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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 41**

**The Police (Conduct) Regulations (Northern Ireland) 2016**

**PART 4**

**Misconduct Proceedings**

**Referral of case to misconduct proceedings**

**21.**—(1) Subject to regulation 42, and paragraphs (6) and (7), on receipt of the investigator's written report under regulation 20, the appropriate authority shall, as soon as practicable, determine whether the member concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) In a case where the disciplinary proceedings have been delayed by virtue of regulation 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, it shall, subject to regulation 42(3), make a further determination as to whether the member concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) Where the appropriate authority determines there is no misconduct case to answer, it may—

- (a) take no further disciplinary action against the member concerned;
- (b) take management action against the member concerned; or
- (c) refer the matter to be dealt with under the Performance Regulations.

(4) Where the appropriate authority determines that there is a case to answer in respect of gross misconduct, it shall, subject to regulation 9(3) and paragraph (2), refer the case to a misconduct hearing.

(5) Where the appropriate authority determines that there is a case to answer in respect of misconduct, it may—

- (a) subject to regulation 9(3) and paragraph (2), refer the case to misconduct proceedings; or
- (b) take management action against the member concerned.

(6) Where the appropriate authority receives a recommendation under section 59(2) of the 1998 Act (steps to be taken after investigation - disciplinary proceedings) that disciplinary proceedings should be brought the appropriate authority shall, if it accepts the recommendation, determine whether to refer the case to a misconduct meeting or misconduct hearing.

(7) In the case of directed proceedings, the Chief Constable shall refer the case to a misconduct hearing in accordance with regulation 27(5).

(8) Where the appropriate authority fails to—

- (a) make the determination referred to in paragraph (1); and
- (b) where appropriate, decide what action to take under paragraph (5),

before the end of 15 working days beginning with the first working day after receipt of the investigator's written report, it shall notify the member concerned of the reason for this.

(9) Where under paragraph (5) the appropriate authority determines to take management action, it shall give the member concerned written notice of this as soon as practicable.

(10) Where the appropriate authority determines under paragraph (5) to refer the case to misconduct proceedings—

- (a) where the member concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) or at the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, those proceedings shall be a misconduct hearing; and
- (b) in all other cases those proceedings shall be a misconduct meeting.

### **Withdrawal of case**

**22.**—(1) Subject to section 59(6)(b) of the 1998 Act, at any time before the beginning of the misconduct proceedings, the appropriate authority may direct that the case be withdrawn.

(2) Where a direction is given under paragraph (1)—

- (a) the appropriate authority may—
  - (i) take no further action against the member concerned;
  - (ii) take management action against the member concerned; or
  - (iii) refer the matter to be dealt with under the Performance Regulations; and
- (b) the appropriate authority shall as soon as practicable give the member concerned—
  - (i) written notice of the direction, indicating whether any action will be taken under sub-paragraph (a); and
  - (ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator's report or such parts of that report as relate to the member concerned.

### **Notice of referral to misconduct proceedings and panel membership**

**23.**—(1) Where a case is referred to misconduct proceedings, the appropriate authority shall as soon as practicable give the member concerned—

- (a) written notice of—
    - (i) the referral;
    - (ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be;
    - (iii) the name of the person appointed to (in the case of a misconduct meeting for a member other than a senior officer) conduct or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6); and
    - (iv) the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred;
  - (b) a copy of any statement he may have made to the investigator during the course of the investigation; and
  - (c) subject to the harm test, a copy of—
    - (i) the investigator's report or such parts of that report as relate to him (together with any document attached to or referred to in that report as relates to him); and
    - (ii) any other relevant document gathered during the course of the investigation.
- (2) As soon as practicable after—

- (a) any person has been appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings; and
- (b) where the misconduct proceedings are to be conducted by a panel, the person or persons comprising that panel (other than the chair) have been determined,

the appropriate authority shall give the member concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6).

(3) The member concerned may object to any person whom he is notified under this regulation is to—

- (a) conduct (including chair) his misconduct proceedings; or
- (b) advise the person or persons conducting those proceedings.

