy Chief Constable will arrange for the appointment of an appropriate IO.
- (3) Regulation 9 of the PSNI (Conduct) Regulations 2000 states that the IO shall, as soon as practicable, (provided it does not prejudice the investigation), serve the member concerned with a written notice, which outlines:
 - (a) That there is to be an investigation into the case;
 - (b) Of the nature of the report or allegation;
 - (c) That the officer is under caution;
 - (d) That the officer has the right to seek advice from their Staff Association;
 - (e) That they may be accompanied by a 'friend' to any meeting, interview or hearing;
 - (f) That they are given the opportunity to respond to the allegation(s) if they wish.
- (4) Where the member concerned has been served with a Regulation 9 notice, they will not be required to make a duty statement.
- (5) At the conclusion of the investigation, the IO will make recommendations to the Public Prosecution Service (PPS) in criminal matters, and in misconduct matters, will submit a report to the Supervising Member in Discipline Branch, who will decide upon appropriate action to take.
- (6) In the majority of cases, all criminal matters must be concluded before misconduct proceedings can take place. However, in exceptional cases, the Chief Constable may consider it is appropriate to deal with misconduct matters before the criminal proceedings are finalised³. The fact that the PPS has directed 'no prosecution', or that an officer has been acquitted at court, will not prevent misconduct proceedings being brought in appropriate cases.
- (7) When a criminal or misconduct matter is being investigated by Discipline Branch or if a District or Department is investigating a matter on behalf of Discipline Branch, the investigation will be supervised and managed in accordance with the Code of Ethics and Policy Directive No 05/06 'Dealing with Victims and Witnesses'. Complainants will be given regular and timely updates regarding the progress of the investigation. It is the responsibility of the IO (Discipline Branch or District/Department as appropriate) to update complainants. Officers under investigation will also be given regular and timely updates regarding the progress of the investigation as appropriate.

³ Regulation 39, Royal Ulster Constabulary Conduct Regulations 2000

4. SUSPENSION OF POLICE OFFICERS AND USE OF ALTERNATIVE DUTIES

(1) Introduction

- (a) This section outlines the policy on the suspension of police officers who are subject of criminal/disciplinary investigations. The decision to suspend an officer from duty is a serious one, having potentially detrimental effects on the individual concerned, their family, and the Police Service. For this reason no individual will be suspended from duty unless it is necessary, proportionate and justified. All proceedings involving suspended officers will be progressed as expeditiously as possible, bearing in mind the need to adhere to misconduct and criminal processes and procedures.
- (b) The suspension of an officer should not be viewed as either indicative of guilt, nor as a punishment, but rather as an appropriate measure in certain cases, to protect the integrity of the Police Service.

(2) Authority

- (a) Regulation 5(1) of The RUC (Conduct) Regulations 2000 gives the Chief Constable the authority to suspend an officer where there has been a report, allegation or complaint which indicates that the conduct of a member did not meet the appropriate standard.
- (b) Regulation 5(5) allows the Chief Constable to delegate this function to another senior officer. In practice this has been delegated to the Deputy Chief Constable.

(3) Alternative duties

- (a) The decision to suspend an officer is only taken in exceptional circumstances after all other options, including 'alternative duties', have been considered.
- (b) Alternative duties in this instance would involve a temporary change in role/location pending the outcome of investigation and misconduct proceedings, for example:
 - (i) Where contact with the public is reduced or prevented;
 - (ii) Where involvement in a particular activity is reduced or prevented, e.g. handling of money or firearms;
 - (iii) Where access to evidence, information or intelligence is restricted.
- (c) Conditions may be placed on an officer who has been placed on alternative duties, for example, not contacting witnesses or visiting certain police premises.
- (d) Any case where an officer is placed on alternative duties which involves notification in Weekly Orders (i.e. transfer to a different District/Branch) will be under the heading 'Temporary Transfer'.

(4) Decision to Suspend/Place on alternative duties

- (a) For all cases where suspension or alternative duties is being considered, including those cases investigated by PONI, the Deputy Head of Service Improvement Department (or deputy) will compile an initial report for consideration by the DCC. This report will outline the options considered and rejected, and contain a rationale for the final recommendation that is made.
- (b) To assist in compiling the report, Deputy Head of Service Improvement Department (or deputy) will seek the views of the officer's Professional Standards Champion (who will also request relevant, available information from OHW), and the IO, before making any recommendations to the Deputy Chief Constable.

