Police Staff Disciplinary Policy (Surrey and Sussex) (797/2024)

Abstract

This policy sets out the Surrey Police and Sussex Police undertaking to provide an open and robust framework to ensure a fair, consistent, proportionate, and timely approach to addressing matters of alleged misconduct by police staff.

Policy

1. Introduction

1.1 Surrey Police and Sussex Police (hereafter referred to as the Forces) recognise that all police staff need to know the standards of conduct and behaviour expected of them and how the Forces will deal with any breaches of these standards.

1.2 The policy is intended to encourage, as is required by The Government Advisory, Conciliation and Arbitration Service (ACAS) Guidelines, a culture of learning and development for individuals and/or the organisation. At the conclusion of any disciplinary process improvement and lessons learned will always be considered and fed back to the organisation.

1.3 This policy sets out the Forces' undertaking to provide an open and robust framework to ensure a fair, consistent, proportionate, and timely approach to addressing matters of alleged misconduct by individuals working for Surrey Police and Sussex Police. Following a clear framework will enable the Professional Standards Departments (PSD) to act fairly and consistently in the handling of police staff disciplinary matters and where disciplinary action may be necessary. The framework which is to be applied is based upon the framework provided by the Police Staff Council (PSC) Standards of Professional Behaviour as set out in PSC Joint Circular 54/2008.

1.4 Paragraph 13, Schedule 3, Police Reform Act 2002 dictates that PSDs must refer certain conduct matters to the Independent Office for Police Conduct (IOPC), these are matters:

- that relate to any incident or circumstances in or in consequence of which a person has died or suffered serious injury;

- that fall within the mandatory referral criteria; or

- the IOPC notifies the Appropriate Authority (AA) that it requires the matter to be referred regardless of whether the conduct matter is already being investigated by any person or the IOPC has considered it previously. Once referred, the IOPC will inform Professional Standards of their 'Mode of Investigation'; on occasion they may decide to investigate a matter independently, in which case the investigation will be wholly conducted by IOPC.

1.5 This policy must always be considered in conjunction with the [ACAS Code of Practice and Guidance on Disciplinary and Grievance Procedures.]

2. Scope

2.1 This policy covers the police staff disciplinary framework and appeals process for the Forces and applies to all individuals who have a contract of employment with either Surrey Police or Sussex Police, with the exception of those individuals still in their probation period. For individuals in their Probationary period refer to the Managing Police Staff Probation Periods Policy (Surrey and Sussex) (1183).

The Police Staff Disciplinary Policy (Surrey and Sussex) (797) and Managing Police Staff Probation Periods Policy (Surrey and Sussex) (1183) relate to police staff only.

3. Policy Statement

3.1 The Forces will follow an equitable, consistent, and transparent process and ensure that all of the procedures are applied in a consistent manner; and that no individual will be unfairly treated.

Procedure

1. Standards of Conduct and Behaviour

1.1 The Standards of Professional Behaviour for Police Staff expected by both Forces are:

Honesty and integrity

Police staff are honest, act with integrity and do not compromise or abuse their position.

Authority, respect, and courtesy

Police staff act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police staff do not abuse their powers or authority and respect the rights of all individuals.

Equality and diversity

Police staff act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

Use of restraint

Police staff only use restraint as part of their roles and responsibilities to the extent that it is necessary, proportionate, and reasonable in all the circumstances.

Instructions

Police staff only give and carry out reasonable instructions.

Police staff follow all reasonable instructions and abide by Force policies.

Work and responsibilities

Police staff are diligent in the exercise of their work and responsibilities.

Confidentiality

Police staff treat information with respect and access or disclose it only in the proper course of their work.

Fitness for work

Police staff when at work are fit to carry out their duties.

Discreditable conduct

Police staff behave in a manner which does not discredit the police service or undermine public confidence in the police service.

Police staff report any conviction or caution against them for a criminal offence.

Challenging and reporting improper conduct

Police staff whilst at work report, challenge or take action against the conduct of colleagues which have fallen below the standards of professional behaviour expected.

Individuals are also encouraged to uphold the principles of the Code of Ethics which signpost the individual to the Police Staff Council (PSC) Standards of Professional Behaviour. The Police Staff Council consider that it is of vital importance that police staff exhibit the high standards of behaviour which the Police Service and the public would expect of them.

2. Disability and Conduct

2.1 Individuals who are disabled are protected by virtue of the provisions contained in the Equality Act 2010. A person is disabled if they have a physical or mental impairment which has a substantially adverse and long-term effect on their ability to carry out normal day-to-day activities. Employers must make reasonable adjustments to ensure workers with disabilities are not disadvantaged and take steps to remove, reduce or prevent obstacles a disabled worker faces. Where an individual raises a disability, reasonable adjustments will be considered during the disciplinary process where required.

2.2 There are a number of medical and neurodivergent / neurological conditions which can give rise to behavioural issues in the workplace. These are sometimes referred to as ‘hidden or invisible disabilities’, meaning the disability is not immediately obvious. An outward sign presenting may be poor behaviour or conduct in the workplace. Line managers must be alert to these possibilities. An individual may not be aware they have an undiagnosed condition, or they may be in the process of securing a diagnosis. They may not have previously disclosed their disability to the Force.

2.3 In situations where unsatisfactory conduct is related to a disability there is a requirement for adjustments to be considered.

2.4 Guidance and support for line managers can be sought from People Services, the Disability Guidance Toolkit and internal staff networks in any cases where there is or believed or perceived to be a causal link between conduct and an individual's disability.

2.5 The Investigating Officer will make reasonable adjustments during the course of any investigation, meeting or hearing to enable the staff member to engage effectively.

3. Responsibilities

3.1 PSD owns this policy and is responsible for its implementation and review. The Head, Deputy Head, Chief Inspectors, and Inspectors of PSD are the Appropriate Authority (AA) for dealing with police staff conduct matters as contained within this policy and relevant law.

3.2 It is important that line managers understand their responsibility to respond to, and deal promptly and effectively with, unsatisfactory behaviour or conduct issues raised and/or complaints about individuals from members of the public.

4. Procedure

4.1 The purpose of an investigation is to:

• Gather evidence to establish the facts and circumstances of the alleged misconduct.

• Assist the Appropriate Authority 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.

4.2 The following principles will apply in all disciplinary matters:

• No disciplinary action will be taken until the matter has been investigated, however please see section 10.

• Disciplinary sanctions will depend on the circumstances and seriousness of the issues.

• All disciplinary decisions will be confirmed in writing.

• Individuals have the right to appeal against a disciplinary decision.

• Confidentiality of information sharing should be managed appropriately to minimise any risk to the organisation and maintain the dignity of the individual.

• Any documentation supplied to an individual remains the property of Forces and can only be used for the purpose of any internal disciplinary proceedings.

4.3 The ACAS code clearly states that both parties should make every effort to comply and co-operate openly with the process and attend meetings / hearings when required. It is therefore expected that individuals should ensure that they comply with and co-operate fully and openly with the process where this is invoked. However, nothing in this paragraph prevents an individual raising concerns, should they believe their treatment is unfair.