(4) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the member concerned is given notice of the person's name and must set out the grounds of objection of the member concerned.

(5) The appropriate authority shall notify the member concerned in writing whether it upholds or rejects an objection to any chair or panel member or to any person appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings.

(6) If the appropriate authority upholds the objection, the person to whom the member concerned objects shall be replaced (in accordance with regulations 7(5) and (6) or 27 and 28 as appropriate).

(7) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the member concerned of the name of the new panel member, or the adviser to the person or persons conducting the misconduct proceedings, as the case may be.

(8) The member concerned may object to the appointment of a person appointed under paragraph (6).

(9) Any such objection must be made in accordance with paragraph (4), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (7); and the appropriate authority shall comply with paragraphs (5) to (7) in relation to that objection, but paragraph (8) shall not apply.

(10) In this regulation "relevant document" means a document which, in the opinion of the appropriate authority, is relevant to the case the member concerned has to answer.

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

**24.**—(1) Before the end of—

- (a) 20 working days beginning with the first working day after the documents have been supplied to the member concerned under regulation 23(1); or
- (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,

the member concerned shall comply with paragraphs (2) and (3).

(2) The member concerned shall provide to the appropriate authority—

- (a) written notice of whether or not he accepts that his conduct amounts to misconduct or gross misconduct as the case may be;
- (b) where he accepts that his conduct amounts to misconduct or gross misconduct as the case may be, any written submission he wishes to make in mitigation; and
- (c) where he does not accept that his conduct amounts to misconduct or gross misconduct as the case may be, or he disputes part of the case against him, written notice of—
  - (i) the allegations he disputes and his account of the relevant events;

- (ii) any arguments on points of law he wishes to be considered by the person or persons conducting the misconduct proceedings; and
- (iii) any documents supplied under regulation 23(1) which he disputes and his reasons for doing so.

(3) The member concerned shall provide the appropriate authority with a copy of any document he intends to rely on at the misconduct proceedings.

(4) Before the end of 3 working days beginning with the first working day after the date on which the member concerned has complied with paragraph (2), the appropriate authority and the member concerned shall each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce.

(5) Where there are proposed witnesses, the member concerned shall, if reasonably practicable, agree a list of proposed witnesses with the appropriate authority.

### **Witnesses**

**25.**—(1) As soon as practicable after any list of proposed witnesses has been—

- (a) agreed under regulation 24(5); or
- (b) where there is no agreement under regulation 24(5), supplied under regulation 24(4),

the appropriate authority shall supply that list to the person conducting or chairing the misconduct proceedings.

(2) The person conducting or chairing the misconduct proceedings shall—

- (a) consider the list or lists of proposed witnesses; and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the misconduct proceedings.

(3) No witness shall give evidence at misconduct proceedings unless the person conducting or chairing those proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case he shall—

- (a) where the witness is a member, cause that person to be ordered to attend the misconduct proceedings; and
- (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the proceedings.

(4) 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 person conducting or chairing the proceedings.

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

### **Timing and notice of misconduct proceedings**

**26.**—(1) Subject to paragraph (2), the misconduct proceedings shall take place—

- (a) in the case of a misconduct meeting, before the end of 25 working days; or
- (b) in the case of a misconduct hearing, before the end of 35 working days,

beginning with the first working day after the documents have been supplied to the member concerned under regulation 23(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period specified in paragraph (1) where he considers that it would be in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct proceedings decides to extend the period under paragraph (2), or decides not to do so following representations from the member concerned or the appropriate authority, he shall provide written notification of his reasons for that decision to the appropriate authority and the member concerned.

(4) The person conducting or chairing the misconduct proceedings shall, if reasonably practicable, agree a date and time for the misconduct proceedings with the member concerned.

(5) Where no date and time is agreed under paragraph (4), the person conducting or chairing the misconduct proceedings shall specify a date and time for those proceedings.

(6) The member concerned shall be given written notice of the date, time and place of the misconduct proceedings.

(7) Where the Ombudsman is entitled to attend the misconduct hearing by virtue of regulation 31, he shall be given written notice of the date, time and place of the hearing.

