SCOTTISH STATUTORY INSTRUMENTS

2013 No. 62

The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

PART 3

Misconduct hearings

Arrangement of misconduct hearing

16.—(1) This regulation applies where the Authority has referred a case to a misconduct hearing.

(2) The Authority must, not less than 20 working days before the date of the misconduct hearing, send a misconduct form to the senior officer.

(3) A misconduct form sent in accordance with paragraph (2) must give notice of—

(a) the date, time and location of the misconduct hearing;

(b) the conduct forming the subject matter of the misconduct allegation;

(c) in summary, the facts established by the investigator;

(d) why, in the Authority's opinion, it can be inferred from the established facts that the conduct which is the subject matter of the misconduct allegation amounts to—

(i) misconduct; or

(ii) (as the case may be) gross misconduct;

(e) the senior officer's right to seek advice from a staff association;

(f) the effect of regulations 4 and 5;

(g) the senior officer's right to provide a statement, either orally or in writing, in response to the misconduct form not more than 15 working days from the date of receipt of that form; and

(h) the names of the members of the panel.

(4) The Authority must send with the misconduct form—

(a) copies of any statements made by the senior officer during the investigation; and

(b) unless paragraph (8) applies, a copy of—

(i) the report submitted by the investigator in accordance with regulation 14(1)(b); and

(ii) any other relevant documents obtained during the course of the misconduct investigation.

(5) Not more than 15 working days from the date of receipt of the misconduct form, the senior officer must provide to the Authority written notice of whether the senior officer accepts that—

(a) the conduct which is the subject matter of the misconduct allegation is conduct of the senior officer; and

(b) that conduct amounts to misconduct or (as the case may be) gross misconduct.

(6) A notice provided under paragraph (5) must give the senior officer's account of the circumstances giving rise to the misconduct allegation and must include—

(a) in a case where the senior officer accepts that any conduct of the senior officer amounts to misconduct or (as the case may be) gross misconduct, any written submissions in mitigation;

(b) in a case where the senior officer does not accept that any conduct of the senior officer amounts to misconduct or (as the case may be) gross misconduct, details of any allegation or allegations which the senior officer denies; and

(c) in every case details of any legal arguments (if any) the senior officer wishes the panel to consider.

(7) The senior officer must send with the notice sent under paragraph (5) a copy of any document or other information on which the senior officer intends to rely at the misconduct hearing.

(8) This paragraph applies where the Authority considers that preventing the disclosure of any document mentioned in paragraph (4)(b) is—

(a) necessary to avoid prejudicing current or future criminal proceedings;

(b) necessary in the interests of national security;

(c) necessary for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders;

(d) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff;

(e) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or

(f) otherwise in the public interest.

(9) Where any document is withheld by virtue of the application of paragraph (8), the Authority must, so far as is reasonably possible without prejudicing any of the matters mentioned in that paragraph, provide the senior officer with a summary of the content of that document.

Witnesses

17.—(1) As soon as reasonably practicable before the misconduct hearing—

(a) the Authority must—

(i) provide to the senior officer a list of witnesses whom the Authority intends will give evidence at the misconduct hearing together with brief details of the evidence each witness is able to adduce; or

(ii) notify the senior officer that it does not intend that any witnesses will give evidence; and

(b) the senior officer must—

(i) provide to the Authority a list of witnesses whom the senior officer intends will give evidence at the misconduct hearing together with brief details of the evidence each witness is able to adduce; or

(ii) notify the Authority that the senior officer does not intend that any witnesses will give evidence.

(2) The Authority must make arrangements for the attendance at the misconduct hearing of any witnesses specified in a list mentioned in paragraph (1).

Appointment of panel

18.—(1) The Authority must appoint a panel of 3 individuals to conduct the misconduct hearing.