- (c) Considerations should include:
- (i) The nature and seriousness of the alleged action of the officer, including any apparent aggravating or mitigating factors;
 - (ii) The strength of evidence;
 - (iii) The public interest, the reputation of the Police Service and the potential impact on public confidence;
 - (iv) Whether effective investigation of the allegation may be compromised if the officer remains in post;
 - (v) The nature of the current post held, alternative posts, and the potential risk to the individual, public, colleagues, operations or the investigation if the officer is not suspended;
 - (vi) The likely outcome should the matter be proven at criminal/misconduct proceedings;
 - (vii) The impact on organisational efficiency.

By its nature, the above list is not exhaustive.

- (d) The officer concerned or their friend may make representations against the decision to suspend/place on alternative duties, and at any time during the course of the suspension/alternative duties if they believe circumstances have changed and that suspension/alternative duties is no longer appropriate.

(5) Notification of suspension or alternative duties

- (a) In every case where an officer is suspended from duty or placed on alternative duties, he or she will be told in person and informed of the reason for that decision by a police officer of a higher rank, and where possible, at least 2 ranks higher than the officer concerned. This will be confirmed in writing. For suspended officers, the person making this notification will at that time collect the officer's identity card, and hand them a copy of this section of the Service Procedure for their information.
- (b) The person taking possession of the identity card will forward this without delay to the officer's Professional Standards Champion/Head of Branch, who will arrange, as soon as is practicable, for all items of the officer's uniform, equipment, and official police notebooks/journals to be secured.
- (c) The officer's Professional Standards Champion should consider the suitability of the officer's access to firearms. Chapter 8 of the PSNI Manual of Policy, Procedure and Guidance on Conflict Management - Access To Firearms And Ammunition refers.
- (d) In addition, the officer's Professional Standards Champion may consider it necessary to conduct a risk assessment and make contact with Occupational Health and Well-being (OHW) if required.

(6) Review

- (a) To ensure that the continued suspension or alternative duties of an officer is necessary, each case will be reviewed. The first review will be conducted by the Deputy Head of Service Improvement Department (or deputy) within one month and thereafter cases will be reviewed in the event of significant change in circumstances.

Significant change is categorised as anything which has the potential to result in having the officer's suspension or use of alternative duties revoked. Examples include:

- (i) PPS has directed no prosecution;
 - (ii) New exculpatory evidence has emerged;
 - (iii) The misconduct case is concluding without need for a misconduct hearing.
- (b) It will be the responsibility of the allocated IO (i.e. Discipline Branch, PONI or District IO), to keep themselves apprised of the current circumstances of the case. On becoming aware of any significant change, the IO will immediately notify the Superintendent, Discipline Branch in writing. The Superintendent, Discipline Branch will then review the circumstances and report to the DCC if there are grounds for reviewing the suspension/alternative duties.
- (c) The officer concerned may tender their views at any stage in writing for consideration by Superintendent, Discipline Branch, articulating how they perceive their circumstances have significantly changed.
- (d) All investigations or proceedings in connection with officers who have been suspended from duty or placed on alternative duties will be dealt with as expeditiously as possible.

(7) Welfare

- (a) Professional Standards Champions will assume responsibility for ensuring that the welfare needs of a suspended officer and their family receive appropriate attention by appointing a single point of contact. As a minimum, there should be monthly contact with the suspended officer by the nominated staff member.
- (b) Evidence would suggest that suspension can be a difficult and isolating experience. The suspended officer may benefit from assistance with arranging police contact, welfare issues or other business matters (including relevant threat and personal security matters) during their time of suspension which the nominated staff member should co-ordinate. This staff member should be sensitive to what form of contact the suspended officer prefers, for example a personal visit or telephone contact.
- (c) If a suspended officer is subsequently dismissed or required to resign, welfare contact by District should continue for one month after the officer leaves the Police Service.
- (d) In addition, Regulation 9 notices specify the contact details of the IO, who can be contacted with any queries.

(8) Circumstances

- (a) Once suspended, an officer cannot exercise police powers.
- (b) Access to police information systems will be suspended. Discipline Branch will email Head of ICS to ensure that the officer's access controls are suspended.
- (c) A suspended officer remains subject to the provisions of the Code of Ethics 2008 and Conduct Regulations for the duration of the period of suspension.
- (d) Other conditions or restrictions may be imposed on a suspended officer as are reasonable in the circumstances, for example restricting access to police premises.

(9) Pay and allowances

- (a) A suspended member will, with certain exceptions, receive full pay and where applicable, other allowances.

