
STATUTORY INSTRUMENTS

2020 No. 4

The Police (Conduct) Regulations 2020

PART 3

Investigations

Application of this Part

13. This Part does not apply to a case to which paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies⁽¹⁾.

Severity assessment

14.—(1) The appropriate authority must assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither (“the severity assessment”).

(2) Where the appropriate authority assesses that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it must assess whether—

- (a) the conduct, if proved, would amount to practice requiring improvement;
- (b) the matter should be referred to be dealt with under the Performance Regulations, or
- (c) it should take no further action.

(3) The appropriate authority must consult the line manager of the officer concerned before making an assessment in terms of paragraph (2)(a) or (b).

(4) Where the appropriate authority assesses that the conduct, if proved, would amount to practice requiring improvement, it must refer the matter to be dealt with under the reflective practice review process set out in Part 6.

(5) Where the appropriate authority assesses that the conduct, if proved, would amount to misconduct or gross misconduct—

- (a) the matter must be investigated, and
- (b) the appropriate authority must assess whether, if the matter were to be referred to misconduct proceedings under regulation 23, those would be likely to be a misconduct meeting or a misconduct hearing.

(6) At any time before the start of misconduct proceedings, the appropriate authority may revise its severity assessment under this regulation if it considers it appropriate to do so.

(1) Part 3 applies to internal conduct allegations of misconduct or gross misconduct which may justify the bringing of disciplinary proceedings and are referred to be dealt with under these Regulations by the appropriate authority. Paragraphs 16, 18 and 19 of Schedule 3 to the 2002 Act make provision for the investigation to be carried out by the appropriate authority on its own behalf, by the appropriate authority under the direction of the Director General and by the Director General respectively. Part 3 of these Regulations will not apply to these cases.

(7) Where the appropriate authority decides under this regulation to take no further action or to refer the matter to be dealt with under the reflective practice review process or the Performance Regulations, it must so notify the officer concerned in writing as soon as practicable.

Appointment of investigator

15.—(1) This regulation applies where the matter is to be investigated in accordance with regulation 14.

(2) The appropriate authority must appoint a person to investigate the matter.

(3) No person may be appointed to investigate a matter under this regulation—

- (a) unless they have an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if they are an interested party;
- (c) if they work, directly or indirectly, under the management of the officer concerned, or
- (d) in a case where the officer concerned is a senior officer, if they are—
 - (i) the chief officer of police of the police force concerned;
 - (ii) a member of the same police force as the officer, or where the officer is a member of the metropolitan police force, serving in the same command as the officer, or
 - (iii) a designated police volunteer serving in that force.

(4) The reference in paragraph (3)(d)(ii) to a member of the police force includes a reference to a special constable appointed for the area of that force and a police staff member serving in that force.

Investigation

16.—(1) The purpose of the investigation is to—

- (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct, and
- (b) assist the appropriate authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) The investigator must as soon as practicable after being appointed draw up the terms of reference of the investigation.

Written notices

17.—(1) Subject to the harm test and except where paragraph (6) applies by virtue of subparagraph (a) of that paragraph, the investigator must, as soon as reasonably practicable after being appointed, give the officer concerned a written notice stating—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) that there is to be an investigation into the matter and the identity of the investigator;
- (c) the result of the severity assessment conducted under regulation 14;
- (d) the result of any assessment under regulation 14(5)(b) as to whether any misconduct proceedings would likely be a misconduct meeting or a misconduct hearing;
- (e) that if the officer is dismissed at misconduct proceedings, information including the officer's full name and a description of the conduct which led to dismissal will be added to the police barred list and may be subject to publication for a period of up to 5 years;

- (f) that the officer has the right to seek advice from the officer's staff association or any other body and of the effect of regulation 7(1) and (2);
 - (g) the effect of regulations 8(1) to (3) and 18, and
 - (h) that whilst the officer does not have to say anything it may harm the officer's case if the officer does not mention when interviewed or when providing any information under regulation 18(1) or 31(2) or (3) something later relied on in any disciplinary proceedings.
- (2) Where a notice is given under paragraph (1), the investigator must—
- (a) subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (b) of that paragraph, give the officer concerned the written terms of reference of the investigation, or
 - (b) where written terms of reference are not provided under sub-paragraph (a), give the officer concerned written notice stating that the terms of reference are not being provided and explaining why.
- (3) Where practicable, the investigator must give the officer concerned the written terms of reference, or, as the case may be, the written notice, under paragraph (2), at the same time as notice is given under paragraph (1), or otherwise within a period of 5 working days, beginning with the first working day after the day on which such notice is given.
- (4) Subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (c) of that paragraph, where notice is given under paragraph (1) and the appropriate authority revises its severity assessment in accordance with regulation 14(6), the appropriate authority must as soon as practicable give the officer concerned a written notice of the result of the revised severity assessment.
- (5) Subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (d) of that paragraph, where the written terms of reference are given under paragraph (2) and those terms are revised by the investigator, the investigator must as soon as practicable give the officer concerned the revised terms of reference.
- (6) This paragraph applies for so long as the investigator considers that giving—
- (a) a written notice under paragraph (1);
 - (b) terms of reference under paragraph (2);
 - (c) a written notice under paragraph (4), or
 - (d) revised terms of reference under paragraph (5),
- might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).
- (7) Once a written notice has been given in accordance with paragraph (1), the investigator must notify the officer concerned of the progress of the investigation—
- (a) if there has been no previous notification following the supply of the written notice under paragraph (1), before the end of 4 weeks beginning with the first working day after that written notice was given, and
 - (b) in any other case, before the end of 4 weeks beginning with the first working day after the previous notification.

