

CONDUCT MATTERS INVESTIGATED BY DIVISIONAL IO's i.e. not arising from a complaint against police

This document is intended to assist supervisors on BCU who are being required to investigate matters of misconduct arising internally – i.e. not from complaints against police.

At an early stage an assessment is made of the conduct in terms of its seriousness in order to produce a proportionate response to it. This is to stop all matters of police conduct being subject to the same level of investigation.

For example a matter assessed as gross misconduct i.e. so serious it could lead to dismissal if proven or admitted, will need a thorough detailed investigation whereas one assessed as misconduct is likely to need proportionately less.

This first assessment falls to be made under Regulation 12 Police (Conduct) Regulations 2012. It is called a severity assessment. Once appointed as an investigating officer you are responsible for considering Regulation 12 and assessing the severity of the conduct. You will find that when you are passed a conduct matter via PSD, the initial assessment will already have been done but as IO you are still responsible for considering this, and for then identifying any change in the assessment as the investigation unfolds.

If you think that the matter should be reassessed then you must contact PSD Admin who will send you a pro-forma for completion. It must then be authorised by a PSD Chief Inspector or above.

Which matters of misconduct might I be required to investigate?

You will not be allocated investigations into matters assessed as likely to amount to gross misconduct. These investigations will be conducted by PSD staff.

In the spirit of the changes brought about by the Taylor Reforms and the new conduct Regulations, PSD will refer matters of misconduct back to BCU.

The paperwork you receive will tell you what level the misconduct is pitched at i.e. misconduct which may result in disciplinary proceedings as opposed to lesser misconduct suitable for management action.

If there is a request for you to prepare and serve a Regulation notice then it will require proper but proportionate investigation.

Which matters of misconduct will require service of a Regulation notice?

A Regulation notice sets out in what way the officer is said not to have met the Standards of Professional Behaviour and notifies him/her that there is to be an investigation into it.

Importantly, it indicates to the officer how, if the matter were proven or admitted, it is assessed it would be likely to be dealt with. The assessment will be either that it may go to a misconduct meeting or a misconduct hearing. A misconduct hearing can dismiss an officer while a meeting cannot.

If it isn't assessed as conduct that will, if proven or admitted, be likely to result in a meeting or a hearing, a Regulation notice is not required.

IMPORTANT: The assessment is based on the likely outcome **if the** conduct was proven or admitted **not if it is likely** that the conduct **can be proven or will be** admitted.

Who serves the Regulation notice?

As Investigating Officer you should serve the Regulation notice or arrange for another supervisor to do so. While personal service is preferable, if an officer is absent from work, service can be by recorded delivery to the officer's address. The regulation notice should be served in a timely fashion – as an aim within a single number of days – its purpose being to inform the officer at the earliest opportunity of the matter(s) under investigation.

What happens after I serve the Regulation notice?

Once the officer is served this notice he/she has 10 working days to respond to you. This is a discretionary response – 'may' not 'must' - the officer does not have to reply – although inferences may be drawn later.

Why respond to a Regulation Notice?

The reforms envisaged that once the officer knows – in the case of matters you will be investigating – that it is not assessed as job threatening – it will encourage transparency, them to put their cards on the table, perhaps early admissions, an apology, an explanation – or at the least not to fear participating in the process through being concerned at not knowing what the worst case scenario outcome may be.

If the officer does make a response to you following service of a Regulation notice then as Investigating Officer you have to consider that response. The officer can also suggest lines of enquiry to you. You have to consider these also and either pursue them or document your reasons for not doing.

*** You should think of the investigation as a search to establish the truth of what happened not a one-sided approach to go all out to prove that something has – or has not – happened

What other enquiries should I make?

It is impossible to be prescriptive here as to what you do as each conduct matter will be very different.

This may help you – the matters subject of Regulation notice which you are investigating as a supervisor on a BCU will be those matters which are assessed as being likely to result in a misconduct meeting. Here, a Chief Inspector, usually from your Command Team, will have to be able to decide - in a meeting with the officer and from the evidence on your file , - on the balance of probabilities if the officer has failed to meet the standards of professional behaviour.

You know what you're investigating – the Standards of Behaviour are akin to your points to prove – what would you want to have documented before you in a misconduct meeting to be able to make the decision?

- If it's a breach of a force policy or a Police Regulation– you'd want a copy of it wouldn't you?
- If it was for failing to follow something from CC's orders you'd want to know what it was and when it was on there?
- If its use of force – wouldn't you want to know when the officer last had personal safety training? If they put a use of force form in?
- An officer not doing something – duty sheets or other evidence showing opportunities to have done whatever it was

As a general rule the presumption is that witnesses should not need to be called to a misconduct meeting so you should ensure their evidence is documented in clear and unambiguous terms e.g. statements, reports, emails.