4.4 Staff who decline to co-operate are reminded that this may in certain cases result in the continuance of the process without the individual being present at any investigation meeting or disciplinary hearings.

4.5 Where timescales are indicated within this policy, these are the aims within which the Forces work. However, occasionally and in exceptional circumstances, for operational or other business needs these may need to be varied. Every endeavour will be made to conclude the disciplinary process as soon as reasonably practicable. In exceptional circumstances an individual may make an application to PSD for consideration for timescales to be extended.

4.6 Types of conduct considered gross misconduct, are illustrated in section 8 (below). The lists are neither exclusive nor exhaustive but an indication of the level of seriousness of these types of actions.

5. The role of a Trade Union Representative or Workplace Colleague

5.1 Where a disciplinary investigation is commenced the individual will have the right to be represented by a qualified Trade Union Representative or a workplace colleague at all stages of the procedure. Both will be permitted reasonable paid time to prepare the case and attend meetings and hearings.

5.2 The Trade Union Representative or workplace colleague may carry out the following tasks as part of their duties:

• Advise and confer with the individual throughout the procedure.

• Attend interviews with the individual which form part of the procedure.

• Address the meeting or hearing to both state and sum up the case for individual.

• Provide relevant documentation to the investigator or the hearing Chair who shall give proper consideration to such documents as necessary.

• Respond on behalf of the member of police staff to any views expressed at the conduct meeting or hearing.

• During conduct meetings or hearings ask questions of any witnesses at the discretion of the Chair.

• Make representations to the Appropriate Authority concerning any aspect of the procedure.

• However, a representative cannot answer questions on behalf of the individual subject to the investigation during any investigative interviews.

5.3 A Trade Union Representative or workplace colleague cannot be appointed to act as such if their presence might cause a conflict of interest (i.e., has had some involvement in the matter or is a witness to the alleged misconduct).

5.4 The Forces acknowledge that support is provided by a trade union representative or workplace colleague and the importance of continuity where possible. However, in circumstances where achieving this would create undue delay, the Forces reserve the right to expect an alternative representative to be appointed as appropriate.

5.5 In circumstances where the staff member's representative is unable to attend a scheduled interview it should be rearranged to a more mutually convenient date which should, if possible be within 5 days of the original interview date.

5.6 The staff member or their representative can request an adjournment during the interview if consultation is needed or new information is provided by the Investigating Officer which requires further advice.

6. Welfare

6.1 When a member of staff is subject to a gross misconduct investigation a Welfare Officer will be appointed to ensure that any concerns are addressed and the staff member is suitably supported throughout the disciplinary process. This support will include regular contact / meetings with the staff member concerned and the Welfare Officer will be responsible for reporting any concerns to the Investigating Officer (or the staff member's line managers). The staff member may also request that all management contact is made via the appointed Welfare Officer, however there is an expectation that the staff member concerned will engage in situations where there is a need for the Senior Management Team (SMT) to make contact.

The role of the Welfare Officer is to act as a conduit between any individual under investigation and the Force to ensure the individual receives all appropriate welfare support.

7. Misconduct

7.1 Misconduct can be broadly defined as inappropriate behaviour in the workplace, which if proven or admitted, would justify at least a written warning. It is typically less serious than gross misconduct (see below).

7.2 If new evidence emerges during the initial investigation, then a fresh assessment can be made. The matter may be reassessed as gross misconduct. In the interests of fairness, the individual will be informed and provided with the reasons for the change in the assessment in writing as soon as practicable. The same principle applies where the initial assessment suggests that the matter is one of gross misconduct but subsequent investigation reveals that it is not.

8. Gross Misconduct

8.1 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the individual and their Force and could result in dismissal.

8.2 Each case will be assessed on an individual basis taking account of the known facts at the time.

8.3 Where substantiated, gross misconduct offences may result in summary dismissal (i.e., dismissal without notice and without pay in lieu of notice).

8.4 Set out below is a list of offences which may be considered to be gross misconduct. This list is not exhaustive, nor exclusive. Gross misconduct includes any other conduct that amounts to a fundamental breach of the employment contract:

• Any matters involving the abuse of position for a sexual purpose of pursuing an improper emotional relationship; (such alleged conduct will be referred to the IOPC as they fall within the definition of serious corruption).

• Conduct prejudicial or likely to be prejudicial to the reputation and good name of Forces.

• Inappropriate use of Social Media (please refer to the Surrey - Social Media Policy and Sussex - Social Media Policy (1086))

• Unauthorised absence from the workplace.

• Abuse, misuse or neglect of Sussex Police property, IT systems or facilities.

• Theft, fraud, dishonesty, or falsification of records; fraudulently misreporting absences; fighting, assault or other violent behaviour.

• Neglect of duty.

• Serious cases of insubordination; wilful refusal to carry out a reasonable management instruction.

• Reckless, negligent wilful damage to, or misuse of the Force' property causing damage or loss.

• Unauthorised removal of the Force' property, or other property.

• Misuse of the internet and/or email to access or distribute material of a pornographic, offensive, obscene, or inappropriate nature.

• Excessive use of the internet for personal purposes during working time.

• Accessing information on the Forces' internal systems for unauthorised purposes or persons.

• Accessing and disclosing information obtained from Forces' internal systems for unauthorised purposes or persons.

• Disclosure of confidential information for unauthorised purposes or persons.

• Consuming alcohol either on Forces' premises or elsewhere, whilst booked on duty and/or carrying out your role.

• Possession, custody, or control of illegal drugs on Forces' premises other than in the course of duty.

• Being the subject of a criminal investigation which is incompatible with continued employment with Forces.

• Bullying, harassment, victimisation, or discrimination.

• Serious breach of Health and Safety rules.

• Any other conduct that amounts to a fundamental breach of the employment contract rendering the employment relationship untenable.

9. Suspension

9.1 There may be occasions when it is appropriate to suspend an individual on full pay at the start of the investigation, or subsequently at any stage in the period up to a formal disciplinary hearing.

9.2 Suspension is designed to be a neutral act which will not prejudge the outcome of the disciplinary investigation.

9.3 Where suspension is being considered it is important to ensure that a fair and equitable process is adopted. This may involve informing the Head of the Trade Union Branch or their deputy of the rationale of that decision when appropriate.

9.4 The line manager, PSD and People Services shall discuss any alternatives to suspension (restrictions) and a record of those decisions will be recorded. This may include allocating alternative duties to the individual whilst the matter is being dealt with.

These restrictions will be subject to review and may be amended where necessary. The staff member will be able to claim reasonable additional travelling expenses incurred, as a result of an alternative location restriction.

9.5 Where suspension is appropriate the PSD Investigating Officer may submit a report (endorsed by at least an Inspector) to the Deputy Chief Constable (DCC) or in their absence another Chief Officer.

Where the Chief Officer is unavailable, or particular circumstances determine that suspension is deemed necessary immediately, GOLD on-call will be the decision maker (or if unavailable an officer of the rank of at least Superintendent) may give such authority to suspend. The officer who makes the suspension decision is then not to be involved in any later disciplinary proceedings. When this immediate suspension occurs, an application to ratify that decision will be made by the PSD Investigating Officer (endorsed by at least an Inspector) to the Chief Officer as soon as practicable.

