
STATUTORY INSTRUMENTS

2015 No. 25

The Ministry of Defence Police (Conduct etc.) Regulations 2015

PART 4

Misconduct Proceedings

Referral of case to misconduct proceedings

23.—(1) Subject to regulation 45 (referral of case to special case hearing) and paragraph (7), on receipt of—

- (a) a written report which is made under regulation 22(2) (report of investigation), or
- (b) an equivalent report made under external procedures,

the relevant authority must, as soon as practicable, determine whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) All referrals to misconduct proceedings under this regulation are subject to regulation 13(3) (outstanding or possible criminal proceedings).

(3) Subject to regulation 45(3) and paragraph (7), in a case where the disciplinary proceedings have been delayed by virtue of regulation 13(3), as soon as practicable after the relevant authority considers that such proceedings would no longer prejudice any criminal proceedings, it must make a further determination as to whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(4) Where the relevant authority determines there is no case to answer, it may—

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

(5) Where the relevant authority determines that there is a case to answer in respect of gross misconduct, it must refer the case to a misconduct hearing.

(6) Where the relevant authority determines that there is a case to answer in respect of misconduct—

- (a) if the officer concerned had a final written warning in force at the assessment date, it must refer the case to a misconduct hearing;
- (b) in all other cases, it may either—
 - (i) refer the case to a misconduct meeting; or
 - (ii) take management action against the officer concerned.

(7) Where the relevant authority—

- (a) accepts a recommendation made under external procedures that proceedings should be brought at a misconduct meeting or a misconduct hearing, or
- (b) is directed under such procedures to give effect to such a recommendation,

it must refer the case to such a meeting or hearing.

- (8) If the relevant authority fails to—
- (a) make the determination referred to in paragraph (1), and
 - (b) where appropriate, decide what action to take under paragraph (6),

before the end of 15 working days beginning with the first working day after receipt of the written report, it must notify the officer concerned in writing of the reason for this.

(9) Where under paragraph (6) the relevant authority determines to take management action, it must give the officer concerned written notice of this as soon as practicable.

Withdrawal of case

24.—(1) This regulation applies to cases which have been or are being investigated under Part 3.

(2) At any time before the beginning of misconduct proceedings, the relevant authority may direct that the case be withdrawn.

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

- (a) the relevant authority may—
 - (i) take no further action against the officer concerned;
 - (ii) take management action against the officer concerned; or
 - (iii) refer the matter to be dealt with under the Performance Regulations; and
- (b) the relevant authority must as soon as reasonably practicable give the officer concerned written notice of the direction, indicating what action will be taken under paragraph (3)(a).

(4) Where—

- (a) a direction is given under paragraph (2),
- (b) the investigation has been completed,
- (c) the officer concerned so requests, and
- (d) the harm test is not satisfied,

the relevant authority must as soon as reasonably practicable after that request give the officer concerned a copy of the investigator's report or such parts of that report as relate to the officer concerned.

Notice of referral to misconduct proceedings and panel membership

25.—(1) Where a case is referred to misconduct proceedings, the relevant authority must as soon as practicable give the officer 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;
 - (iii) the name of the person appointed to (in the case of a misconduct meeting for an officer other than a senior officer) conduct or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6) of this regulation; and
 - (iv) the effect of regulation 10 (police friend and legal representation);
- (b) a copy of any written statement, or transcript or note of any oral statement, the officer 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 which relate to the officer (together with any document attached to or referred to in that report which relates to the officer); 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 11(2) to advise the person or persons conducting the misconduct proceedings; and
 - (b) where the matter has been referred to misconduct proceedings conducted by a panel, the persons comprising the panel (other than the chair) have been determined,the relevant authority must give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.
- (3) The officer concerned may object to any person described in paragraph (1)(a)(iii) or (2).
- (4) Any such objection must be made in writing to the relevant authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.
- (5) The relevant authority must notify the officer concerned in writing as soon as reasonably practicable whether it upholds or rejects an objection made under paragraph (3).
- (6) If the relevant authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulations 11(2), 29 or 30 as appropriate).
- (7) As soon as reasonably practicable after any such new appointment, the relevant authority must notify in writing the officer concerned of the name of the person appointed.
- (8) The officer concerned may object to a new appointment 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 relevant authority must comply with paragraphs (5) to (7) in relation to that objection, but paragraph (8) shall not apply.