(2) A panel appointed under paragraph (1) must comprise—

(a) a chairing member who is—

(i) a member of the Authority; or

(ii) a member of the Authority's staff;

(b) one member who is—

(i) a member of the Authority;

(ii) a member of the Authority's staff;

(iii) a member of any committee of the Authority established under paragraph 9(1) of schedule 1 to the Act; or

(iv) any other individual the Authority considers appropriate, based on that individual's skills, knowledge and expertise; and

(c) one member who is—

(i) an individual considered appropriate by the Authority, based on that individual's skills, knowledge and expertise;

(ii) not a member of the Authority;

(iii) not a member of the Authority's staff; and

(iv) not a member of any committee of the Authority established under paragraph 9(1) of schedule 1 to the Act.

(3) The Authority may not appoint to a panel—

(a) a senior officer;

(b) a constable working directly under the management of the senior officer; or

(c) any other individual whose appointment could give rise to a reasonable concern as to whether that individual could act impartially in relation to the misconduct hearing.

(4) The chairing member of the panel may appoint to assist the panel—

(a) up to two individuals to act as assessors; and

(b) in a case where the senior officer has notified an intention to be legally represented, an advocate or a solicitor to act as a legal assessor.

Procedure at misconduct hearing

19.—(1) Subject to the following paragraphs of this regulation and regulations 20 and 21, the chairing member of the panel is to determine the procedure at the misconduct hearing.

(2) At the misconduct hearing the panel must permit—

(a) the senior officer or any individual representing the senior officer to make representations;

(b) evidence to be heard from any witnesses in attendance; and

(c) subject to paragraph (3), the senior officer or any individual representing the senior officer to ask questions of any witness.

(3) Whether any question is to be put to a witness is to be determined by the chairing member of the panel.

(4) The chairing member of the panel may, with the agreement of the senior officer, permit the admission of written statements in lieu of oral evidence.

(5) An audio recording may be made of the misconduct hearing and, where such a recording is made, the senior officer must be provided with a copy of that recording as soon as reasonably practicable after the conclusion of the hearing.

(6) Where no audio recording is made under paragraph (5), a written record of the misconduct hearing must be prepared and—

(a) the chairing member of the panel must provide a draft of that record to the senior officer;

(b) the senior officer must be given the opportunity to make representations in relation to that draft;

(c) the chairing member of the panel must consider any representations made; and

(d) having considered those representations (if any), the chairing member of the panel must send the final written record of the interview to the senior officer.

Proceedings in senior officer's absence

20.—(1) Where the senior officer informs the chairing member of the panel that the senior officer is unable to attend the misconduct hearing on grounds which the chairing member considers to be reasonable, the chairing member may permit the senior officer to participate in the proceedings by video link or other suitable means.

(2) Paragraph (3) applies where the senior officer—

(a) participates in the misconduct hearing in accordance with paragraph (1); or

(b) otherwise does not attend that hearing.

(3) Where this paragraph applies—

(a) the senior officer may be represented at the misconduct hearing by the senior officer's police friend, an advocate or a solicitor; and

(b) the hearing may be proceeded with and concluded in the senior officer's absence (whether or not the senior officer is so represented).

Attendance of third parties

21.—(1) Subject to the following paragraphs of this regulation, the misconduct hearing is to be held in private.

(2) Where the misconduct hearing has arisen from a complaint made by a member of the public, the chairing member of the panel may—

(a) inform that member of the public of the time, date and location of that hearing; and

(b) permit that member of the public to attend, as an observer, that hearing, or such part or parts of that hearing as the chairing member considers appropriate.

(3) Where a witness is giving evidence, the chairing member of the panel may allow such other persons to attend the misconduct hearing as seem reasonable by virtue of any special circumstances (and, in particular, a parent or guardian may be allowed to attend where a child is giving evidence).

(4) The chairing member of the panel may, with the agreement of the senior officer, allow any other person to attend the misconduct hearing.

(5) Paragraphs (2) to (4) do not apply to any part of the misconduct hearing at which disciplinary action is being considered.