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- (b) Suspension will be without pay where the officer is detained in pursuance of a court sentence or is in custody between conviction by a court and sentence, or has absented themselves and their whereabouts are unknown to the Chief Constable.⁴ Notices in this respect will be issued to the officer's Professional Standards Champion by Discipline Branch for service. Discipline Branch will also notify the HR Service Centre, who will initiate the necessary paperwork to pay section for purposes of pay, allowances etc.
- (c) Officers who are suspended from duty are still permitted to take their annual leave entitlement in the normal way whilst suspended, providing they seek permission from their management. Permission for annual leave should not be withheld unreasonably. When considering the granting of annual leave, managers should liaise with Discipline Branch to ensure there will be no impact on the investigation, or criminal/misconduct proceedings. Any annual leave not taken by the police officer concerned will still be subject to the rules governing the maximum number of days which can be carried over⁵ and it is the officer's personal responsibility to ensure they avail of their annual leave allowance.
- (d) The PSNI Regulations 2005 require members to reside at premises approved by the Chief Constable. Any officer intending to reside at premises other than their approved address must submit a report through normal channels to the Head of Discipline Branch.
- (e) An officer who is temporarily promoted at the time of the suspension will revert to their substantive rank once suspended.
- (f) Any business interest which a suspended officer holds will be reviewed in light of the circumstances of the suspension.

(10) Sickness

- (a) An officer may still be suspended even if they are currently on sick leave. However, any relevant matters of a medical nature must be made available to Discipline Branch for inclusion on the report recommending suspension. The advice of OHW may be sought prior to making the decision on whether to suspend.

Note: Whilst it is the responsibility of the officer's Professional Standards Champion to request relevant, available information from OHW for inclusion in the report, if there are other existing relevant medical matters that OHW are not aware of, it is the individual responsibility of every officer to provide those details to Discipline Branch in a timely manner.

- (b) The suspension will take effect immediately the officer is notified of suspension, and not when the officer returns to duty off sick leave. Practical consideration must be given to ensuring appropriate support is available if an officer on sick leave is suspended.
- (c) Any illness or injury whilst on suspension should be reported to the officer's line manager in the normal way. Medical certificates should be forwarded promptly in accordance with current instructions.
- (d) Sickness which occurs while an officer is suspended will count in respect of Regulation 27 of the PSNI Regulations 2005 (reduction in pay after six months/one year).

⁴ Schedule 3 Police Service of Northern Ireland Regulations 2005

⁵ Annex M of the Determinations association with the PSNI Regulations 2005

5. HEARINGS

The main sources of reference and further reading on Hearings can be found within the Royal Ulster Constabulary (Conduct) Regulations 2000 and the NIO Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures.

On receipt of a report by the IO following investigation, the Superintendent within Discipline Branch (the Supervising Member) will decide whether the officer concerned should be brought before a misconduct hearing.

(1) Notification of Hearing

- (a) Discipline Branch will notify the officer concerned in writing (not less than 28 days before the hearing) that a decision has been taken to hold a misconduct hearing. This notice will specify the conduct which allegedly failed to meet the appropriate standard, and the relevant article in the Code of Ethics 2008.
- (b) The officer concerned will be supplied with copies of any statement they may have made and any relevant statement, document or other material obtained by the IO.
- (c) These papers will be forwarded to the officer's Professional Standards Champion for service on the officer concerned. It is normally delegated to an Inspector to serve the papers. It is essential that the papers are served on the officer forthwith, and that the person serving them complies with all instructions contained in the papers. It is important that the officer concerned is informed they must respond in writing to Discipline Branch within 14 days. The person serving the papers must then complete the details of service on the form provided and return this to Discipline Branch.
- (d) The officer concerned is required to state in writing, within 14 days of the receipt of these documents:
 - (i) whether or not they accept that their conduct did not meet the appropriate standard;
 - (i) (where the option is available) whether they wish to be legally represented at the hearing;
 - (iii) whether they propose to call any witnesses, and the names and addresses of any such witnesses whose attendance they wish Discipline Branch to secure.
- (e) Where the officer concerned accepts that their conduct did not meet the appropriate standard, a summary of the facts will be prepared, and supplied to them at least 14 days before the hearing. If the officer does not agree with the summary, they may submit a response within 7 days of receipt of the summary. This summary, along with any response from the officer, will be supplied to the officers conducting the hearing. Where the officer concerned does not accept that their conduct failed to meet the appropriate standard, no summary will be prepared or supplied to the officers conducting the hearing.