Procedure on receipt of notice

- 26.**—(1) Subject to paragraph (2), the officer concerned must comply with paragraphs (3) and (4) before the end of 14 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 25(1).
- (2) The person conducting or chairing the misconduct proceedings may extend the period described in paragraph (1) where to do so is in the interests of justice.
- (3) The officer concerned must provide to the relevant authority—
- (a) written notice of whether or not the officer accepts that the conduct amounts to misconduct or gross misconduct;
 - (b) where the officer accepts that the conduct amounts to misconduct or gross misconduct, any written submission the officer wishes to make in mitigation; and
 - (c) where the officer does not accept that the conduct amounts to misconduct or gross misconduct, or the officer disputes part of the case, written notice of—
 - (i) the allegations the officer disputes and the officer's account of the relevant events; and
 - (ii) any arguments on points of law the officer wishes to be considered by the person or persons conducting the misconduct proceedings.

(4) The officer concerned must give the relevant authority a copy of any document that the officer intends to rely on at the misconduct proceedings.

(5) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (3), the relevant authority and the officer concerned must each give to the other either—

- (a) a list of proposed witnesses, including brief details of the evidence that each witness is able to adduce; or
- (b) give notice that they do not have any proposed witnesses.

(6) Where there are proposed witnesses, the officer concerned and the relevant authority must, if reasonably practicable, agree a list of proposed witnesses, including brief details of the evidence that each witness is able to adduce.

Witnesses

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

- (a) agreed under regulation 26(6); or
- (b) where there is no agreement under regulation 26(6), given under regulation 26(5)(a),

the relevant authority must give a copy of that list or lists to the person conducting or chairing the misconduct proceedings.

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

- (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 may 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 the person conducting or chairing those proceedings must—

- (a) where the witness is an MDP officer, 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 their attendance is requested and of the date, time and place of the proceedings.

Timing and notice of misconduct proceedings

28.—(1) Subject to paragraphs (2) and (6), the misconduct proceedings must commence—

- (a) in the case of a misconduct meeting, before the end of 20 working days; or
- (b) in the case of a misconduct hearing, before the end of 30 working days,

beginning with the first working day after the documents have been given to the officer concerned under regulation 25(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period specified in paragraph (1) where they consider 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 officer concerned or the relevant authority, that person must provide in writing the reasons for that decision to the relevant authority and the officer concerned.

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

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

(6) Where a date and time is specified under paragraph (5) and—

(a) the officer concerned or the police friend will not be available at that date and time; and

(b) the officer concerned proposes an alternative date and time which satisfies paragraph (7), the misconduct proceedings must be postponed to the date and time proposed by the officer concerned.

(7) An alternative date and time must—

(a) be reasonable; and

(b) fall before the end of 5 working days beginning with the first working day after the day specified by the person conducting or chairing the misconduct proceedings.

(8) The person conducting or chairing the misconduct proceedings must give the officer concerned written notice of the date, time and place of the misconduct proceedings.

(9) Where the Commission or the Ombudsman is entitled to attend the misconduct proceedings to make representations (regulation 33) or to nominate a person to attend the proceedings as an observer (regulation 35), the person conducting or chairing the misconduct proceedings must give the Commission or the Ombudsman written notice of the date, time and place of the proceedings.

Persons conducting misconduct proceedings: officers other than senior officers

29.—(1) This regulation applies where the officer concerned is an officer other than a senior officer.

(2) Where the case is referred to a misconduct meeting, that meeting must be conducted by a person appointed by the relevant authority who is not an interested party and who satisfies paragraph (3).

(3) The person must be—

(a) an MDP officer of at least one rank higher than the officer concerned; or

(b) unless the case substantially involves operational policing matters, a staff member who, in the opinion of the relevant authority, is more senior than the officer concerned.

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

(a) a senior officer, who shall be the chair;

(b) an MDP officer of the rank of superintendent or above, who is of at least one rank above the officer concerned; and

(c) a person selected by the relevant authority from a list of candidates maintained by the MOD Police Committee.

Persons conducting misconduct proceedings: senior officers

30.—(1) This regulation applies where the officer concerned is a senior officer.