Determination

22.—(1) At the conclusion of the misconduct hearing, the panel must—

(a) determine whether the conduct which is the subject matter of the misconduct allegation is conduct of the senior officer;

(b) in a case where the Authority has determined, in accordance with regulation 15(1)(a), that the senior officer has a case to answer in respect of misconduct, determine whether it is established that any conduct of the senior officer amounts to misconduct; and

(c) in a case where the Authority has determined, in accordance with regulation 15(1)(b), that the senior officer has a case to answer in respect of gross misconduct, determine whether it is established that any conduct of the senior officer amounts to—

(i) gross misconduct;

(ii) misconduct; or

(iii) neither.

(2) A determination under paragraph (1) is to be made on the balance of probabilities.

(3) In a case mentioned in paragraph (1)(b), the panel may not determine that any conduct of the senior officer amounts to gross misconduct.

(4) Where the panel has determined that the conduct of the senior officer amounts to neither misconduct nor gross misconduct the Authority may—

(a) take no further action;

(b) take improvement action; or

(c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.

Disciplinary action

23.—(1) This regulation applies where—

(a) the panel has determined that any conduct of the senior officer amounted to misconduct or, as the case may be, gross misconduct; or

(b) the senior officer has admitted misconduct or, as the case may be, gross misconduct.

(2) Where this regulation applies, the panel must determine whether the Authority is to take—

(a) in a case where the senior officer's conduct amounts to misconduct—

(i) improvement action; or

(ii) subject to paragraphs (4) to (7), any such disciplinary action as is mentioned in paragraph (3); or

(b) in a case where the senior officer's conduct amounts to gross misconduct—

(i) improvement action; or

(ii) any such disciplinary action as is mentioned in paragraph (3).

(3) The disciplinary action is—

(a) a verbal warning;

(b) a written warning;

(c) a final written warning;

(d) dismissal with such notice as the Authority may specify; or

(e) dismissal without notice.

(4) Where, on the date of the determination under regulation 22(1)(b), the senior officer was subject to a written warning which remains in effect, neither a verbal warning nor a written warning may be given.

(5) Where, on the date of the determination under regulation 22(1)(b), the senior officer was subject to a final written warning which remains in effect—

(a) none of a verbal warning, a written warning or a final written warning may be given; but

(b) in exceptional circumstances, the final written warning may be extended, provided that such a warning may be extended on one occasion only and for a period of no more than 18 months.

(6) Where the panel has determined that any conduct of the senior officer amounts to misconduct, the disciplinary action mentioned in paragraph (3)(d) or (e) may be taken only where the senior officer is subject, on the date of the determination under regulation 22(1)(b), to a final written warning which remains in effect.

(7) A final written warning remains in effect for a period of 18 months from the date on which it is given (unless extended under paragraph (5)(b)).

(8) The chairing member of the panel must, as soon as reasonably practicable (and not later than 5 working days from the date of conclusion of the misconduct hearing) notify the Authority of—

(a) the panel's determination under regulation 22(1); and

(b) the action to be taken in accordance with this regulation.

Notification of determination and action to be taken

24.—(1) The Authority must, as soon as reasonably practicable after the conclusion of the misconduct hearing (and not later than 10 working days from the date of conclusion of that hearing), notify the senior officer in writing of—

(a) the panel's determination as to whether any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct;

(b) what improvement or, as the case may be, disciplinary action is to be taken; and

(c) the reasons for the determination and the action to be taken.

(2) A notification under paragraph (1) must—

(a) in a case where a written warning has been given, explain the effect of regulation 23(4) in relation to any future misconduct allegation; and

(b) in a case where a final written warning has been given, explain the effect of regulation 23(5), (6) and (7) in relation to such an allegation.

(3) Where it has been determined that any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct, a notice under paragraph (1) must give notice of—

(a) the senior officer's right to an appeal under regulation 25; and

(b) the name of the individual to whom an appeal should be submitted.

(4) If the misconduct hearing has arisen out of a complaint made by a member of the public, the Authority must notify that member of the public in writing of the determination under this regulation.