9.6 Reasons for suspension may include:

• Matters of potential gross misconduct.

• Where there is a serious breakdown in relationships between the individual and other close parties.

• To preserve evidence or prevent evidence being altered / amended / deleted.

• Where it is believed the individual may try to influence or prejudice the investigation.

• To protect the integrity of the Forces' systems.

• The public interest regarding the nature of the allegation and other relevant consideration requires that the member of police staff should be suspended.

• Where the individual has access to sensitive information, and it is believed it could be used inappropriately.

9.7 The terms of suspension will be confirmed in writing and should include a copy of the disciplinary policy and procedure following a meeting with the staff member and a member of their SMT.

The individual needs to be clear that the suspension is not a punishment, does not involve any prejudgment and that they will remail on full pay throughout the suspension period.

9.8 Suspension shall be reviewed regularly or as is appropriate by a Chief Officer. Those reviews will be documented, and any change will be communicated to the individual concerned.

10. Practice Requiring Improvement and Reflective Practice Review Process

10.1 Practice Requiring Improvement (PRI) and Reflective Practice Review Process (RPRP) offers an opportunity to be more focused on learning, development, and self-awareness, creating a culture of reflection rather than blame. The purpose of this process, and the introduction of PRI, is to capture matters that can appropriately be handled in a proportionate and constructive way and deal with them:

a) more quickly,

b) outside of the disciplinary process or unsatisfactory performance procedures, and

c) in a collaborative manner between a line manager and the individual with a focus on learning and improvement.

10.2 Definitions:

PRI means underperformance or conduct, not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the policing Code of Ethics; RPRP sets out the process that must be followed for handling practice requiring improvement.

10.3 PRI and RPRP do not constitute disciplinary proceedings and no action taken within the RPRP will constitute disciplinary action. It will not prevent or impact on the individual applying for promotion or a lateral move.

10.4 Examples of Reflective Practice actions may include:

• Proportionate remedial or restorative actions such as, apologising or engaging with those adversely affected.

• Training.

• Mediation.

• Shadowing or being mentored.

• More regular management or performance conversations or other forms of closer supervision.

• Referral for support or to Occupational Health and Wellbeing Service (OHWS).

• A reminder of the individual’s professional responsibilities and the importance of the Code of Ethics.

• Other proportionate action.

10.5 The RPRP is a genuine chance for self-reflection and learning and is a positive attribute which should be encouraged. It will allow the individual to engage and have input at every stage allowing them to reflect and the most appropriate actions to be taken.

10.6 There are three separate routes into RPRP.

• Local line manager intervention.

• Following PSD assessment of a complaint or internal conduct referral.

• As a discipline outcome at a misconduct meeting or hearing.

10.7 Guidance to support staff and line managers can be found by following the links below.

Surrey: Reflective Practice and Practice Requiring Improvement Guidance.

Sussex: Reflective Practice and Practice Requiring Improvement General Guidance.

10.8 Local Line Manager Intervention.

PRI and RPRP allow supervisors and managers to deal with low level misconduct or performance issues without referral to PSD.

The focus of PRI is learning and improvement and can be used for low-level one-off incidents where there has been a breach of the Code of Ethics or low-level breaches of the Police Staff Council (PSC) Standards of Professional Behaviour.

10.9 A low-level breach means behaviour that would not, if proven or admitted, justify a formal sanction of at least a written warning. Advice can be sought from People Services or PSD.

10.10 Recording Reflective Practice.

In order to ensure any action taken is captured, recorded and held centrally by the Reflective Practice Development Report must be completed by the line manager and discussed with the staff member concerned. The completed form must be submitted to PSD, and this will be recorded on the PSD Database (Centurion). This will ensure that a central record is held for the staff member concerned which can be reviewed by PSD should further issues come to light.

10.11 Following PSD assessment of a complaint or internal conduct referral.

Where PSD have assessed a public complaint, or internal conduct matter, as not amounting to either misconduct or gross misconduct they can direct the matter to be dealt with by RPRP. This decision will be made by PSD in consultation with the relevant individual's supervisor. The PSD AA may also require particular activities to be included within the RPRP to promote development and improvement, but these will be discussed with the line manager.

10.12 Discipline outcome at a misconduct Meeting or Hearing.

Where the Chair of misconduct proceedings finds the allegation(s) does not amount to either misconduct or gross misconduct, they may direct the matter to be dealt with under RPRP.

11. Formal Procedure

11.1 Severity assessment.

Where an allegation is made against an individual, a severity assessment will be made by Appropriate Authority within PSD as to whether the conduct (if proved or admitted) would amount to misconduct or gross misconduct.

11.2 The purpose of assessing whether a matter is potentially misconduct or gross misconduct is to allow the individual subject to the misconduct procedure to have an early indication of the possible outcome if the allegation is proven or admitted.

11.3 Where it is determined that the conduct if proved, would constitute gross misconduct or misconduct then the matter will be subject to a proportionate investigation.

11.4 Where there are outstanding criminal proceedings against the individual these will not normally delay the conduct investigation. The presumption is that action for conduct should be taken prior to or in parallel with any criminal proceedings. Please refer to section 26 'criminal investigations, charges, or convictions' for full information.

11.5 Where potential prejudice to any criminal proceedings is identified, advice will be sought as to whether it is appropriate to continue with an investigation into the matter.

11.6 If a decision is made that the matter amounts to misconduct and that RPRP is appropriate, then this can be done without the need to refer the matter to conduct proceedings.

11.7 In all other cases where RPRP is not appropriate, no referral to conduct proceedings will take place if this would prejudice the criminal proceedings.

11.8 Whether there appears to be an indication of misconduct or not, the Appropriate Authority may refer the matters to be dealt with under policies Attendance Management Policy (Surrey and Sussex) (950) / Performance and Gross Incompetence Management Policy (Surrey and Sussex) (1228) if this appears to be the most appropriate way of addressing the issues.

11.9 An assessment of conduct will remain the subject of continuous review throughout the investigation process and any changes will be notified to the staff member without delay.

12. Investigations

12.1 There will be an investigation of any alleged misconduct before any disciplinary action is taken. Any conduct investigation shall be proportionate to the nature and gravity of the allegations.

12.2 The aim of the investigation is to establish the facts without delay. Investigations will either be completed by staff from the IOPC or accredited members of staff from within PSD.

12.3 As soon as practicable after the investigation has been authorised, individual subject to investigation should be advised in writing of the identity of the investigator and the fact that an investigation is to be commenced.

This should be by way of a written notice including Terms of Reference which are clear and unambiguous, also setting out the nature and particulars of the conduct found to be unacceptable and a clear indication of the possible sanctions open to Forces should the conduct be proven to be below standards expected.

The individual will also receive a copy of the current Police Staff Disciplinary Policy along with a copy of the Employee Assistance Programme.

This notice should be served by a member of the individuals SMT in person, however, can be served by recorded delivery if the member of staff is not able to be visited in person. Recorded delivery should be the exception rather than the norm and the manager deciding to send the notices should provide PSD with rationale as to why this was done in order that this can be recorded within the PSD file. All police staff should be advised that all investigations will be conducted as expeditiously as possible.