(2) Whether the case is referred to a misconduct meeting or a misconduct hearing, that meeting or hearing must be conducted by a panel of persons specified in paragraph (3), appointed by the relevant authority.

(3) Those persons are—

- (a) a chair selected by the relevant authority from a list of persons who satisfy the judicial-appointment eligibility criterion⁽¹⁾ on a 5-year basis and have been nominated by the Secretary of State for the Home Department for the purposes of these Regulations;
- (b) the Inspector of Constabulary; and
- (c) a person selected from a list maintained by the MOD Police Committee.

Documents to be supplied

31.—(1) Prior to the misconduct proceedings the relevant authority must give the person or persons conducting the misconduct proceedings a copy of—

- (a) the documents given to the officer concerned under regulation 25(1);
- (b) the documents given by the officer concerned under—
 - (i) regulation 26(3) and (4); and
 - (ii) where paragraph (2) applies, regulation 49; and
- (c) where the officer concerned does not accept that their conduct amounts to misconduct or gross misconduct, or disputes any part of the case, any other documents that, in the opinion of the relevant authority, should be considered at the misconduct proceedings.

(2) This paragraph applies where the relevant authority has directed, in accordance with regulation 47(1), that the case be dealt with under this Part.

(3) Prior to the misconduct proceedings the relevant authority must give the officer concerned a list of the documents given under paragraph (1) and a copy of any such document if the officer has not already been supplied with a copy.

Attendance of officer concerned at misconduct proceedings

32.—(1) Subject to paragraph (2), the officer concerned must attend the misconduct proceedings.

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

(3) Where the officer concerned participates in the misconduct proceedings by video link or other means, or fails to attend the misconduct proceedings—

- (a) the officer may nonetheless be represented at those proceedings by the—
 - (i) police friend; or
 - (ii) in the case of a misconduct hearing, the relevant lawyer (in which case the police friend may also attend); and
- (b) the proceedings may proceed and be concluded in the absence of the officer concerned whether or not the officer is so represented.

(4) Where the officer concerned—

- (a) attends the proceedings by video link or other means, and
- (b) is represented in accordance with paragraph (3)(a),

the relevant lawyer or the police friend, or both, may participate using the video link or other means as are used by the officer concerned.

(1) See section 50 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Participation of Commission or Ombudsman and investigator at misconduct proceedings

33.—(1) The Commission may attend the misconduct proceedings to make representations in any case where under external procedures—

- (a) the Commission has managed the investigation or itself carried out the investigation; or
- (b) the Commission has instructed the relevant authority to carry out the investigation on its own behalf or under the supervision of the Commission, and the Commission—
 - (i) recommended that misconduct proceedings should be brought; or
 - (ii) directed that the relevant authority must give effect to such a recommendation.

(2) The Ombudsman may attend the misconduct proceedings to make representations in any case where under external procedures—

- (a) the case was investigated by the Ombudsman or on the Ombudsman’s behalf; or
- (b) the Ombudsman—
 - (i) recommended that misconduct proceedings should be brought; or
 - (ii) directed that the relevant authority must give effect to such a recommendation.

(3) Where the Commission or Ombudsman intends to attend the misconduct proceedings—

- (a) it must notify—
 - (i) the complainant or any interested person, and
 - (ii) the person conducting or chairing the misconduct proceedings,prior to those proceedings; and

(b) the person conducting or chairing the misconduct proceedings must notify the officer concerned prior to the proceedings.

(4) Where the Commission or Ombudsman attends a misconduct hearing, it may instruct a relevant lawyer to represent it.

(5) The investigator or any nominated person must attend the misconduct proceedings on the request of the person conducting or chairing those proceedings to answer questions.

(6) Where more than one allegation is considered in the same misconduct proceedings (regulation 9(2)), this regulation applies to the whole of the proceedings and accordingly the Commission or Ombudsman may make representations in respect of any allegation.

(7) In this regulation, “nominated person” means a person who, in the opinion of—

- (a) the relevant authority, or
- (b) in a case where under external procedures the Commission managed the investigation or itself carried out the investigation, the Commission, or
- (c) in a case where under external procedures the Ombudsman investigated the case, the Ombudsman,

has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the misconduct proceedings.

Attendance of complainant or interested person at misconduct proceedings

34.—(1) This regulation applies in any misconduct proceedings arising from a case which has been investigated under external procedures.

(2) The relevant authority must notify the complainant or any interested person of the date, time and place of the misconduct proceedings.

(3) Subject to regulation 36 and any conditions imposed under regulation 35(9), a complainant or any interested person may attend the misconduct proceedings as an observer up to but not including the point at which the person or panel conducting those proceedings considers the question of disciplinary action.

(4) Subject to paragraph (5), regulation 36 and any conditions imposed under regulation 35(9), 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 is to give evidence as a witness at the misconduct proceedings, that witness and any person allowed to accompany that witness may not attend the proceedings before giving evidence.

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

(7) The person conducting or chairing the misconduct proceedings may put any questions to the officer concerned that the complainant or interested person may request be put.

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

Attendance of others at misconduct proceedings

35.—(1) Subject to the attendance of —

- (a) any nominated person (regulation 33(7)),
- (b) any person entitled to attend under regulation 34, and
- (c) any person entitled to attend under this regulation,

the misconduct proceedings shall be in private.

(2) A person nominated by the Commission or the Ombudsman (as appropriate) may, as an observer, attend misconduct proceedings which arise from a case which has been investigated under external procedures.

(3) Unless expressly authorised by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the officer concerned may only attend the misconduct proceedings for the purpose of giving their evidence.

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

(5) This paragraph applies where—

- (a) a case has been investigated under external procedures established with the Commission;
- (b) the Commission has itself investigated the case;
- (c) the case has been referred to a misconduct hearing;
- (d) the Commission considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest for all or part of the misconduct hearing be held in public; and
- (e) the Commission has consulted with—
 - (i) the relevant authority;

- (ii) the officer concerned;
- (iii) the complainant or interested person; and
- (iv) any witnesses.

(6) Where paragraph (5) applies, the Commission may direct that the whole or part of the misconduct hearing be held in public.

(7) Where the Commission makes a direction under paragraph (6), it must as soon as reasonably practicable, and in any event no later than 5 working days beginning with the first working day after the decision was taken, notify the persons consulted under paragraph (5)(e) of the decision and the reasons for it.

(8) Subject to regulation 36 (exclusion from a third stage hearing), the persons conducting the misconduct hearing must comply with a direction given under paragraph (6).

(9) The person conducting or chairing the misconduct proceedings may impose such conditions as they see fit relating to the attendance under regulation 34 (attendance of complainant or interested person) 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

36.—(1) This paragraph applies where it appears to the person conducting or chairing misconduct proceedings that any person may, in giving evidence, disclose information the disclosure of which should be prevented for any of the reasons set out in paragraphs (1)(a) to (g) of regulation 4 (the harm test).

(2) Where paragraph (1) applies, the person conducting or chairing misconduct proceedings must require any person to withdraw while the evidence is given.

Procedure at misconduct proceedings

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

(2) The misconduct proceedings may not commence unless the officer concerned has been notified of the effect of regulation 10 (police friend and legal representation).

(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 be necessary or expedient to do so.

(4) The misconduct proceedings may 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 officer concerned may—

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

- (i) put the case of the officer concerned;
- (ii) sum up that case;
- (iii) respond on behalf of the officer concerned to any view expressed at the proceedings;
- (iv) make representations concerning any aspect of the proceedings; and
- (v) subject to paragraph (8), ask questions of any witnesses; and

(b) confer with the officer concerned.

(6) Where the person representing the officer concerned is a relevant lawyer, the police friend of the officer concerned may also confer with the officer concerned.

(7) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned.

(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 officer concerned to the relevant authority in accordance with regulation 26(3); or
- (b) to the officer concerned in accordance with regulation 25(1).

(10) This paragraph applies where evidence is given at the misconduct proceedings that the officer concerned—

- (a) was given written notice to attend an interview with an investigator (whether under regulation 21(5) or any equivalent notice given under external procedures) but failed to attend that interview;
- (b) on being questioned by an investigator at any time after the officer was given written notice of investigation (whether under regulation 19(1) or any equivalent notice given under external procedures) failed to mention any fact relied on at the misconduct proceedings, being a fact which in the circumstances existing at the time, the officer concerned could reasonably have been expected to mention when so questioned; or
- (c) in submitting any information or by not submitting any information at all under—
 - (i) regulation 20(1) (representations to the investigator),
 - (ii) regulation 26(3) or (4) (procedure on receipt of notice),
 - (iii) where a direction has been made under regulation 47 (remission of case), regulation 49 (procedure on receipt of notice),
 - (iv) any equivalent opportunities to submit information under external procedures, failed to mention any fact relied on at the misconduct proceedings, being a fact which in the circumstances existing at the time, the officer concerned could reasonably have been expected to mention when providing such information.

(11) Where paragraph (10) applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(12) The person or persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer 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.

(13) The person or persons conducting the misconduct proceedings may not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless—

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

(14) The decision of the panel at a misconduct hearing may be based on a majority (with the chair having the casting vote if necessary).

Senior officers: meeting of MOD Police Committee to consider disciplinary action

38.—(1) Where the officer concerned is a senior officer, the persons conducting the misconduct proceedings must, as soon as reasonably practicable after the meeting or hearing, submit a report to the MOD Police Committee setting out—

- (a) the finding of the persons conducting the proceedings (regulation 37(12));

- (b) the reasons for that finding;
 - (c) if that finding was that the conduct of the officer 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 relevant authority.
- (2) Where a report is submitted under paragraph (1), the persons conducting the misconduct proceedings must send a copy to—
- (a) the officer concerned; and
 - (b) if the Commission or the Ombudsman was entitled to attend to make representations (regulation 33(1) or (2)), to the Commission or the Ombudsman.
- (3) On receiving a report under paragraph (1), the MOD Police Committee must meet for the purpose of considering what disciplinary action (if any) should be imposed.
- (4) The provisions of these Regulations specified in paragraph (6) apply, with the modifications specified in paragraph (7), to a meeting held under paragraph (3) as if it were a misconduct hearing.
- (5) The MOD Police Committee may appoint a person (who may be a relevant lawyer) to advise it at the meeting.
- (6) The provisions are—
- (a) regulation 10 (police friend and legal representation);
 - (b) regulation 12 (provision of notices or documents);
 - (c) regulation 13 (outstanding or possible criminal proceedings);
 - (d) regulation 26(5) and (6) (procedure on receipt of notice);
 - (e) regulation 27 (witnesses);
 - (f) regulation 28 (timing and notice of misconduct proceedings);
 - (g) regulation 32 (attendance of officer concerned at misconduct proceedings);
 - (h) regulation 33 (participation of Commission or Ombudsman and investigator at misconduct proceedings);
 - (i) regulation 34 (attendance of complainant or interested person at misconduct proceedings);
 - (j) regulation 35 (attendance of others at misconduct proceedings);
 - (k) regulation 36 (exclusion from misconduct proceedings);
 - (l) regulation 37(1) to (11) (procedure at misconduct proceedings); and
 - (m) regulation 41 (record of misconduct proceedings).
- (7) The modifications are that—
- (a) each reference to the person conducting or chairing the misconduct proceedings has effect as a reference to the Chair of the MOD Police Committee;
 - (b) in regulation 26(5), the reference to the date on which the officer concerned has complied with paragraph (3) has effect as a reference to the date on which the report is submitted under paragraph (1) of this regulation; and
 - (c) in regulation 28—
 - (i) the reference in paragraph (1) to the first working day after the documents have been supplied to the officer concerned has effect as a reference to the first working day after the report is submitted under paragraph (1) of this regulation;
 - (ii) the references in paragraph (3) to the relevant authority are omitted.

Outcome of misconduct proceedings

39.—(1) The person or persons conducting misconduct proceedings in the case of an officer other than a senior officer may—

- (a) impose any of the disciplinary actions in paragraph (3)(a) or (b) as appropriate; or
- (b) where they find 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) At a meeting held under regulation 38(3) the MOD Police Committee may—

- (a) impose any of the disciplinary actions in paragraph (3)(a) or (b) as appropriate; or
- (b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(3) The disciplinary action is—

- (a) where the report referred to in regulation 38(1) was made after a misconduct meeting—
 - (i) management advice;
 - (ii) written warning; or
 - (iii) final written warning;
- (b) where the report referred to in regulation 38(1) was made after a misconduct hearing—
 - (i) management advice;
 - (ii) written warning;
 - (iii) final written warning;
 - (iv) dismissal with notice; or
 - (v) dismissal without notice.