#### **Persons conducting misconduct proceedings: members other than senior officers**

27.—(1) This regulation applies where the member concerned is not a senior officer.

(2) The misconduct meeting shall be conducted by a person appointed by the Chief Constable who is not an interested party and who satisfies paragraph (3).

(3) The person shall be another member of at least one rank higher than the member concerned and of at least the rank of inspector.

(4) Where the case is referred to a misconduct hearing, that hearing shall be conducted by a panel of three persons appointed by the Chief Constable, comprising—

- (a) a senior officer who shall be the chair;
- (b) a police officer of the rank of superintendent or above; and
- (c) a person selected by the appropriate authority from a list of candidates maintained by the Chief Constable for the purposes of these Regulations.

(5) In the case of directed proceedings, the misconduct hearing shall be conducted by a panel of three persons appointed by the Chief Constable, none of whom is an interested party and comprising—

- (a) a barrister or solicitor of not less than seven years' standing, who shall be the chair and who has been nominated by the Lord Chief Justice for the purpose of this regulation;
- (b) a police officer of the rank of superintendent or above; and
- (c) another panel member who is not a serving police officer, selected from a list of candidates maintained by the Chief Constable for the purposes of these Regulations.

(6) In the case of directed proceedings the Ombudsman shall present the case.

#### **Persons conducting misconduct proceedings: senior officers**

28.—(1) Where the member concerned is a senior officer the misconduct proceedings shall be conducted by a panel of persons as specified in paragraph (2) or (3) as appropriate, appointed by the appropriate authority.

(2) For a misconduct meeting, those persons are—

- (a) the chair of the Board, or another member of the Board nominated by him, who shall chair the meeting; and
- (b) HMCIC or an inspector of constabulary nominated by him.

- (3) For a misconduct hearing, those persons are—
- (a) a barrister or solicitor of not less than seven years' standing, who shall be the chair and who has been nominated by the Lord Chief Justice for the purpose of this regulation;
  - (b) the chair of the Board, or another member of the Board nominated by him; and
  - (c) HMCIC or an inspector of constabulary nominated by him.

### **Documents to be supplied**

**29.**—(1) Prior to the misconduct proceedings the appropriate authority shall supply the person or persons conducting the misconduct proceedings with a copy of—

- (a) the documents given to the member concerned under regulation 23(1);
- (b) the documents provided by the member concerned under—
  - (i) regulation 24(2) and (3); and
  - (ii) where paragraph (2) applies, regulation 46; and
- (c) where the member concerned does not accept that his conduct amounts to misconduct or gross misconduct as the case may be or where he disputes any part of the case against him, any other documents that, in the opinion of the appropriate authority, should be considered at the misconduct proceedings.

(2) This paragraph applies where the appropriate authority has directed, in accordance with regulation 43(1), that the case be dealt with under this Part.

(3) Prior to the misconduct proceedings the member concerned shall be supplied with a list of the documents supplied under paragraph (1) and a copy of any such document of which he has not already been supplied with a copy.

### **Attendance of member concerned at misconduct proceedings**

**30.**—(1) Subject to paragraph (2), the member concerned shall attend the misconduct proceedings.

(2) Where the member concerned informs the person conducting or chairing the misconduct proceedings in advance that he is unable to attend on grounds which the person conducting or chairing those proceedings considers reasonable, that person may allow the member concerned to participate in the proceedings by video link or other means.

(3) Where the member concerned is allowed to and does so participate in the misconduct proceedings or where the member concerned does not attend the misconduct proceedings—

- (a) he may nonetheless be represented at those proceedings by his—
  - (i) police friend; or
  - (ii) in the case of a misconduct hearing, counsel or solicitor (in which case the police friend may also attend); and
- (b) the proceedings may be proceeded with and concluded in the absence of the member concerned whether or not he is so represented.

(4) Where the member concerned is represented in accordance with paragraph (3), the person representing the member concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the member concerned.

