



Leicestershire Police

Complaints and Misconduct Procedure

This procedure supports the following policy:
Complaints and Misconduct Policy

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1. Introduction

The complaints and misconduct procedures are legislated for by Part IV of the Police Act 1996 and various regulations and rules. This document details how those procedures will be implemented at a force level and should not be read in isolation but where clarification or further details are needed reference should be made to the regulations and Home Office guidance found on the PSD website.

The complaints system is managed by the Independent Police Complaints Commission (IPCC). Their aim is to ensure suitable arrangements are in place for dealing with complaints or allegations of misconduct and in doing so to increase public confidence by demonstrating the independence, accountability and integrity of the complaints system.

It is inevitable that in a large organisation such as the Leicestershire Police, which has such varied and complex contacts with the public, complaints will manifest themselves. It is vital that we respond to these in an appropriate way and where applicable learn the lessons thereby improving the quality of our service.

This procedure reflects the processes and procedures for police officers, members of the Special Constabulary and where applicable, police staff. The handling of complaints goes to the heart of our efforts to achieve and maintain a quality service to the people of Leicester, Leicestershire and Rutland.

2. Legislation

Provision for the handling of complaints and misconduct matters is contained within legislation including:-

- The Police Reform Act 2002
- The Police (Conduct) Regulations 2008
- The Police (Complaints and Misconduct) Regulations 2008
- The Police Reform and Social Responsibility Act 2011
- The Police (Conduct) Regulations 2012
- The Police (Complaints and Misconduct) Regulations 2012
- The Police (Performance) Regulations 2012

3. Home Office guidance

The Home Office guidance on 'Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures' has been issued in support of the regulations. It is there to supplement the regulations and underpins the procedures adopted by the Leicestershire Police. It is also supported by the IPCC Statutory Guidance to the Police Service.

4. Disciplinary authority

The Chief Constable has delegated responsibility for discipline to the Deputy Chief Constable (DCC). The DCC is responsible for the overall investigation of complaints and misconduct, including those alleging criminal offences. The PSD assist the DCC in this function.

5. Standards of Professional Behaviour

The 10 standards (Appendix A) have been designed to reflect the expectations that the police service and the public have of how police officers should act whether on or off duty. They have been written in a positive style to reflect what officers do together with an expectation that officers will challenge the poor behaviour of others.

6. Welfare Provision

It is recognised that suspension from the force, being the subject of a gross misconduct investigation and/or the appearance before gross

misconduct proceedings is a serious matter, which inevitably causes stress to the individual and to their families. In these cases the appointment of a welfare liaison person will be mandatory. In all other cases it is recognised that other members of staff may require enhanced welfare provision following the service of a notice of investigation. In such cases the appointment of a welfare liaison person should be considered. Full details on welfare provision and the role of the welfare person can be found at [Appendix D](#).

7. Suspension from duty

In cases of alleged serious misconduct, the officer may be suspended on the authority of the DCC.

Full details are contained within the 'Suspension from duty – Police Officer Procedure'.

8. Conducting investigations where there are possible outstanding criminal proceedings against the officer

Where there are possible or outstanding criminal proceedings, these will not normally delay proceedings under the Conduct Regulations unless it is decided that such action is likely to result in real prejudice to the outcome of the criminal case. If there is any doubt advice will be sought from the CPS or other prosecuting authority.

Advice on misconduct action following criminal proceedings can be found in the Home Office and IPCC Guidance.

9. Local Resolution Procedure (LR)

The LR procedure is intended to provide a timely, flexible and proportionate method for dealing with complaints of a relatively minor nature and so avoid the lengthy formality of a full investigation.

If handled confidently and professionally, this approach will have a positive impact on the views of people about policing in their area. Resolution means solving, explaining, clearing up or settling the matter with the complainant. It should be relatively quick and straightforward.

The person receiving or being allocated a complaint suitable for LR should make every effort to deal with it in this way. A little time spent with the complainant can, in most cases result in a positive outcome.

A complaint that is locally resolved will still be recorded as a complaint against police on the electronic form BC21.

A complaint is only suitable for Local Resolution if:-

- The complainant consents to that course of action, and

- The complaint is not a mandatory referral to the IPCC, and
- The incident would not justify bringing criminal or disciplinary proceedings against the person whose conduct is complained about, and
- The conduct complained about (even if it were proved) would not involve the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights.