(4) The disciplinary action referred to in paragraph (3) has effect from the date on which it is notified to the officer concerned and, in the case of dismissal with notice, the person or persons imposing the disciplinary action must decide the period of notice to be given, subject to a minimum period of 28 days.

(5) Where there is a finding that the conduct of the officer concerned amounts to misconduct but not gross misconduct, the officer may not be dismissed (whether with or without notice) unless a final written warning was in force on the assessment date.

(6) Where the officer concerned had a written warning in force on the assessment date, a written warning may not be given.

(7) Where, on the assessment date, the officer concerned had a final written warning in force—

- (a) neither a written warning nor a final written warning may be given; but
- (b) subject to paragraph (9), in exceptional circumstances, the final written warning may be extended.

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

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

(10) Where there is a finding of gross misconduct and the person or persons considering the question of disciplinary action decides that the officer concerned shall be dismissed, the dismissal shall be without notice.

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

- (a) must have regard to the record of police service of the officer concerned as shown on the officer's personal record;
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (c) must give—
 - (i) the officer concerned, the police friend or, at a misconduct hearing, the relevant lawyer, and
 - (ii) in the case of an officer other than a senior officer, the relevant authority or any person appointed to advise the relevant authority (regulation 11(2)),an opportunity to make oral or written representations before any such question is determined.

Notification of outcome

40.—(1) The relevant authority must inform the officer concerned in writing of—

- (a) the finding of the person or persons conducting the misconduct proceedings;
- (b) the reasons for that finding; and
- (c) in a case other than one to which regulation 38 (senior officers: meeting of MOD Police Committee to consider disciplinary action) applies, any disciplinary action imposed,

as soon as reasonably practicable and in any event before the end of 5 working days beginning with the first working day after the conclusion of the misconduct proceedings.

(2) In a case to which regulation 38 applies, the relevant authority must inform the officer concerned in writing of any disciplinary action imposed and the reasons for that action, as soon as reasonably practicable, and in any event before the end of 5 working days beginning with the first working day after the conclusion of the meeting held under regulation 38(3).

(3) Where there was a finding of misconduct or gross misconduct a written notice under paragraph (1) must include—

- (a) where the officer concerned is an officer other than a senior officer—
 - (i) if the case was decided at a misconduct meeting, notice of the officer's right of appeal under regulation 42; or
 - (ii) if the case was decided at a misconduct hearing, notice of the officer's right of appeal to a police appeals tribunal;
- (b) where the officer concerned is a senior officer, notice of the officer's right of appeal to a police appeals tribunal;
- (c) the name and address of the person to whom an appeal should be sent.

(4) The relevant authority must send a copy of any written notice under this regulation to—

- (a) the Commission or the Ombudsman, in any case in which the Commission or the Ombudsman was entitled to attend to make representations under regulation 33(1) or (2); and
- (b) to the complainant and any interested person, in any case to which regulation 34 applies.

Record of misconduct proceedings

41.—(1) The relevant authority must ensure that a record of the misconduct proceedings is taken, and in the case of a misconduct hearing that record must be verbatim.

(2) The relevant authority must, if the officer concerned so requests, give the officer concerned a copy of the record of the proceedings as soon as reasonably practicable after the conclusion of the misconduct proceedings.

Appeal from misconduct meeting: officers other than senior officers

42.—(1) Where the officer concerned is an officer, other than a senior officer, whose case was decided at a misconduct meeting, the officer may, subject to the provisions of this regulation, appeal—

- (a) if the officer admitted that the conduct amounted to misconduct, against any disciplinary action imposed under regulation 39; or
- (b) if (after the officer denied misconduct) the person conducting the misconduct meeting found that the officer’s conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 39.

(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 may be commenced by the officer concerned giving written notice of appeal to the relevant authority—

- (a) subject to paragraph (4), 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 40; and
- (b) stating the grounds of appeal and whether a meeting is requested.

(4) The relevant authority may extend the time period specified in paragraph (3)(a) where it considers that it would be in the interests of justice to do so.