### **Attendance of Ombudsman and investigator at misconduct hearing**

**31.**—(1) Where a misconduct hearing is being conducted in accordance with a recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, the Ombudsman may attend the hearing as an observer.

(2) In the case of directed proceedings the Ombudsman shall present the case.

(3) Where paragraph (1) applies, the person chairing the misconduct hearing may require the Ombudsman to withdraw while any submission is made in mitigation on the member's behalf.

(4) The investigator or a nominated person shall attend the misconduct hearing on the request of the person chairing that hearing to answer questions.

(5) For the purposes of this regulation, a "nominated person" is a person who, in the opinion of—

(a) the appropriate authority; or

(b) where the matter was formally investigated by him, the Ombudsman,

has sufficient knowledge of the investigation of the case to be able to assist the person chairing the misconduct hearing.

### **Attendance of complainant or interested person at misconduct hearing**

**32.**—(1) This regulation shall apply in the case of a misconduct hearing.

(2) The appropriate authority shall cause notice to be given to the complainant or any interested person of the date, time and place of the misconduct hearing.

(3) Subject to the provisions of this regulation, regulation 34 and any conditions imposed under regulation 33(4), the complainant or any interested person may attend the misconduct hearing as an observer up to but not including the point at which the person chairing the hearing considers the question of disciplinary action.

(4) Subject to paragraph (5), regulation 34 and any conditions imposed under regulation 33(4), a complainant or interested person may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

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

(6) Where the member concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the member's behalf, the person chairing the misconduct hearing may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made.

(7) The person chairing the misconduct hearing may, at his discretion, put any questions to the member concerned that the complainant or interested person may request be put to him.

(8) For the purposes of this regulation, a person has a special need if, in the opinion of the person chairing the misconduct hearing, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to fully participate in or understand the misconduct hearing.

### **Attendance of others at misconduct proceedings**

**33.**—(1) Subject to regulations 31 and 32 and the provisions of this regulation, the misconduct proceedings shall be in private.

(2) Subject to any contrary decision by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the member concerned, shall only attend the misconduct proceedings for the purpose of giving their evidence.

(3) The person conducting or chairing the misconduct proceedings may, at his discretion, permit a witness in the misconduct proceedings to be accompanied at those proceedings by one other person.

(4) The person conducting or chairing the misconduct proceedings may impose such conditions as he sees fit relating to the attendance under regulation 32 or this regulation of persons at the misconduct proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the proceedings.

### **Exclusion from misconduct proceedings**

**34.** Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information which, under the harm test, ought not to be disclosed to any person attending the proceedings, he shall require such attendees to withdraw while the evidence is given.

### **Procedure at misconduct proceedings**

**35.—**(1) Subject to these Regulations, the person conducting or chairing the misconduct proceedings shall determine the procedure at those proceedings.

(2) The misconduct proceedings shall not proceed unless the member concerned has been notified of the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings taking place.

(3) Subject to paragraph (4), the person conducting or chairing the misconduct proceedings may from time to time adjourn the proceedings if it appears to him to be necessary or expedient to do so.

(4) The misconduct proceedings shall not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

(5) The person representing the member concerned may—

(a) address the proceedings in order to do any or all of the following—

(i) put the case of the member concerned;

(ii) sum up that case;

(iii) respond on behalf of the member concerned to any view expressed at the proceedings;

(iv) make representations concerning any aspect of proceedings under these Regulations; and

(v) subject to paragraph (8), ask questions of any witnesses; and

(b) confer with the member concerned.

(6) Where (at a misconduct hearing) the person representing the member concerned is counsel or a solicitor, the police friend of the member concerned may also confer with the member concerned.

(7) The police friend or the counsel or solicitor of the member concerned may not answer any questions asked of the member concerned during the misconduct proceedings.

(8) Whether any question should or should not be put to a witness shall be determined by the person conducting or chairing the misconduct proceedings.

(9) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—

(a) by the member concerned to the appropriate authority in accordance with regulation 24(3); or

(b) to the member concerned in accordance with regulation 23(1).