Think about CCTV, pocket books, duty rosters, time off and LRD records, incident prints, custody records, custody video, airwave transmissions, force policies, medical evidence, CPS records, process or prosecution files, PACE or other legislative requirements. This is not an exhaustive list and you won't need them all each time but do any of these have a bearing on the case you are investigating?

If they do - obtain them and be professional – exhibit them and refer to them as such in your Investigators report (and statement if applicable).

What if it looks more serious than first thought?

If as you investigate a misconduct matter it appears that it is one of gross misconduct you should complete the re-assessment form available from PSD Admin and forward it and the case papers to PSD without delay.

Do I need to interview the officer?

It will not always be necessary to conduct an interview with the officer – but sometimes it will be.

Under no circumstances should you be reporting that your investigation is complete without there being a response in one form or another from the officer. This response could be the one made by the officer under Regulation 16 – or it could be that he/she doesn't make one, or it isn't adequate to establish a particular necessary element - in which case you as Investigating Officer then need to request a written response – or conduct an interview on tape.

PSD will provide you with tape reference numbers for misconduct interviews.

What is sufficient in any case will depend of the complexity of the case itself. A straightforward breach of a policy fully admitted in a regulation 16 response – will need less - if any - further questions or clarification. One which disputes the conduct in question will need a response to the evidence that is to the contrary.

The officer of course 'does not have to say anything' but in order to draw inferences later you have to put the questions – in the same way you would in your experience of interviewing members of the public.

What do I need to do when I have done the investigation?

On completion of the investigation you are required by Regulation 18 to submit an Investigating Officers report.

This report should set out on a Form 33:

1. Details of Officer under investigation

Name

Collar number/employee number

Section/Station

Role

Date of birth

Date joined

ID

code

2. Brief particulars of the conduct matter under investigation

This will have been outlined on the Regulation 14A/15 notice

3. How the matter first came to notice

Including date reported and by whom

4. Details of the Investigating Officer

Name

Section/Station

Role

Date appointed to investigate

5. Service of Regulation 14A/15 Notices

Time and date of service of notice

6. Summary of Circumstances and details of Investigation.

This part is to include relevant background information, details of what investigations have been carried out. It can refer to or summarise witness evidence but it is NOT a replacement for it. Don't fill in gaps in your investigation by writing 'evidence' into your report.

You should provide an accurate summary of the evidence and attach and refer to relevant documents.

7. Response(s) from officer concerned.

This will include a reference to any response made under Regulation 16, and in a written response or interview – as applicable. The text should include time, date, place and mode of interview, and other persons present. Investigating officers should NOT be submitting files for

misconduct where there has been no response obtained from the officer. Important: if your conclusion is that there is a case to answer for misconduct then you MUST make certain that your file includes the ROTI or full transcript.

8. Investigating Officer's Conclusion

In this part you consider the evidence and are required to 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.' (Regulation 18 Police (Conduct) Regulations 2012).

This is the only conclusion you make and you should make it using the wording stated.

***YOU MUST NOT MAKE ANY RECOMMENDATIONS AS TO FURTHER ACTION

e.g. I recommend a misconduct meeting and a written warning etc ***

9. Lessons Learned

Investigations into misconduct matters may well reveal important policy and practice issues which must be captured by the BCU or wider organisation – the ultimate aim being to lead to an improved service.

This section of the report must be used to identify any lessons learned as a result of the incident and subsequent investigation. These can lead to improvements to service delivery, standards of supervision, public confidence in the police or in general training approaches – even if no action is taken against an officer.

What do I do with the report and file?

You must submit the report through your Command Team who will endorse it and forward to D/Supt Walker PSD. She is responsible for deciding if there is a case to answer for misconduct or gross misconduct or if there is no case to answer, and **SECONDLY** whether or not the case is to be referred to misconduct proceedings.

Put your file into some semblance of order – don't just submit a jumble of papers – some do!! – and your professionalism too is on show.

E.g. Investigating Officers report

Evidence of conduct – consider either in chronological order or non police then police witnesses. Its going to be read by someone who knows nothing or very little about the case - in what order would it make most sense for them to read it?
Regulation notice

Regulation response (if applicable)

Written response (if applicable)

Interview (if applicable – MUST include ROTI if there is a case to answer for misconduct)

Exhibits

Miscellaneous/unused

XX Be professional – the vast majority of these documents are likely to be given to the officer as relevant documents if there are disciplinary proceedings so make sure they are accurate, contain appropriate language etc XX

PSD are available to provide advice on any aspect of the process and can be contacted as below: