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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 242**

**Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008**

**PART VII**

**MISCONDUCT PROCEEDINGS**

**Outstanding criminal proceedings**

**42.** Where there are criminal proceedings outstanding against a designated person, proceedings under this Part shall not take place against that person unless the Chief Constable believes that in the exceptional circumstances of the case it would be appropriate for them to do so.

**Withdrawal of case**

**43.—**(1) At any time before the beginning of the hearing of a case the supervising member may direct that the case be withdrawn, unless—

- (a) the case is one to which regulation 38(4) applies, or
- (b) the Chief Constable has a duty to proceed under section 59(6) of the 1998 Act.

(2) Where a case is withdrawn it shall be treated as if the Chief Constable or (as the case may be) the supervising member had decided not to refer it to a hearing.

**Notice of decision to refer case to hearing**

**44.—**(1) The supervising member shall ensure that—

- (a) as soon as practicable, the designated person concerned is given written notice of a decision to refer the case to a hearing, and
- (b) not less than 28 days before the date of the hearing, the designated person concerned is supplied with copies of—
  - (i) any statement he may have made to the appointed officer, and
  - (ii) any relevant statement, document or other material obtained by the appointed officer.

(2) The notice given under paragraph (1) shall specify the conduct of the designated person concerned which it is alleged failed to meet the appropriate standard and the paragraph of the code of ethics in respect of which the appropriate standard is alleged not to have been met.

(3) In this regulation any reference to a copy of a statement shall, where it was not made in writing, be construed as a reference to a copy of an account thereof.

**Notification of hearing**

**45.—**(1) The supervising member shall ensure that at least 28 days in advance the designated person concerned is notified of the time, date and place of the hearing.

(2) In a case to which this paragraph applies the hearing may, if the supervising member considers it appropriate in the circumstances, take place before the expiry of the 28 days referred to in paragraph (1).

(3) Paragraph (2) applies where the designated person concerned is given a written notice under regulation 44(1)(a) of a decision to refer the case to a hearing and—

- (a) at the time he receives such a notice he is detained in pursuance of the sentence of a court in a prison or other institution to which the Prison Act (Northern Ireland) 1953(1) applies, or has received a suspended sentence of imprisonment, and
- (b) he has been supplied under regulation 44(1)(b) with the documents mentioned in that sub-paragraph.

### **Procedure on receipt of notice**

**46.**—(1) The designated person concerned shall be invited to state in writing, within 14 days of the date on which he is notified that the last of the documents required by regulation 44(1)(b) to be supplied to him have been so supplied—

- (a) whether or not he accepts that his conduct did not meet the appropriate standard; and
- (b) whether he proposes to call any witnesses to relevant facts at the hearing and the names and addresses of any such witnesses whose attendance he wishes the supervising member to take steps to secure.

(2) Any witness whose attendance the designated person concerned wishes the supervising member to take steps to secure and who is a police officer shall be ordered to attend at the hearing of the case, and the supervising member, where so requested, shall cause any other such witnesses to be given due notice that their attendance is desired and of the time and place of the hearing.

(3) Nothing in this regulation shall require a hearing to be adjourned where a witness is unable or unwilling to attend the hearing.

### **Panel conducting the hearing**

**47.**—(1) Where a case is referred to a hearing it shall be heard by a panel consisting of the persons specified in paragraphs (2) and (3), who shall not be interested parties.

(2) Subject to regulation 58, the presiding officer shall be an officer appointed by the Chief Constable, being—

- (a) a police officer of at least the rank of Assistant Chief Constable, or
- (b) a member of a police force in Great Britain of at least the rank of Assistant Chief Constable or commander.

(3) The presiding officer shall be assisted by—

- (a) a police officer or member of a police force in Great Britain, of at least the rank of superintendent, appointed by the Chief Constable, and
- (b) a member of the police support staff, appointed by the supervising member.

(4) In making an appointment under paragraph (3)(b) the supervising member shall have regard to any recommendation made by a senior employee.

### **Documents to be supplied to the designated person concerned**

**48.**—(1) Where the designated person concerned accepts, in accordance with regulation 46, that his conduct did not meet the appropriate standard, a summary of the facts of the case shall be

prepared, a copy of which shall be supplied to the designated person concerned at least 14 days before the hearing.

(2) If the designated person concerned does not agree with the summary of facts he may submit a response within 7 days of receipt of the summary.

(3) Where the designated person concerned does not accept that his conduct did not meet the appropriate standard no summary of facts shall be prepared.

### **Documents to be supplied to the panel conducting the hearing**

49. There shall be supplied to the panel conducting the hearing—

- (a) a copy of the notice given under regulation 44(1)(a); and
- (b) where a summary of the facts has been prepared under regulation 48, a copy of that summary and of any response from the designated person concerned.