(2) Attendance at Disciplinary Hearings

- (a) The officer concerned will be ordered to attend the hearing. For the purpose of reckoning overtime and rest day entitlements etc., the officer concerned will be regarded as on duty when they are appearing at a hearing, unless in a particular case this would be inappropriate, e.g. because they are on sick leave or suspended from duty. Travelling and subsistence allowances etc will be payable in accordance with current Regulations.
- (b) It is not necessary for the officer concerned to be present at the hearing for it to be valid. If the officer concerned fails to appear at a hearing without prior warning or without sufficient reason being given to excuse their absence, the hearing may proceed and the panel may make decisions in the officer's absence. In such a case, the presiding officer will decide whether to proceed or adjourn the hearing.

- (c) Hearings will be conducted in private. However, the presiding officer may, with the consent of all parties concerned, permit other persons to be present if there is good reason to believe that their presence would be beneficial.
- (d) The Police Ombudsman may ask to send a representative to act as observer at any hearing which follows a recommendation by them as to misconduct action, and this request should normally be granted; subject to the consent of all parties to the hearing.

(3) Ill health of officer concerned

- (a) An illness or disability may render an officer unfit for duty without affecting their ability to attend a misconduct hearing. Unless the officer's 'fit note' specifically states that the nature of the illness prohibits the officer from giving evidence to a hearing then the requirement to attend the hearing remains. A hearing will not be deferred indefinitely because a sick officer is unable to attend, although every effort should be made to enable the officer to attend if they wish.
- (b) The presiding officer must judge, in all the circumstances of the case, whether to defer the hearing or proceed in the absence of the officer concerned.

(4) Wearing of Uniform

All officers ordered to appear at a hearing or related sitting will do so in uniform except for the following, in which smart dress is required:

- (a) A Police Association representative or a member appearing as a friend;
- (b) Officers on sick leave or suspended from duty;
- (c) Officers permanently employed on plain clothes duty;
- (d) Where the Presiding Officer makes a specific exception for any reason.

(5) Witnesses/Complainants

- (a) Any officer who is to appear as a witness will be ordered to attend the hearing. Any other person will be invited to indicate whether or not they are prepared to attend as a witness.
- (b) Where a hearing stems from a complaint by a member of the public, the complainant may be present if they wish throughout the hearing and until a finding is reached; provided that, if they are to be called as a witness, they will not be allowed to attend before that point. If the presiding officer considers it appropriate, they may allow the complainant to be accompanied by a friend or relative to whose presence the same rules and restrictions will apply.
- (c) Where the officer concerned gives evidence, the complainant may ask them questions either through the presiding officer, or at the presiding officer's discretion, directly. The presiding officer may disallow questions which they consider to be irrelevant, or formulated in an undesirable manner. The complainant and any person accompanying them shall neither intervene in nor interrupt the hearing. If they behave in a disorderly or abusive manner, or otherwise misconduct themselves, the presiding officer may exclude them from the remainder of the hearing.

(6) Antecedent History and Character Evidence

Regulation 32 of the PSNI (Conduct) Regulations 2000 provides that where the question of the sanction to be imposed is being considered, the officers conducting the hearing shall have regard to the record of police service of the officer concerned, as shown on their personal record, and may receive evidence from any witness whose evidence would assist in determining the question. They must also give the officer concerned or their representative the opportunity to make oral or written representations on the question, or to mention relevant matters. Any officer providing evidence of character is reminded of their own integrity, and such evidence must be fair and accurate.

(7) Sanctions

(a) The full range of sanctions available to a hearing are:

- (i) dismissal from the Service - effective immediately;
- (ii) requirement to resign from the Service as an alternative to dismissal, taking effect one month from the date of the decision; (Note – if suspended, the officer will remain suspended for this period. If not currently suspended, the officer will be placed on suspension during the notice period.)
- (iii) reduction in rank - effective immediately;
- (iv) reduction in pay for such a period, not exceeding 12 months, as shall be specified in the decision;
- (v) fine of a sum representing not more than 13 days pay recoverable over a minimum of 13 weeks;
- (vi) reprimand – this is recorded in the officer's personal record;
- (vii) caution – this is not recorded in the officer's personal record or on SAP.

(b) Personal Record

Sanctions imposed by a misconduct hearing will be expunged after three years free of further sanctions. If a misconduct panel imposes a further sanction within three years, both sanctions will remain until there are a further three years free of sanctions (written warnings do not affect this). It is the responsibility of Discipline Branch to record and expunge sanctions from SAP and to notify the HRSC of the requirement to place or remove the hard copy sanction from the officer's personal record.

(8) Discipline Sanctions for Drink Driving Offences

It should be noted that the following provisions of this paragraph constitute guidance to police officers and panel members, rather than 'direction'. The decision-maker will enjoy a level of discretion and a margin of appreciation in responding to all factors in every case, and every case will be dealt with strictly on its own merits.

- (a) A police officer detected for a drink driving offence can expect to face a formal disciplinary hearing. It is expected that the usual sanction to be applied is either dismissal or a requirement to resign to reflect the serious view which is taken of drink-driving, both inside the Service and by society generally.
- (b) It is important that a discipline panel is responsive to the circumstances of any particular case, and police officers presiding at such hearings must apply their judgement to the facts of the case to consider whether an alternative sanction could be justified. Aggravating factors in considering the seriousness of an offence include where:

- (i) the offence was committed on duty;
- (ii) there is an attempt to avoid arrest;
- (iii) there is an attempt to interfere with due process, particularly by leaving the scene or improperly using their position as a police officer;
- (iv) the alcohol reading is particularly high;
- (v) the offence derives from a traffic collision or another incident involving a member of the public;
- (vi) given the nature of policing within Northern Ireland, cognisance will also be given to whether the police officer is in possession of a firearm.

This list is not exhaustive.

- (c) It is anticipated that a lesser sanction would only be imposed when truly exceptional circumstances exist. It should be noted that the standard of proof for misconduct proceedings is the balance of probabilities. The presence of any factor considered by the decision-maker to amount to an 'aggravating factor' within the context of paragraph 8(b) above will be a relevant consideration when deciding whether truly exceptional circumstances do exist in a particular case. The justification for such a decision should be clearly set out and recorded.

6. DISCLOSURE OF MISCONDUCT SANCTIONS

The PSNI already provides anonymised statistical data in relation to misconduct outcomes, both to NIPB, and as a result of Freedom of Information requests. There may be occasions however, where complainants or other individuals or bodies will seek to find out what, if any misconduct outcome has been applied in a particular case.

The Data Protection Act requires that personal information should be processed in a lawful manner, and an officer's discipline records fall under this category. However, legal advice suggests that unless there are convincing Article 2 or Article 8 issues, individual misconduct outcomes could, in certain cases, be disclosed.

Whilst each case will be considered on its own merits, the following general principles will apply:

(1) Misconduct Hearings

- (a) There will be a presumption that complainants who attend a misconduct hearing will, subject to compelling Article 2 or Article 8 considerations, be notified of the outcome at the conclusion of the hearing. Where a misconduct hearing has considered a range of issues, the complainant will be advised in relation to the particular aspect relating to them.
- (b) The officer concerned, or their representative, may make representations to the chair in relation to disclosure of sanction.

(2) Enquiries in relation to Misconduct Sanctions

- (a) Enquiries in relation to specific misconduct sanctions should be directed, in writing, to D/Supt Discipline Branch for consideration.
- (b) The officer will be advised of the request, and given an opportunity to comment prior to the decision on whether or not to disclose a misconduct sanction. The PSNI will seek to anonymise information where possible.

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- (c) Each decision will be arrived at on a case by case basis and will seek to achieve a balance between any legitimate public interest in disclosure and the rights and freedoms of the officer concerned.
- (d) In coming to a decision, the following will apply:
 - (a) Where information will not identify individual officers, there will be a presumption towards disclosure;
 - (b) Consideration will be given to the nature and context of information which is already in the public domain in relation to a specific incident. For example, is there sufficient information publically available to piece together the identity of an officer even if the information is anonymised? Is the officer's identity already a matter of public record as a result of criminal conviction?
 - (c) Where an officer is likely to be identified as a result of disclosure of the information, then an assessment of Article 2 and Article 8 risks should be made;
 - (d) In doing so, consideration will be given to what harm would be caused to the individual if the information was disclosed;
 - (e) The involvement of the person seeking the information may also be a relevant consideration, for example, is the person requesting the information involved in the original incident, a member of the NIPB, or a member of the media?

The above is not exhaustive.

(3) Police Ombudsman investigations

Discipline Branch advise the Police Ombudsman of the outcome of any misconduct action arising from cases in which his office has investigated. It will be for the Police Ombudsman to determine whether he subsequently discloses information to a complainant or to the wider public in relation to misconduct action arising from his investigation. In doing so, it is anticipated that the Ombudsman would give due regard to Data Protection principles and the considerations and processes outlined within this procedure prior to making a decision. Where an allegation has not been substantiated, but residual misconduct matters have been identified, care should be taken to make a distinction between the matters.