Representations to the investigator

- 18.**—(1) Before the end of 10 working days beginning with the first working day after the terms of reference, or, as the case may be, written notice has been given under regulation 17(2)—
- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation to the investigator, including any mitigating circumstances relevant to any such matter, and

- (b) the officer concerned or the officer's police friend may provide any relevant documents to the investigator.
- (2) The investigator must, as part of the investigation, consider any such statement or document and must make a record of having received it.
- (3) The period of 10 working days referred to in paragraph (1) may be extended by the investigator.
- (4) In this regulation "relevant document"—
 - (a) means a document relating to any matter under investigation, and
 - (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed.

Timeliness of investigation

- 19.**—(1) Where an investigation is not completed within a relevant period, the appropriate authority must, subject to paragraph (3), provide as soon as practicable the following information in writing to the local policing body—
- (a) the date on which the allegation came to the attention of the appropriate authority;
 - (b) the date on which notice was given under regulation 17(1);
 - (c) the progress of the investigation;
 - (d) an estimate of when—
 - (i) the investigation will be concluded, and
 - (ii) a report will be submitted under regulation 21;
 - (e) the reason for the length of time taken by the investigation, and
 - (f) a summary of planned steps to progress the investigation and bring it to a conclusion.
- (2) For the purposes of this regulation, each of the following is a "relevant period"—
- (a) the first relevant period is the period of 12 months beginning with the day on which the allegation first came to the attention of the appropriate authority;
 - (b) each subsequent relevant period is the period of 6 months beginning with the day after the end of the previous relevant period.
- (3) The requirement to provide information under paragraph (1) does not apply in a case where it appears to the appropriate authority that to do so might prejudice the investigation or any other investigation (including a criminal investigation).
- (4) Subject to the harm test, a copy of the information provided under paragraph (1) or (2) must be sent to the officer concerned.

Interviews during investigation

- 20.**—(1) Where an investigator wishes to interview the officer concerned as part of the investigation, the investigator must, if reasonably practicable, agree a date and time for the interview with the officer.
- (2) No interview may take place until the officer concerned has been provided with the terms of reference or, as the case may be, a written notice under regulation 17(2).
- (3) Where no date and time is agreed under paragraph (1), the investigator must specify a date and time for the interview.
- (4) Where a date and time is specified under paragraph (3) and—
- (a) the officer concerned or the officer's police friend will not be available, and

(b) the officer proposes an alternative date or time which satisfies paragraph (5), the interview must be postponed to the date or time proposed by the officer.

(5) An alternative time must—

(a) be reasonable, and

(b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(6) The investigator must give the officer concerned written notice of the date, time and place of the interview.

(7) The investigator must, in advance of the interview, provide the officer concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the officer to prepare for the interview.

(8) The officer concerned must attend the interview.

(9) A police friend may not answer any questions asked of the officer concerned during the interview.

Report of investigation

21.—(1) On completion of the investigation, the investigator must as soon as practicable submit a written report on the investigation to the appropriate authority.

(2) The written report must—

(a) provide an accurate summary of the evidence;

(b) attach or refer to any relevant documents;

(c) indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer, and

(d) where the investigator's opinion under sub-paragraph (c) is that there is no case to answer, indicate the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the reflective practice review process.

(3) If at any time during the investigation the investigator believes that the appropriate authority would, on consideration of the matter, be likely to determine that the special conditions are satisfied, the investigator must, whether or not the investigation is complete, submit to the appropriate authority—

(a) a statement of the investigator's belief and the grounds for it, and

(b) a written report on the investigation to that point.

(4) If at any time during the investigation the investigator believes that, in light of evidence made available to the investigator that was not available to the appropriate authority when it made its severity assessment or any revised severity assessment under regulation 14, the appropriate authority would, on further consideration of the matter, be likely to determine that the conduct which is the subject matter of the allegation, if proved, would amount to neither misconduct nor gross misconduct, the investigator must, whether or not the investigation is complete, submit to the appropriate authority—

(a) a statement of the investigator's belief and the grounds for it;

(b) a written report on the investigation to that point, and

(c) a statement of the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the reflective practice review process.

(5) Where a report is submitted to the appropriate authority under paragraph (4), the appropriate authority must make a further severity assessment under regulation 14.

(6) If the appropriate authority assesses that the conduct if proved would amount to misconduct or gross misconduct, the investigator must continue to proceed with the investigation that has been commenced.

(7) If the appropriate authority makes an assessment other than that the conduct if proved would amount to misconduct or gross misconduct—

- (a) the case must be dealt with in accordance with regulation 14;
- (b) the investigation must be promptly concluded;
- (c) the appropriate authority must as soon as practicable and in addition to any notice required under regulation 14(7), give the officer concerned notice in writing that—
 - (i) the notice given to the officer under regulation 17(1) has been withdrawn and no further action will be taken pursuant to that notice, and
 - (ii) the investigation has been concluded.