### **Representation**

50.—(1) The supervising member shall appoint another police officer to present the case (“the presenting officer”).

(2) The designated person concerned may conduct his case in person or may be represented by an approved person selected by him.

(3) In paragraph (2) an “approved person” means a police officer, a member of a police force in Great Britain, a member of the police support staff or a representative of a trade union.

### **Conduct of hearing**

51.—(1) The panel conducting the hearing may from time to time adjourn if it appears to them to be necessary or expedient to do so for the due hearing of the case.

(2) Any decision of the panel conducting the hearing shall be based on a simple majority, but shall not indicate whether it was taken unanimously or by a majority.

### **Procedures at hearing**

52.—(1) Subject to the provisions of these regulations, the panel conducting the hearing shall determine their own procedures.

(2) The panel conducting the hearing shall review the facts of the case and decide whether or not the conduct of the designated person concerned met the appropriate standard.

(3) The panel conducting the hearing shall not find that the conduct of the designated person concerned failed to meet the appropriate standard unless the conduct is—

- (a) admitted by the designated person concerned; or
- (b) proved by the presenting officer on the balance of probabilities, to have failed to meet that standard.

(4) Where evidence is given that the designated person concerned, while subject to investigation—

- (a) after having been given in writing the caution set out in paragraph 1 of Schedule 2, failed to mention any fact relied on in his defence at the hearing, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention during the investigation, or
- (b) after having been given in writing the caution set out in paragraph 2 of Schedule 2, failed or refused to account for any object, substance or mark, or

(c) after having been given in writing the caution set out in paragraph 3 of Schedule 2, failed or refused to account for his presence at a particular place,  
the panel conducting the hearing may draw such inferences from the failure or refusal as appear proper.

#### **Non-attendance**

**53.**—(1) The designated person concerned shall be instructed to attend the hearing.

(2) If the designated person concerned fails to attend the hearing it may be proceeded with and concluded in his absence.

(3) Where the designated person concerned informs the presiding officer in advance that he is unable to attend due to ill-health or some other unavoidable reason the hearing may be adjourned.

(4) Where, owing to the absence of the designated person concerned, it is impossible to comply with any of the procedures set out in these regulations, that procedure shall be dispensed with.

#### **Attendance of complainant at hearing**

**54.**—(1) This regulation shall apply where there has been a complaint against the designated person concerned.

(2) Notwithstanding anything in regulation 55, but subject to paragraphs (3) and (4), the complainant—

(a) shall be allowed to attend the hearing while witnesses are being examined or cross-examined, and

(b) may at the discretion of the presiding officer be accompanied by a friend or relative.

(3) Where the complainant or any person allowed to accompany him is to be called as a witness at the hearing, he and any person allowed to accompany him shall not be allowed to attend before he gives his evidence.

(4) If the complainant or any person allowed to accompany him behaves in a disorderly or abusive manner, or otherwise misconducts himself, the presiding officer may exclude him from the remainder of the hearing.

(5) Except where giving evidence as a witness, or putting questions under paragraph (6), the complainant and any person allowed to accompany him shall neither intervene in, nor interrupt, the hearing.

(6) Where the designated person concerned gives evidence then, after the presenting officer has had an opportunity of cross-examining him, the presiding officer—

(a) shall put to him any questions which the complainant requests should be so put and might have been properly so put by the presenting officer, or

(b) at his discretion, may allow the complainant to put such questions to the designated person concerned.

(7) In this regulation a reference to the complainant is a reference to the originator of the complaint notwithstanding that it was transmitted to the Ombudsman by some other person or some other body.

#### **Attendance of others at hearing**

**55.**—(1) The hearing shall be in private, subject to regulation 54(2) and the following provisions of this regulation.

(2) It shall be within the discretion of the presiding officer to allow—

(a) any authorised officer of the Ombudsman,

- (b) any solicitor, or
- (c) any such other persons as he considers desirable,

to attend the whole or such part of the hearing as he may think fit, subject to the consent of all parties to the hearing.

(3) Where the case of a designated person is to be conducted by a person selected by him under regulation 50(2), he may be accompanied at the hearing by that person.

(4) In any other case, the designated person concerned may be accompanied at the hearing by a person selected by him, being a police officer, a member of a police force in Great Britain, a member of the police support staff or a representative of a trade union.

(5) The presiding officer may allow witnesses to be accompanied at the hearing by a friend or relative.

### **Exclusion of public from hearing**

**56.** Where it appears to the presiding officer that a witness may, in giving evidence, disclose information which, in the public interest, ought not be disclosed to a member of the public he shall require any member of the public including the complainant and any person allowed to accompany the complainant or any witness to withdraw while the evidence is given.

### **Evidence at hearing**

**57.—**(1) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the presiding officer.

(2) With the consent of the designated person concerned the presiding officer may allow any document to be adduced in evidence during the hearing notwithstanding that a copy thereof has not been supplied to the designated person concerned in accordance with regulation 44(1)(b).