Following service of the Notice of Investigation the employee will have 10 working days to provide a response (if they wish to). This can be extended with the agreement of the AA.

12.4 When an individual is notified, they are the subject of an investigation, they must notify the recruiting manager if applying for other roles within the Forces. This applies to any active application submitted prior to being notified and any application submitted after being notified.

12.5 Where the investigation is referred to or adopted by the IOPC the individual will be notified of the investigation via PSD.

12.6 It is sometimes necessary to delay notifications in 12.3 or 12.5 for good and sound operational reasons or to prevent prejudice to the investigation. Any decision not to inform the individual will be recorded and kept under regular review in order to avoid unreasonable delay in notifying the individual concerned.

12.7 Where it is necessary to speak with other members of staff who may be witnesses, they should be spoken to, and a written account taken with the Investigating Officer as soon after the event as possible.

12.8 All parties should aim to ensure the facts are established without delay. Should the individual who is the subject of the investigation, be unable to attend an investigative meeting or interview (for example due to sickness) then consideration should be given to allowing a short delay to the proceedings.

Where a staff member states they cannot attend a scheduled interview through sickness, medical evidence by Occupational Health will need to be obtained, a GP note will not always be acceptable evidence on medical grounds. A number of reasonable adjustments can be put in place to support the staff member if they are absent from work. Unfit to work will not always mean unfit to take part in an interview where reasonable adjustments are in place.

Where a staff member is unable to attend a scheduled meeting or hearing on the first occasion, due to illness or certified sickness, a second date will be scheduled. Where considered necessary the staff member will be required to attend Occupational Health for an assessment as to their fitness to attend a meeting or hearing.

Should the individual be unable to attend the rearranged meeting or interview then consideration should be given to alternative methods, for example dealing with the matter through correspondence or moving ahead with the investigation on the information available. This does not affect the individual's rights of being offered reasonable adjustments throughout the process where appropriate due to a disability.

13. Investigation Interview / Written Response

13.1 It will not always be necessary to conduct a formal interview with the individual who is the subject of the investigation.

13.2 In some cases, particularly involving low level misconduct cases, it may be more appropriate, proportionate, and timely for a written account from the individual concerned to be provided. In all cases where this option is adopted, the written response together with any supporting documentation should be provided by the individual to the investigator within 10 working days, commencing the first working day following service of the formal notice of the investigation. The Investigating Officer will then consider whether or not an interview is also necessary.

13.3 Where an interview with the individual concerned is necessary the investigator and the individual concerned should agree a date and time for the interview within a reasonable timeframe which, where appropriate, may be in consultation with the Trade Union Representative or workplace colleague.

13.4 If no agreement can be reached then the investigator may specify a time and date, giving at least 5 working days' advance notice. If the individual concerned, their Trade Union Representative or workplace colleague is not available on the specified date, then the interview can be postponed to a time proposed by the individual concerned provided it is reasonable and within 5 working days of the specified date.

13.5 All interviews or proceedings for matters that are subject to conduct / behaviour will in the normal course of events be audio recorded and take place within each Force's premises. If an investigator wishes to interview an individual on a premises not part of the Force' estate, this can only be conducted with the individual's consent.

13.6 A full transcript of the interview and/or a copy of the interview recording will be provided if misconduct proceedings are pursued. Copies of any interview recording will be made available on request.

13.7 On the rare occasion an interview is not audio recorded it will be recorded contemporaneously at the time of the interview. Full documentation of the interview will be provided at the conclusion of the interview and an opportunity to correct alter or add anything given to the individual.

13.8 In advance of the interview the Investigating Officer will provide the staff member with a 'Notice of Disclosure', and sufficient evidence relevant to the matter to allow them to prepare for the interview. The aim of the disclosure is to allow a productive interview process in order for an account to be gained concerning the misconduct allegation/s.

A disclosure pack could include:

- Statements.
- ICADS.
- Call records.
- Computer Audits.

This list is not exhaustive, and redactions are acceptable if required. If there are sensitivities regarding disclosure, the PSD Investigating Officer can invite the member of staff or their representative to view the disclosure within the PSD office in order to maintain secure storage. This should be arranged at a mutually convenient time in advance of the interview enabling the employee to prepare for interview.

14. Investigation Report and the AA's Determination

14.1 At the conclusion of the investigation the Investigator shall produce a report to the AA with sufficient detail that a determination can be made.

14.2 Upon receiving the investigator's report, the AA shall as soon as reasonably practicable inform the individual concerned of its determination. If this has not been carried out within 15 working days of the completion of the investigation, then the AA will notify the individual concerned together with reasons why a determination has not been made.

14.3 Where the IOPC are the investigatory body this determination process will be slightly different, as such guidance and timescales will be provided by the IOPC and PSD will facilitate contact if required.

14.4 Where it is determined that there is no case to answer, the AA may,

- Take no further action.
- Refer the matter to RPRP.
- Refer the matter to Unsatisfactory Performance Procedures (UPP).

14.5 Where it is determined that there is a case to answer in respect of misconduct, the AA may,

- Take no further action.
- Refer the matter to RPRP.
- Refer the matter to UPP.
- Refer the matter to misconduct proceedings.

14.6 Where it is determined that there is a case to answer in respect of misconduct and the behaviour would justify at least a written warning then the matter will be referred to a misconduct meeting. (Also refer to 15.4-15.5).

14.7 Where it is determined that there is a case to answer in respect of gross misconduct then the case shall be referred to a misconduct hearing. (Also refer to 15.4-15.5).

14.8 Where the decision is that the matter is to be referred to misconduct proceedings the AA shall, as soon as reasonably practicable ensure the individual concerned receives a written notice with the following information,

• Notification of the referral to a misconduct meeting or hearing.

• Details of the alleged conduct and whether it is considered to amounts to misconduct or gross misconduct.

• The name of the person(s) appointed to conduct the misconduct meeting or hearing and the People Services advisor to it.

• Make full disclosure of all statements and documentation collected by the Investigating Officer.

• Advise the right to be accompanied.

14.9 Timeliness of Investigation – if the relevant time period for an investigation is exceeded the AA must explain why, and what enquiries are outstanding to the employee and to the OPCC. The relevant time period is 12 months, then each subsequent 6 months.

Where a determination is made that the matter will progress to a misconduct meeting, this shall take place within 20 days of the notice to progress is provided to the employee. Where the matter is to progress to a Gross Misconduct Hearing, this shall take place within 30 days of the notice to progress being provided to the employee. This timeframe can be extended by the Chair having heard representations from the AA, employee, or their representative.

Conduct investigations may also take longer where the conduct has been identified through a complaint investigation as the complainant may have a right of appeal. Where the guidance dictates, this may be an IOPC right of appeal in accordance with Paragraph 25 Schedule 3 Police Reform Act 2002. Where the AA decides that there is a case to answer for conduct, the complainant only has a right of appeal against misconduct, not gross misconduct, and any proceedings under the Police Staff Disciplinary Procedure will take place before the appeal is finalised.

The staff member (and their Trade Union Representative) must be notified of any extension and the reasons for it.