(10) Where evidence is given or considered at the misconduct proceedings that the member concerned—

- (a) on being questioned by an investigator at any time after he was given written notice under regulation 16(1) or 17(1); or
- (b) in submitting any information or by not submitting any information at all under regulation 18(1) or 24(2) or (3) (or, where paragraph (11) applies, regulation 46),

failed to mention any fact relied on in his case at the misconduct proceedings, being a fact which in the circumstances existing at the time, the member concerned could reasonably have been expected to mention when so questioned or when providing such information, paragraph (12) applies.

(11) This paragraph applies where the appropriate authority has directed, in accordance with regulation 43(1), that the case be dealt with under this Part.

(12) Where this paragraph applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(13) The person or persons conducting the misconduct proceedings shall review the facts of the case and decide whether the conduct of the member concerned amounts—

- (a) in the case of a misconduct meeting, to misconduct or not; or
- (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(14) The person or persons conducting the misconduct proceedings shall not find that the conduct of the member concerned amounts to misconduct or gross misconduct unless—

- (a) he is or they are satisfied on the balance of probabilities that this is the case; or
- (b) the member concerned admits it is the case.

(15) At misconduct proceedings conducted by a panel, any decision shall be based on a majority but shall not indicate whether it was taken unanimously or by a majority.

### **Outcome of misconduct proceedings**

**36.**—(1) Subject to the provisions of this regulation, the person or persons conducting the misconduct proceedings may—

- (a) impose any of the disciplinary action in paragraph (2)(a) or (b) or (6)(b) as appropriate; or
- (b) where the finding is that the conduct amounts to misconduct but not gross misconduct following a misconduct meeting or hearing, record a finding of misconduct but take no further action.

(2) The disciplinary action is—

- (a) at a misconduct meeting—
  - (i) management advice;
  - (ii) written warning; or
  - (iii) final written warning;
- (b) at a misconduct hearing—
  - (i) management advice;
  - (ii) written warning;
  - (iii) final written warning;
  - (iv) reduction in rank;
  - (v) dismissal with notice; or
  - (vi) dismissal without notice.

(3) The disciplinary action referred to in paragraph (2) shall, subject to paragraph (6)(b), have effect from the date on which it is notified to the member concerned and in the case of dismissal

with notice, the person or persons imposing the disciplinary action shall decide the period of notice to be given, subject to a minimum period of 28 days.

(4) Where there is a finding that the conduct of the member concerned amounts to misconduct but not gross misconduct, the member may not be dismissed (whether with or without notice) unless a final written warning was in force on the date of the assessment of conduct under regulation 12(1), or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, or on the date of the direction under section 59(5) of that Act, as the case may be.

(5) Where the member concerned had a written warning in force on the date of the assessment of the conduct under regulation 12(1), or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, or on the date of the direction under section 59(5) of that Act, as the case may be, a written warning shall not be given.

(6) Where the member concerned had a final written warning in force on the date of the assessment of the conduct under regulation 12(1), or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, or on the date of the direction under section 59(5) of that Act, as the case may be—

- (a) neither a written warning nor a final written warning shall be given; but
- (b) subject to paragraph (7), in exceptional circumstances, the final written warning may be extended.

(7) Where a final written warning is extended under paragraph (6)(b), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.

(8) A final written warning may be extended on one occasion only.

(9) Where the member concerned is a senior officer, the persons conducting the misconduct proceedings shall, as soon as practicable after the meeting or hearing, submit a report to the Board, or, in any case where the Ombudsman was entitled to attend as an observer under regulation 31, to the Board with a copy sent to the Ombudsman, together with a copy to the senior officer concerned, setting out—

- (a) the finding of the persons conducting the misconduct proceedings;
- (b) the reasons for that finding;
- (c) if that finding was that the conduct of the member concerned amounted to misconduct or gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (d) any other matter arising out of the proceedings which they desire to bring to the notice of the Board.

(10) Where the member concerned is a senior officer, on receipt of the report submitted under paragraph (9), the Board shall either—

- (a) dismiss the case; or
- (b) record a finding that the conduct of the senior officer concerned amounted to misconduct or gross misconduct, but take no further action; or
- (c) record a finding that the conduct of the senior officer concerned amounted to misconduct or gross misconduct and impose disciplinary action under paragraph (2)(a) or (b) or (6)(b) as appropriate.

(11) Where the member concerned is a senior officer and the Ombudsman was entitled to attend as an observer under regulation 31 the Board shall not take the action referred to in paragraph (10) without the agreement of the Ombudsman.

(12) Where the question of disciplinary action is being considered, the person or persons considering it—

- (a) shall have regard to the record of police service of the member concerned as shown on his personal record;
- (b) may receive evidence from any witness whose evidence would, in his or their opinion, assist him or them in determining the question; and
- (c) shall give—
  - (i) the member concerned, his police friend or, at a misconduct hearing, his counsel or solicitor; and
  - (ii) the appropriate authority or person appointed to represent the appropriate authority in accordance with regulation 7(4),

an opportunity to make oral or written representations before any such question is determined.

### **Notification of outcome**

**37.—**(1) The member concerned shall be informed of—

- (a) the finding of the person or persons conducting the misconduct proceedings; and
- (b) any disciplinary action imposed,

as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the misconduct proceedings in accordance with the requirements of regulation 36.

(2) Where there was a finding of misconduct or gross misconduct a written notice under this regulation shall provide—

- (a) where the member concerned is not a senior officer—
  - (i) if the case was decided at a misconduct meeting, that he has a right of appeal under regulation 39 and he shall be given written notice of that right; or
  - (ii) if the case was decided at a misconduct hearing, that he has a right of appeal to a police appeals tribunal and he shall be given written notice of that right;
- (b) where the member concerned is a senior officer, that he has a right of appeal to a police appeals tribunal and he shall be given written notice of that right.

(3) In all cases referred to in paragraph (2) a written notice under this regulation shall include the name of the person to whom an appeal should be sent.

(4) The appropriate authority shall send a copy of any written notice under this regulation to the Ombudsman, in any case in which the Ombudsman was entitled to attend as an observer under regulation 31.

(5) In the case of directed proceedings—

- (a) the member concerned shall be informed orally of the finding by the chair at the conclusion of the hearing;
- (b) where the panel determine that there was misconduct or gross misconduct the chair shall send a report to the Chief Constable of the panel's finding and may, after consulting with other members of the panel, make recommendations to the Chief Constable as to any disciplinary action it considers appropriate;
- (c) the panel conducting the misconduct proceedings shall send a copy of any report to the Ombudsman;
- (d) the Chief Constable may impose any of the disciplinary action in regulation 36(2)(b) or (6)(b) as appropriate;
- (e) any disciplinary action imposed by the Chief Constable will, if so requested by the member concerned, be given in person by the Chief Constable to that member, and in every case

the member concerned will be notified in writing of any sanction imposed together with a copy of the report of the hearing, as provided by the chair; and

- (f) the member concerned shall have a right of appeal to a police appeals tribunal and be given written notice of that right.

(6) A copy of the report of the panel submitted under regulation 36(9), together with the decision of the Board, shall be sent by the Board to the Department of Justice and copied to the Ombudsman and the Chief Constable.

### **Record of misconduct proceedings**

**38.**—(1) A record of the misconduct proceedings shall be taken and in the case of a misconduct hearing that record shall be verbatim.

(2) Where the member concerned has exercised his right of appeal in accordance with regulation 37(2) or regulation 37(5)(f), he shall, on request, be supplied with a copy of the record of the proceedings at the misconduct proceedings.

(3) Where the member concerned is a senior officer, a verbatim record of the proceedings before the panel shall be taken and the transcript of the record shall be made and sent to the Board.

### **Appeal from misconduct meeting: members other than senior officers**

**39.**—(1) Where the member concerned is not a senior officer, whose case was decided at a misconduct meeting, he may, subject to the provisions of this regulation, appeal—

- (a) if he admitted his conduct amounted to misconduct, against any disciplinary action imposed under regulation 36; or
- (b) if (after he denied misconduct) the person conducting the misconduct meeting found that his conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 36.

(2) The only grounds of appeal under this regulation are that—

- (a) the finding or disciplinary action imposed was unreasonable;
- (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action; or
- (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

(3) An appeal under this regulation shall be commenced by the member concerned giving written notice of appeal to the Chief Constable—

- (a) before the end of 7 working days beginning with the first working day after the written notice and summary of reasons is given under regulation 37 (unless this period is extended by the Chief Constable for exceptional circumstances); and
- (b) stating the grounds of appeal and whether a meeting is requested.

(4) An appeal under this regulation shall be determined by a police officer of at least one rank higher than the police officer who conducted the misconduct meeting who is not an interested party, appointed by the Chief Constable.

(5) The Chief Constable shall as soon as practicable give the member concerned written notice of—

- (a) the name of the person appointed to determine the appeal under paragraph (4);

- (b) the name of any person appointed under regulation 7(5) to advise the person determining the appeal; and
  - (c) the effect of paragraphs (6) to (9).
- (6) The member concerned may object to any person whom he is notified under this regulation is to—
- (a) determine the appeal; or
  - (b) advise the person determining the appeal.
- (7) Any such objection must be made in writing to the Chief Constable before the end of 3 working days beginning with the first working day after the member concerned is given notice of the person's name and must set out the grounds of objection of the member concerned.
- (8) The Chief Constable shall notify the member concerned in writing whether he upholds or rejects an objection to the person appointed to conduct the appeal meeting or to any person appointed under regulation 7(5) to advise the person conducting the appeal meeting.
- (9) If the Chief Constable upholds the objection, the person to whom the member concerned objects shall be replaced (in accordance with regulation 7(5) or (6) or paragraph (4) as appropriate).
- (10) As soon as reasonably practicable after any such appointment, the Chief Constable shall notify in writing the member concerned of the name of the new person appointed to determine the appeal or the advisor to the person determining the appeal as the case may be.
- (11) The member concerned may object to the appointment of a person appointed under paragraph (9).
- (12) Any such objection must be made in accordance with paragraph (7), provided that it must be made before the end of 3 working days beginning with the first working day after the member concerned is given the notice referred to in paragraph (10); and the Chief Constable shall comply with paragraphs (8) to (10) in relation to that objection but paragraph (11) shall not apply.

### **Appeal meeting**

- 40.**—(1) This regulation applies where the member concerned requests a meeting in his written notice of appeal under regulation 39(3).
- (2) The person determining the appeal shall determine whether the notice of appeal sets out arguable grounds of appeal and—
- (a) if he determines that it does he shall hold an appeal meeting with the member concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination; and
  - (b) if he determines that it does not, he shall dismiss the appeal.
- (3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where he considers that it would be in the interests of justice to do so.
- (4) The person determining the appeal shall, if reasonably practicable, agree a date and time for the appeal meeting.
- (5) Where no date and time is agreed under paragraph (4), the person determining the appeal shall specify a date and time for the appeal meeting.
- (6) Written notice of the date, time and place of the appeal meeting shall be given to the member concerned.
- (7) Prior to the appeal meeting the Chief Constable shall supply the person determining the appeal with a copy of—
- (a) the documents given to the person who held the misconduct meeting as specified in regulation 29(1);

- (b) the notice of appeal given by the member concerned under regulation 39(3);
- (c) the record of the misconduct meeting taken under regulation 38(1); and
- (d) any evidence of a kind referred to in regulation 39(2)(b) that the member concerned wishes to submit in support of his appeal.

**Procedure and finding of the appeal**

**41.**—(1) Subject to the provisions of this regulation, the person determining the appeal shall determine the procedure at the appeal meeting.

(2) The person determining the appeal may—

- (a) confirm or reverse the decision appealed against;
- (b) deal with the member concerned in any manner in which the person conducting the misconduct meeting could have dealt with him under regulation 36.

(3) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the member concerned shall be given written notice of that determination with a summary of the reasons.

(4) The decision of the person determining the appeal shall take effect by way of substitution for the decision of the person conducting the misconduct meeting and as from the date of the written notice of the outcome of that meeting.