### **Remission of cases**

**58.—**(1) The hearing of the case may be remitted by the presiding officer to a police officer or member of a police force in Great Britain of equivalent rank who, at the presiding officer's request, has agreed to act as the presiding officer in the matter, if, either before or during the hearing, the presiding officer considers remission appropriate.

(2) The hearing of the case shall be so remitted, if the presiding officer is an interested party otherwise than in his capacity as presiding officer.

### **Record of hearing**

**59.—**(1) A verbatim record of the proceedings at the hearing shall be taken.

(2) The presiding officer shall supply a transcript of the record or a copy thereof to the designated person concerned, if the designated person concerned so requests within the period of 21 days beginning with the date on which he is notified in writing of the finding of the hearing under regulation 60(1)(b).

### **Finding, recommendation and sanction**

**60.—**(1) The designated person concerned—

- (a) shall be informed orally of the finding of the hearing by the presiding officer at the conclusion of the hearing, and

- (b) shall be provided with a written notification and summary of the reasons within three working days.
- (2) The presiding officer shall send a report to the Chief Constable of the panel's finding.
- (3) Where the panel conducting the hearing decide that the conduct of the designated person concerned did not meet the appropriate standard, then, after consultation with the other members of the panel, the presiding officer—
  - (a) may recommend to the Chief Constable that he modify or withdraw the designation of the designated person concerned under section 33(4) of the 2003 Act, and
  - (b) may recommend to the Chief Constable that a sanction be imposed under the terms and conditions under which the designated person concerned was appointed under section 4 of the 2000 Act.
- (4) Where the Chief Constable receives a report under paragraph (2), he shall send a copy of the report, and a copy of any recommendation made under paragraph (3), to—
  - (a) the designated person concerned, and
  - (b) the Ombudsman.
- (5) Where a recommendation is made under paragraph (3) in relation to the conduct of a designated person, the Chief Constable shall notify the Ombudsman and the designated person concerned—
  - (a) of his decision on whether to accept the recommendation, and
  - (b) of any sanction imposed on the designated person concerned in relation to that conduct.

**Personal record to be considered before recommendation made**

- 61.** Where the question of making a recommendation under regulation 60(3) is being considered—
- (a) the members of the panel conducting the hearing shall have regard to the record of the service of the designated person concerned in the police support staff, and
  - (b) the panel conducting the hearing may receive evidence from any witness whose evidence would, in the opinion of the members of the panel or the designated person concerned, assist in determining the question, and
  - (c) the designated person concerned, or his representative, shall be afforded an opportunity to make oral or, if appropriate, written representations as respects the question or to adduce evidence relevant thereto.

**Request for a review**

- 62.**—(1) Where the members of the panel conducting the hearing decide that the conduct of the designated person concerned did not meet the appropriate standard, the designated person concerned shall be entitled to request the Chief Constable to review the finding.
- (2) A request for a review must be made to the Chief Constable in writing within 14 days of receipt of the written summary of reasons given in accordance with regulation 60(1)(b), or within such longer period as the Chief Constable may, in his discretion, allow, having regard to the circumstances of the case.
- (3) A request for a review shall state the grounds on which the review is requested and whether a meeting is requested.

### **Conduct of the review**

63.—(1) On a review requested under regulation 62(1) the Chief Constable shall, subject to paragraph (2), hold a meeting with the designated person concerned if requested to do so.

(2) Where the hearing was conducted by a panel constituted in accordance with Schedule 4 following a direction from the Ombudsman under section 59(5) of the 1998 Act, the review will be conducted by a chief officer of a police force in Great Britain who has agreed to act in that capacity.

(3) Where a meeting is held the designated person concerned may be accompanied by a police officer, a member of a police force in Great Britain, a member of the police support staff or a representative of a trade union.

### **Finding of the review**

64.—(1) The designated person concerned shall be informed of the finding of the Chief Constable in writing within three days of completion of a review.

(2) The Chief Constable shall decide whether or not to confirm the finding of the hearing.

(3) The decision of the Chief Constable shall take effect by way of substitution for the decision of the hearing and as from the date of that hearing.

### **Hearing of review in absence of the Chief Constable**

65.—(1) Subject to paragraph (2), where the Chief Constable is an interested party or the circumstances in section 34(1)(a) or (b) of the 2000 Act apply, the review shall be conducted by the deputy Chief Constable.

(2) Where the deputy Chief Constable is absent or an interested party, the review shall be conducted by the chief officer of a police force in Great Britain who has agreed to act in that capacity.

### **Record of conduct proceedings**

66. The Chief Constable shall cause a book of record to be kept in which shall be entered every case brought against a designated person, together with the finding thereon and a record of the decision in any further proceedings in connection therewith.