15. Misconduct Meetings and Hearings

15.1 Standard of Proof.

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(s) conducting the meeting / hearing is / are satisfied by the evidence that it is more likely than not that the conduct occurred. The balance of probabilities is a single unvarying standard (i.e., there is no sliding scale).

15.2 The more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding, the more persuasive (cogent) the evidence will need to be in order to meet that standard. This does not mean that the standard is higher. It means only that the inherent probability or improbability of the conduct occurring is itself a matter to be considered and taken into account when weighing the probability and deciding whether on balance the conduct occurred.

15.3 Therefore, in making a decision whether the alleged conduct of an individual is proven or not, the person(s) conducting the misconduct meeting / hearing will need to exercise reasonable judgement and give appropriate careful consideration to the evidence.

15.4 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 individual 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 without notice.

15.5 It is important that misconduct hearings are only used for those matters of serious nature or where the individual has a live final written warning and has potentially committed a further act of misconduct. The term “serious” has the meaning that if the misconduct alleged is so serious that it is genuinely considered that if proven or admitted, dismissal from the police service would be justified.

15.6 It is intended that all misconduct meetings and hearings will be audio recorded. Whilst the individual (or their representative) can take their own notes, it is not permitted for them to record the meeting via digital media (recorders, smart phones etc.).

15.7 Where an individual is absent from work for health reasons, this does not necessarily preclude them attending a meeting or hearing and a range of reasonable adjustments will be considered. Depending on the circumstances a meeting can proceed in their absence. Suitable advice from Occupational Health may be taken were appropriate.

15.8 In such circumstances an employee’s representative can represent the individual in their absence where there is medical evidence supplied from Occupational Health which specifically establishes that the individual is incapable of answering questions or dealing with issues either by correspondence or by attendance at a hearing taking account of the particular circumstances.

15.9 In the event an individual on sickness absence declines to attend a misconduct hearing, consideration will be given as to whether this is acceptable in the circumstances. If it is accepted that they cannot participate on these grounds, the hearing may be postponed for a short period of time at the Chair’s discretion. In the event that the individual declines to attend the rescheduled meeting / hearing, a decision will be taken by the Chair of the hearing, as to whether to hold the hearing in their absence (or by correspondence).

15.10 Where an individual is persistently unable or unwilling to attend a misconduct hearing the Chair may make a decision on the evidence available. Holding a meeting by correspondence may be considered by the Chair in exceptional circumstances.

15.11 An appropriate level of management will be selected to chair a meeting, hearing or appeal hearing as set out below.

15.12 Where for operational or organisational reasons, the appointed Chair becomes unavailable to conduct a meeting or hearing, an alternative will be sought but in the event one cannot be found, the Forces reserve the right to postpone the hearing to another date as soon as reasonably practicable.

15.13 Misconduct hearings will be chaired according to the table below:

Conduct Level.	**Meeting / Hearing Management Level.**
Misconduct Meeting.	Chief Inspector / Staff equivalent.
Misconduct Hearing.	Superintendent (Chair), or Staff equivalent, People Service's Casework Consultant.
Misconduct Appeal.	At least one grade higher than misconduct Chair unless exceptional circumstances apply.

15.14 The principle is that the Chair of any meeting or hearing is at least one grade higher than the individual attending the meeting / hearing unless exceptional circumstances apply.

While any officer or staff member of the appropriate rank may be used for any hearing or meeting PSD may request a chairperson with certain knowledge, skills or experience based on the nature of the conduct matters to be heard e.g., a Chair with knowledge of criminal investigation may be required for matters pertaining to criminal investigations.

15.15 A People Service’s Casework Consultant may attend to advise on Employment Law and/or procedural matters only.

15.16 Following service of the notice of referral to a meeting / hearing the individual concerned may object to the person(s) appointed to conduct the meeting / hearing or any person named who will advise at the meeting / hearing. Any objection must be in writing and is required to provide a specific rationale, this must be submitted to PSD within 3 working days commencing the first working day following service of the referral notice, setting out the grounds for objection. The AA (or their deputy) will notify the individual concerned whether it upholds or rejects the objections. If the objections are upheld the person(s) to whom the individual concerned objects will be replaced.

15.17 Generally speaking, a meeting / hearing will be conducted without witnesses and according to the rules of natural justice. There is a presumption that witnesses will not be required to give evidence at a meeting / hearing. Where witnesses are required to attend, they will be given written notice that their attendance at the meeting / hearing is considered necessary.

15.18 The staff member will receive notice of the meeting / hearing date as soon as practicable. The Investigating Officer will provide, at least 5 (working) days before the meeting / hearing, copies of all documents which, in the opinion of the AA, should be considered at the meeting / hearing. The staff member must submit any documents which they intend to rely on at the meeting / hearing to the Investigating Officer at least 3 (working) days before the given date. They are also entitled to be accompanied at the meeting / hearing by an employee colleague or a Trade Union Representative.

15.19 Where there are proposed witnesses the individual and the investigator concerned will submit their details to the AA who will supply the list to the person(s) conducting the meeting / hearing. The list will include brief details of the evidence the witnesses are able to provide and their name unless it is agreed that the witness will remain anonymous (exceptional cases only).

Where the Investigating Officer wishes to call witnesses the staff member will be given notice of this no later than 5 working days before the meeting or hearing.

15.20 The person(s) conducting the meeting / hearing will,

- Consider the list of proposed witnesses.
- Determine if any witness should attend the meeting / hearing.
- Complete a written rationale and inform the individual and investigator concerned of the reasons why the request for any witness to attend has been accepted or rejected.

15.21 Misconduct meetings or hearings should be arranged as soon as reasonably practicable taking into consideration the circumstances of the case.

15.22 When an individual has been dismissed, PSD will send the College of Policing (CoP) a notification within 5 working days of the dismissal of finding. When this dismissal is as a result of any other reason than gross misconduct, People Services will be responsible for updating PSD who will submit the report on behalf of the Force. The CoP will then include the individual on the barred list.

16. Misconduct Meetings involving complaint cases

16.1 In cases where the misconduct to be considered was identified as a direct result of a complaint, then any decision by the AA to hold a meeting / hearing may be subject of appeal by the complainant.

16.2 Paragraph 25 Schedule 3 Police Reform Act 2002 sets out what information is needed to be considered where a complaint is about misconduct or gross misconduct.

16.3 The individual concerned should therefore be informed of the determination to proceed to a misconduct meeting or hearing but also informed that the AA’s decision could be subject of appeal by the complainant to the IOPC.

16.4 The AA should then wait until either the 28-day period that the complainant may appeal has elapsed or an appeal has been received and decided by the IOPC, before proceeding with a misconduct meeting.

16.5 Where a matter is to be referred to a misconduct hearing, then those proceedings may proceed without the need to wait to see if an appeal is made by the complainant.

16.6 Police staff misconduct procedures are private matters between the employer and the individual. However, Home Office guidance states that where the matter being heard was as the result of a complaint, the complainant or interested party will have the right to attend. However, the Chair has the right to impose conditions on those attending or exclude those wishing to attend. The complainant or interested party may also be accompanied by one other person. All decisions must be in line with the rules of natural justice.