(5) An appeal under this regulation shall be determined—

- (a) where the person who conducted the misconduct meeting was a member of a police force, by—
 - (i) a member of a police force of at least one rank higher than that person; or
 - (ii) unless the case substantially involves operational policing matters, a staff member who, in the opinion of the relevant authority, is more senior than that person;
- (b) where the person who conducted the misconduct meeting was a staff member, by—
 - (i) a member of a police force who, in the opinion of the relevant authority is more senior than that person; or
 - (ii) a more senior staff member,

who is not an interested party, appointed by the relevant authority.

(6) The relevant authority must as soon as reasonably practicable give the officer concerned written notice of—

- (a) the name of the person appointed to determine the appeal under paragraph (5);
- (b) the name of any person appointed under regulation 11(2) to advise the person determining the appeal; and
- (c) the effect of paragraphs (7) to (10) of this regulation.

(7) Once notified the officer concerned may object to any person who is to—

- (a) determine the appeal; or
- (b) advise the person determining the appeal.

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

(9) The relevant authority must notify the officer concerned in writing whether it upholds or rejects an objection made under paragraph (7).

(10) If the relevant authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulation 11(2) or paragraph (5) as appropriate).

(11) As soon as reasonably practicable after any such new appointment, the relevant authority shall notify in writing the officer concerned of the name of the new person appointed.

(12) The officer concerned may object to the appointment of a person appointed under paragraph (10).

(13) Any such objection must be made in accordance with paragraph (8), provided that it must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (11); and the relevant authority must comply with paragraphs (9) to (11) in relation to that objection, but paragraph (12) shall not apply.

Appeal meeting

43.—(1) This regulation applies where the officer concerned requests a meeting in the written notice of appeal (regulation 42(3)).

(2) The person determining the appeal must determine whether the notice of appeal sets out arguable grounds of appeal and—

- (a) if so, the person determining the appeal must hold an appeal meeting with the officer 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 not, that person must dismiss the appeal.

(3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where that person considers that it would be in the interests of justice to do so.

(4) The person determining the appeal must give written notice of the date, time and place for the appeal meeting to—

- (a) the officer concerned;
- (b) where the Commission or the Ombudsman was entitled to attend the misconduct meeting to make representations (regulation 33(1) or (2)), or to nominate a person to attend the meeting as an observer (regulation 35(2)), the Commission or the Ombudsman;
- (c) where the complainant or an interested person was entitled to attend the misconduct meeting (regulation 34), the complainant or interested person.

(5) Where—

- (a) the officer concerned or the police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (6),

the appeal meeting must be postponed to the time proposed by the officer concerned.

(6) An alternative time must—

- (a) be reasonable; and

- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person determining the appeal.
- (7) Prior to the appeal meeting the relevant authority must give the person determining the appeal a copy of—
 - (a) the documents given to the person who held the misconduct meeting as specified in regulation 31(1);
 - (b) the notice of appeal given by the officer concerned under regulation 42(3);
 - (c) the record of the misconduct meeting taken under regulation 41(1); and
 - (d) any evidence of a kind referred to in regulation 42(2)(b) that the officer concerned wishes to submit in support of the appeal.

Procedure and finding of the appeal

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

(2) Any interested person or complainant entitled to be given notice of the appeal meeting under regulation 43(4) may attend the appeal meeting as an observer.

(3) Where the officer concerned objects to the complainant or interested person being present while a submission is made in mitigation on the officer's behalf, the person determining the appeal may require the complainant or interested person to withdraw while the submission is made.

(4) The person determining the appeal may impose such conditions as they see fit relating to the attendance of persons under paragraph (2) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

(5) The person determining the appeal may—

- (a) confirm or reverse the decision appealed against;
- (b) deal with the officer concerned in any manner in which the person conducting the misconduct meeting could have dealt with that officer under regulation 39.

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

(7) 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.

(8) In a case where the Commission or the Ombudsman was entitled to attend the misconduct meeting to make representations (regulation 33(1) or (2)), or to nominate a person to attend the meeting as an observer (regulation 35(2)), the relevant authority must give the Commission or the Ombudsman written notice of the determination of the appeal with a summary of the reasons.