(4) Disclosure of Misconduct Sanctions to PPS

Chapter 18 of the Disclosure Manual outlines the responsibility of officers to notify the PPS of relevant misconduct and criminal convictions. The onus is placed on individual police officers, who provide witness statements for potential use in criminal proceedings, to ensure that the information is made available to the reporting IO, so that it can be revealed to the prosecutor.

7. SEARCH PROCEDURES AND LAWFUL BUSINESS MONITORING

(1) Search Procedures

There may be occasions when, in the course of either a misconduct or criminal investigation, reasons of organisational efficiency or health and safety, it is necessary to search Police Service lockers, drawers, desks or offices. This procedure applies to all members of the Police Service staff, whether police officers or police staff (including agency staff and contractors).

(2) Lockers, filing cabinets, desks and drawers remain the property of the Police Service, and therefore there should be no expectations of privacy in relation to these items.

(3) In the event of a search being needed, the IO must first, if practical and appropriate, attempt to contact the officer concerned (unless this would prejudice the investigation) explaining the circumstances and requesting permission to proceed. The District Commander/Head of Branch should also, where practical, be notified. The officer/police staff member will be given a

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reasonable opportunity to attend in person or to nominate another member of the Police Service staff to be present. If the member of staff cannot be contacted or refuses to give permission, the search will proceed.

- (4) Two supervising officers must be present during the search. If items are removed, the member concerned must be informed as soon as practical. Once the search is completed the supervisors must ensure that the locker/drawers are properly secured. Any damage to police property will be repaired at police expense.
- (5) These procedures may be set aside if the search is being conducted covertly under RIPA authority or where it would frustrate a criminal investigation.
- (6) Appropriate powers under PACE will be utilised where relevant.

(7) **Lawful Business Monitoring**

The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 provide that an employer can monitor phone and computer transactions on systems provided for the purposes of their business. All police staff must therefore be aware that their transactions and communications using the Police Service systems may not be regarded as private.

- (a) The employer or 'system controller' as described in paragraph 3(1) of the legislation is deemed, in relation to the Police Service, to be the Chief Constable.
- (b) For the purposes of authorisations, reviews, and cancellations in respect of the monitoring of communications the Chief Constable has delegated responsibility to Deputy Head of Department, Service Improvement Department. Head of Intelligence Branch, Crime Operations, will have delegated responsibility for matters of National Security.
- (c) The completion, maintenance, and updating of appropriate forms for authorisations, reviews and cancellations will be the responsibility of the respective Head of Branch.
- (d) The employer, which for these purposes includes the Police Service as a 'public authority', has been granted these rights to enable them to:
 - (i) record evidence of business transactions;
 - (ii) ensure compliance with regulatory or self-regulatory guidelines, which includes the PSNI Code of Ethics 2008 and the NICS Code of Conduct;
 - (iii) maintain the effective operation of the systems (eg preventing viruses);
 - (iv) monitor standards of training and service;
 - (v) prevent or detect criminal activity;
 - (vi) prevent the unauthorised use of the computer/telephone system – i.e. ensuring the employee does not breach the company's email or telephone policies.
- (e) Monitoring may be undertaken by Anti-Corruption and Vetting Branch, Crime Operations Department, Information and Communications Services and local systems administrators.
- (f) The nature of computer systems is such that all transactions are recorded. Phone calls may be recorded for the purposes described above. (This does not affect the existing non-recording arrangements for Crimestoppers).
- (g) The Regulations require the employer to take reasonable steps to inform 'every person who may use the telecommunication system', that their communications might be monitored. PSNI Common Terminal computer screens currently display a message to this effect prior to login and during workstation locked mode. All police officers and staff have a responsibility to ensure that they are fully aware of their responsibility under the PSNI Information Assurance Policy.

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8. SUPPORT

Discipline Branch will treat victims and witnesses in line with Service Policy, outlined in PD 05/06 – 'Dealing with Victims and Witnesses'. Additional support is available to officers under investigation from their staff associations and OHW. In addition we undertake to update officers who are under investigation as appropriate.

9. REVIEW

- (1) This Service Procedure will be reviewed in 24 months time.
- (2) Interim reviews may also be prompted by feedback, challenge or change in legislation.
- (3) Feedback or queries relating to this Service Procedure should be addressed to D/Supt Discipline Branch.