17. Complaints and IOPC

17.1 Some incidents result in a mandatory referral to the IOPC due to certain statutory referral criteria being met. For example, in cases where there are criminal or conduct allegations, allegations relating to discrimination, sexual offences, fraud or corruption (including Abuse of Position for a Sexual Purpose), serious crime or conduct linked to a death or serious injury (DSI) to a member of the public (see below for more detail on DSI).

17.2 Sometimes an investigation starts because a death or serious injury has occurred to a member of the public that the police were dealing with. An example is someone who is detained in our care who go on to be injured. Serious injury is defined as Actual Bodily Harm so the threshold is quite low for referral.

18. Workplace Resolutions Relating to Misconduct Cases

18.1 In the course of a misconduct case, an employee may raise a workplace concern that is directly related to the case. It may be appropriate to suspend the disciplinary procedure for a short period until the workplace concern can be considered.

With advice from People Services in consultation with PSD, a decision may be taken to run the two processes concurrently at the outset or at any point thereafter. The individual will have to raise their workplace concern in accordance with the Workplace Resolution Policy (Surrey and Sussex) (796).

In a minority of cases where a workplace concern is raised prior to any appeal stage of the disciplinary procedure, it will be possible to consolidate the two procedures.

19. Conduct Action against Trade Union Representatives

19.1 The ACAS Code of Practice stipulates that where disciplinary action is being considered against an individual who is a Trade Union Representative, then the normal procedure should be followed. However, the case should be discussed after seeking the staff member’s agreement with a full time official of the Union at an early stage.

19.2 Therefore, when a misconduct matter is raised in relation to a Trade Union Representative, advice must be sought from People Services before commencing the disciplinary procedure.

20. Outcome of Meetings / Hearings

20.1 If the Chair conducting the meeting / hearing finds that the individual's conduct did fail to meet the required standard of conduct, then they will then determine the most appropriate outcome.

20.2 In considering the question of outcome the Chair 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 individual's record of service, including any previous live misconduct outcomes.

20.3 A previous written warning is 'live' for the purposes of misconduct proceedings if it had not expired on the date upon which the report of the alleged misconduct or gross misconduct is received and assessed and not the date upon which the actual misconduct meeting or misconduct hearing is held.

20.4 The person conducting the proceedings is also entitled to take account of any early admission of the conduct on behalf of the individual concerned and attach whatever weight to this as they consider appropriate in the circumstances of the case.

20.5 In addition, the individual concerned and their Trade Union Representative or workplace colleague should be given the opportunity to make representations on the question of the most appropriate outcome of the case.

20.6 The person conducting the proceedings shall provide a written notice of the finding and outcome to the individual concerned as soon as practicable after the conclusion of the meeting / hearing. The written notice shall set out the finding of the person conducting the meeting / hearing, any disciplinary outcome imposed and the right to appeal against the finding and/or outcome.

In all dismissal cases the staff member will be informed of the reasons for the dismissal, the date which their employment contract will terminate, the appropriate period of notice (where applicable) and their right of appeal.

20.7 At the end of the misconduct meeting or hearing the Chair will advise if a decision can be reached that day or will inform the individual of when a decision should be reached. In either case, the decision will be confirmed in writing within 5 working days of the outcome hearing.

20.8 PSD will publish anonymised outcomes from misconduct proceedings on routine orders to help educate the wider workforce and promote improved standards in line with the PSD communications strategy.

21. Misconduct Meeting / Hearings - Outcomes available

21.1 Meetings.

The following are the possible outcomes available to the Chair,

- No Further Action.
- Reflective Practice.

• Referral to UPP.

• First Written Warning (Live for - 12 months from the date of the meeting).

• Final Written Warning (Live for - 18 months from the date of the meeting).

21.2 Misconduct Hearing.

The outcomes available to the Chair of a misconduct hearing are the same as those available to the misconduct meeting with the addition of the following,

• Dismissal without Notice – dismissed with immediate effect.

• 24 Months final written warning for a finding of gross misconduct but not dismissed.

In exceptional circumstances and with reference to the Head of People Operations, People Services the following outcomes are available to the Chair:

• Demotion to a lower graded post if such a suitable post is available, subject to vetting clearance (this would be in very rare and exceptional circumstances).

• Disciplinary Transfer to a suitable alternative post for a set or indefinite period.

• Pay back of monies owed or time – an example of when this sanction may be appropriate when a person has received overpayment of salaries / allowances / leave.

21.3 Written warnings shall remain “live” on the personal file of the individual concerned for the specified period shown above. At the end of the designated period the warning will be deemed to be spent.

21.4 A “live” warning may have the effect of moving any subsequent conduct matter to the “final” warning or dismissal stage.

21.5 Final Warnings remain “live” for 24 months for a finding of gross misconduct, as an alternative to dismissal. A further conduct matter which comes to light while the warning is in place may result in the dismissal of the individual. That consequence needs to be made very clear in all communications with the individual.

21.6 In the case of both meetings and hearings and in exceptional circumstances a further outcome may be a disciplinary transfer and/or a demotion to a lower graded post (subject to vetting clearance). If this outcome is to be considered, then consultation with the Head of People Operations, People Services must be undertaken in the first instance before any sanction is stated to the individual.

21.7 Whilst a written warning is still ‘live’ this may affect any entitlement to an annual pay increment for 12 months from the sanction given and the individual will not normally be permitted to apply for other roles for the first 12 months of any sanction with the only exceptions to this:

• A member of staff whose role is vulnerable due to redundancy.

• Where a duty has been established under Section 20 of the Equality Act 2010 that application for other roles should be considered a reasonable adjustment because the staff member is no longer able to continue in their substantive post due to disability as defined under the Act.

Any live Misconduct sanctions will however be considered in the selection process.

21.8 Pay back of monies owed or time – an example of when this sanction may be appropriate when a staff member has received overpayment of salaries / allowances / leave.

Outcome.	**Live Period.**	**Other Implications.**
NFA.	Nil.	Nil.
RPRP.	Nil.	Nil.
First Written Warning.	12 Months.	• Annual increment will not be paid. • May not be able to apply for another role.
Final Written Warning.	18 or 24 Months (dependant on whether this is a finding for gross misconduct and not dismissed).	• Annual increment will not be paid for 12 months. • May not be able to apply for another role for 12 months. • Disciplinary Transfer. • Demotion to lower graded post. • Payback of monies and/or time.

22. Appeal

22.1 All Appeals against the findings of a misconduct meeting or hearing will be heard by at least one level of management / police officer rank up from meeting or hearing the Chair. PSD administrative team will seek a suitable Chair and notify People Services in order that a consultant can be allocated.

22.2 An appeal is not a repeat of the hearing. Individuals have the right to appeal against the outcome of a meeting or hearing and may do so by writing to the nominated post holder as reasonably practicable and within 5 working days of receipt of the misconduct meeting / hearing outcome, setting out their grounds for appealing against the decision.

The Chair must decide whether the decision was reasonable in finding the allegation proven and then assess whether the sanction is appropriate from the sanctions available for the relevant meeting / hearing.

22.3 An appeal can only be raised on the following grounds,

• That the finding or disciplinary sanction imposed was unreasonable.

• That there is new critical information that could not reasonably have been considered at the misconduct meeting / hearing.

• That there was a serious breach of the procedures or other unfairness which could have affected the outcome.

22.4 The hearing will be recorded, and this will be arranged by the PSD administrative team. On request of the staff member or union representative, PSD will provide access to the recording of the proceedings to aid in considering whether to make an appeal and in what terms. If this is impracticable, PSD will provide a transcript.

22.5 An appeal must be in writing. The appeal should include,

• A written statement stating the facts and other circumstances on which they will rely on at the appeal hearing and any matters relating to the procedure with which they may be dissatisfied.

• Any names of witnesses they intend to call.

• Copies of any documents which they intend to place before the Chair.

22.6 An appeal hearing will take place as soon as reasonably practicable, normally within 20 working days of receipt of the letter.

The staff member may be accompanied at the appeal hearing (as for interview / hearing). PSD administrative team will undertake all the administrative support in room booking, sending invites, etc.

22.7 The outcome of the appeal will be confirmed in writing as soon as reasonably practicable and normally within 5 working days of that hearing. The Chair will provide the written adjudication to the PSD administrative team who will ensure it is appropriately disseminated.

23. Appeal Outcomes

23.1 The appeal hearing may, in very exceptional circumstances increase any sanction.

23.2 The appeal hearing may also confirm, decrease, or rescind the original disciplinary sanction.

23.3 Where the appeal has been against dismissal, if the decision to dismiss is upheld, the effective date of termination shall be the date on which the original dismissal took place.

24. Conduct and Vetting

24.1 The National Vetting Codes of Practice 2023 and Authorised Professional Practice Vetting Code of Practice 2021 sets out the requirement for a review of vetting following misconduct.

24.2 When misconduct proceedings have concluded and the individual is not dismissed but has been issued with a written warning or a final written warning, a review of vetting clearance should be carried out. The review includes a consideration of the individual's suitability to maintain the level of clearance held and to continue in the post they occupy.

24.3 The above review will take the form of a panel chaired by the Head of PSD (or in their absence their deputy) and will take place as soon as practicable after the misconduct outcome. Those in attendance should include Joint Force Vetting Manager, the subject's supervisor and/or head of department, the relevant People Services representative and the subject's union representative.

24.4 The Panel outcomes can include placing conditions on a subject's existing vetting clearance, removal from their existing post / role, temporary suspension, or total removal of their vetting clearance.

24.5 The individual may appeal the panel's decision if certain criteria apply (for details refer to the Code of Practice APP and the Joint Force Vetting Policy (Surrey and Sussex) (592)). Such appeals must be submitted within fourteen days of the panel decision. In these circumstances the appeal will be considered by the DCC and a decision made within twenty-eight days.

25. Advisory and Barred Lists

25.1 Policing and Crime Act 2017 makes provisions for the Police Barred List and the Police Advisory List.

25.2 The Police Advisory List is intended to act as a vetting tool for forces and specified law enforcement bodies to flag up individuals who are currently under investigation for matters which could lead to dismissal, or designated volunteers who had had their status withdrawn. It also includes a list of all individuals who have resigned or retired during an investigation or who leave before an allegation comes to light. The advisory list is not published.

Should a member of police staff choose to resign or retire whilst under investigation for gross misconduct, PSD will send a report to the College of Policing (within 5 working days of the individual leaving the Force) and the individual will be included on the advisory list.

If a member of staff or an officer (former officer / Special Constable for example) is included on the advisory list, this may affect their vetting status causing their employment to be reviewed.

This will not apply where the individual was subject to an investigation which concluded that no disciplinary proceedings should be brought and subsequently leaves the Force. Individuals will only be included on the advisory list where the allegation against them relates to conduct, efficiency or effectiveness and could have led to their dismissal if they had not retired or resigned.

If there is a finding which is less than dismissal, it is determined that no disciplinary proceedings will be brought (for example where a Force decides that a post-employment hearing will not be held) or the proceedings are withdrawn, PSD will make a 'further report' to the College of Policing, within 5 working days, to remove the person from the list.

25.3 Policing and Crime Act 2017 establishes that individuals who are dismissed from their role following a conduct, performance, or attendance issue, will be placed on the Barred List. The College of Policing maintain the list, this is available to the public, but will only display police officer details; police staff names are not publicly available.

25.4 Where an individual is dismissed during their probationary period for a reason unrelated to conduct, they will not be placed on either list but issues relating to conduct will result on entry to the relevant list.

25.5 Whilst included on the Barred List, an individual is prevented by law from re-joining Home Office police forces and certain law enforcement bodies including the IOPC, His Majesty's Inspectorate of Constabulary Fire and Rescue Service (HMICFRS) and any Office for a Police and Crime Commissioner (OPCC).

25.6 An individual will be unable to be employed in a police staff role if dismissed as a Special Constable or hold a role as a Special Constable if dismissed from employment in a police staff role.

25.7 After a period of time removal from the lists is possible by appealing to the College of Policing. Further information can be obtained from the College of Policing.

25.8 When police staff could be named on the Barred list.

Any individual who is dismissed from a position within policing becomes a barred person and is included on the barred list as a result of their dismissal. This will therefore include:

• Individuals dismissed under the Conduct Regulations with a further finding of misconduct.

• Individuals dismissed under the Conduct Regulations with a further finding of gross misconduct.

• Individuals dismissed under the Performance Regulations with a finding of gross incompetence.

• Individuals dismissed under the Performance Regulations with a finding of unsatisfactory performance.

• Individuals dismissed under the Performance Regulations with a finding of unsatisfactory attendance.

• Police staff members dismissed in any of the above circumstances under the equivalent local procedures used in Force.

25.9 Where an individual resigns or retires during the course of an investigation PSD must be informed without delay. Depending on the circumstances of the investigation the discipline process may still continue to a meeting or hearing. This may result in the individual being included on the Barred and Advisory List.

Individuals will be notified, in writing, where misconduct proceedings will be pursed following their resignation from the Force.

An employee who has resigned or retired cannot be compelled to attend a disciplinary hearing post-employment however the employee can attend and will be informed of the time and date in the same way as if they remained in the organisation. If an individual refuses to attend the hearing, the hearing can take place in their absence. This will happen as per the policy above whereby the individual would have received a notice of the allegations against them and been given the opportunity to respond to the allegations. Following the procedure, the individual will be supplied with their right of appeal.

Staff members who resign or retire during the course of an investigation will be included on the police advisory list – see below. If a post-employment procedure is run and the employee would have been dismissed had they still been employed, they will be moved to the Barred List.

25.10 For frequently asked questions refer to the Police Barred List and the Police Advisory List (FAQ).

26. Criminal investigations, charges or convictions

26.1 A criminal investigation, charge or conviction for any type of offence may result in misconduct proceedings being taken against an individual where, in the opinion of Forces, the investigation, charge or conviction is such as to affect, or be likely to affect, the suitability of the individual for the position in which they are employed, or the business or reputation of Forces, or where the existence of the investigation, charge or conviction could, in the opinion of Forces, otherwise seriously undermine the trust and confidence that the organisation has in the individual.

Proceeding with a Gross Misconduct Hearing in these circumstances may only be used if the AA determines that the following conditions have been satisfied:

1) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that the conduct of the staff member concerned constitutes gross misconduct, and

2) it is in the public interest for the employee concerned to cease to be employed by the Force without delay.

26.2 Where criminal issues are a feature, if there is reasonable belief based on the facts that the circumstances render the individual's continued employment incompatible with the impact to their role, disciplinary action may be taken up to and including summary dismissal.

26.3 The Forces reserve the right to proceed with the disciplinary process ahead of the conclusion of any criminal case unless the AA deems that continuing with proceedings would prejudice the criminal investigation and/or procedures.

• A Gross Misconduct Hearing will only be convened in circumstances, where a staff member has been summonsed or charged with a criminal offence (not necessarily related to work) or where criminal proceedings against them have been, or are being considered or, the alleged conduct is so serious so as to be incompatible with the staff member's continued employment with the Forces.

• Where these circumstances are met, the staff member will be served with written notice informing them of this. The assessment as to whether these circumstances are met should be made by the AA based on the evidence and the conduct criteria, the criminal outcome should not be considered as relevant in this decision making as the alleged conduct must be so serious as to be incompatible with ongoing employment with Forces.

• The staff member will also receive written notification of the date and time of any proposed hearing (as per the procedure for gross misconduct) and given the opportunity to provide a written response to the allegations within 5 working days receipt of the notice. An interview may not be deemed necessary due to the irrefutable evidence and in order not to compromise any ongoing criminal proceedings.

• Where, before the commencement of a hearing in these circumstances, the AA considers that a particular witness whose evidence to the case is disputed must be called to give oral testimony, the matter may be remitted back for standard procedures upon their direction.

• The hearing will be chaired by an officer of at least the rank of Superintendent (or police staff equivalent).

• The hearing will consider the evidence (and any written response) and provide the staff member with the opportunity to respond to the allegations before the Chair decides on the matter.

• The staff member will be informed in writing of the findings within 5 working days of the decision.

• If the staff member does not attend, the hearing will continue in their absence, but representations may still be made by a chosen representative or in written form.

26.4 Information obtained in a criminal investigation may be used to support an internal conduct investigation, but the criminal investigation will not replace the need for any disciplinary investigations, including meetings.

26.5 Individuals must advise their line manager (or PSD direct) if they are subject of a criminal investigation or charged with a criminal offence.

26.6 Line managers must seek advice from PSD if they become aware of individuals being the subject of a criminal investigation or charged with a criminal offence.

26.7 Recording of Crimes in cases where an allegation of crime is made against a police officer or a member of police staff in the execution of their duty.

It is recognised that by the very nature of their work officers and staff will be the subject of complaints. Many of them are shown to be false or malicious or are determined have been lawful actions, such as in cases where the use of force is questioned. It is not the intention to record as crimes all such allegations unless or until it is determined there is a criminal case to answer. There is no requirement to record such matters within the general National Crime Recording Statistics (NCRS) provisions within 24 hours of the report being made.

The point at which a crime will be recorded will be when:

• The Appropriate Authority determines that there may be a case to answer criminally and requests Crown Prosecution Service advice; or

• The Appropriate Authority determines, in accordance with the Director of Public Prosecutions (DPP) Charging Guidance, that a charge or summons or out of court disposal should be issued in relation to a criminal matter; or

• The Appropriate Authority determines, on the balance of probabilities, that there is a case to answer for misconduct or gross misconduct and the nature of the conduct is such that it would amount to a notifiable offence for the purposes of Home Office Counting Rules (HOCR).

It is important that we record accurate data in the records we hold about protected characteristics. This data is critical to delivering outstanding public service because it deepens our understanding of what our communities demand from us, what response we currently give and where we need to improve. Protected characteristics can be defined as age, gender, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, disability, race (including colour), nationality, ethnic or national origin, religion or belief and sexual orientation.

Mandatory Flags

Some crime data is flagged by the Home Office. There are Hate Crime, Metal Theft, Domestic Abuse, Online Crime, Child Sexual Abuse, Child Sexual Exploitation, Alcohol, Corrosive Based Substances and Honour Based Abuse. There is detail which supports each of these important flags at https://www.gov.uk/government/publications/counting-rules-for-recorded-crime.

For more information refer to

Surrey: Crime Recording Policy

Sussex: Crime and Incident Disposal, Recording and Auditing Policy (757)

The Appropriate Authority is as defined in The Police (Conduct) Regulations 2020. "Any allegation of a crime against a police officer or member of police staff which solely relates to their off duty activities or is other than in the execution of their duties should be dealt with in accordance with the NCRS and the Counting Rules".

Clarification

• The term 'police staff' includes any non-sworn employee of a Force and will include Police Community Support Officers (PCSOs) and Custody Detention Officers as well as staff employed in other roles.

• Where criminal offences are being covertly investigated, notwithstanding a formal assessment of criminal conduct there is no requirement to record a crime until such time as the investigation progresses to a formal stage.

27. The IOPC in Police Staff Conduct Matters

27.1 Statutory guidance issued by the IOPC states that police staff can be subject of investigation by virtue of Section 12(7) of the Police Reform Act 2002.

27.2 Paragraph 13, Schedule 3, Police Reform Act 2002 dictates that PSDs must refer certain conduct matters that must be referred to IOPC, these are matters that:

- Relate to any incident or circumstances in or in consequence of which a person.
- Has died or suffered serious injury.
- Fall within the mandatory referral criteria, or
- The IOPC notifies the Appropriate Authority that it requires the matter to be referred.

27.3 Police staff are included in the provisions contained in the Police Reform Act 2009, Police and Social Reform Act 2011 and Police (Complaints and Misconduct) Regulations 2020.

27.4 This means that it is possible that the IOPC will investigate matters that relate to conduct of police staff, and they have the powers and authority to do so which is different to any other occupation. However, they must follow the policy and procedures of the employer in order to conduct their enquiries. It is important to recognise that this type of investigation is unlikely to meet the time limits that internal investigations strive to adhere to.

27.5 Where the IOPC investigates a matter referred to them it is possible that they may present the case to the Chair or be present when PSD present the case on their behalf. The IOPC will be kept informed of any disciplinary action taken against the staff member as a result of any form of input from the IOPC (Paragraph 27(9) Schedule 3 Police Reform Act 2002).

27.6 Where a complaint about a member of Police Staff is made by a member of the public the matter will be dealt with under the terms of guidance issued under section 12(7) Police Reform Act 2002. Police staff are included in this guidance.

28. Useful Guidance

28.1 College of Policing – Code of Ethics

Provision of Employment References to Prospective Employers Policy (Surrey and Sussex) (1175)

Attendance Management Policy (Surrey and Sussex) (950)

Performance and Gross Incompetence Management Policy (Surrey and Sussex) (1228)

Joint Force Vetting Policy (Surrey and Sussex) (592)

Business Interests and Additional Work Policy (Surrey and Sussex) (965)

Workplace Resolution Policy (Surrey and Sussex) (796)

Welfare Officer Guidance

Team: Professional Standards Department