Examples of complaints to which the LR procedure may be considered appropriate are:-

- Those of minor complaints concerning incivility, rudeness, technical assault in the nature of a push without aggravating features, reddening caused through the application of handcuffs;
- If a member of the public in similar circumstances would not be proceeded against; or
- Where advice is appropriate having regard to the alleged conduct.

Before attempting to resolve a complaint, the Appointed Officer should ensure that:-

- The complainant wishes to make a complaint against the police
- Where the complainant makes a number of separate complaints, all complaints can be locally resolved. The Appointed Officer can attempt to locally resolve some of the complaints and then submit a report recommending that the others be formally investigated.

Dependent on the case and the wishes of the complainant it may be appropriate to seek the views of the officer(s) which can inform the process addressing the complainants concerns.

It may be appropriate in dealing with a complaint using LR for a manager to take management action. However, this will not be considered as formal discipline action although it does not prevent a manager from making a note of the action and recording this on the officer's PDR (if appropriate).

It is not necessary for the officer complained of to admit the conduct alleged or to apologise. In some instances, it will be sufficient to explain the laws or the procedure under which the officer was operating at the time of the incident which gave rise to the complaint.

The only limit placed on the Appointed Officer's freedom of approach is that they shall not tender an apology on behalf of the officer concerned, unless that officer agrees to an apology being made. The Act provides that any statement made for the purpose of LR will not be admissible in subsequent criminal, civil or misconduct proceedings, unless it consists of, or includes, an admission relating to a matter which does not come within the scope of the LR procedure.

Where it appears to the Appointed Officer that the resolution of a complaint is likely to be assisted by a meeting between the complainant and the officer concerned, appropriate arrangements may be made. The officer complained of shall not be obliged, or ordered, to attend the meeting. The parties concerned may find it reassuring to have a lay person, or a 'friend', present at the meeting.

If, during the course of the LR procedure (whether by reason of a fresh allegation by the complainant, or by admission of the officer concerned, or other means), evidence comes to light of a more serious complaint which might require formal investigation, the LR procedure should be terminated and the matter dealt with as a formal complaint and the papers forwarded to the PSD.

The local resolution should be concluded as soon as possible and the report form BC21 should be submitted to the PSD via the supervisor's line manager. If the matter cannot be resolved within a few days, then the BC21 should be retained and contact made with the PSD to obtain a complaint reference number.

No entry will be made in the personal record of the officer concerned in relation to the attempted, or successful, local resolution of a complaint.

A complainant is entitled to be provided with a copy of the record relating to the complaint if application is made within 3 months of the resolution being achieved or, for whatever other reason, it is determined that the complaint should no longer be subject to that procedure.

A good practice guide for dealing with local resolutions can be found on the PSD website.

10. Complaints from members of the public – Initial Action

10.1 Definition of Complaint

A complaint is an expression of dissatisfaction by a member of the public about the conduct of a person serving with the police.

A complaint may be made by any of the following:

- A member of the public who claims that the conduct took place in relation to him or her
- A member of the public who claims to have been adversely affected by the conduct, even though it did not take place in relation to him or her
- A member of the public who claims to have witnessed the conduct

- A person acting on behalf of someone who falls within any of the three categories above.

A person can only be considered as having been authorised to act on behalf of another for the purposes of making a complaint if he or she has and is able to produce written consent from the person.

The decision to record a complaint is made in PSD. This will give the complaint formal status under the Police Reform Act 2002. This means that it has to be handled in accordance with legislation and guidance.

Many people often merely require a sympathetic and helpful explanation of police actions in order to satisfy them. Such immediate steps to allay a sense of grievance can increase respect for the Service and can be of great importance in maintaining good public relations. However, care should be taken to avoid any suggestion that improper pressure was exerted on a complainant or that there was any reluctance to record the complaint.

When dealing with a complaint from a juvenile, there is a responsibility to ensure the young person making the complaint understands the process and potential outcomes. Therefore, normal practice requires the involvement of a parent or guardian to provide the necessary support and guidance. In exceptional circumstances a child under 16 can give valid consent as long as they understand fully what is involved in making a complaint. A parent or guardian or a third party can make a complaint on behalf of a child or young person. The recording of a complaint may be commenced following verbal consent, pending the written consent. However, the absence of verbal or written consent must not preclude any necessary immediate action to preserve evidence, arrange a medical examination, etc., whilst a parent or guardian is being sought.

10.2 Receipt of complaints

In every case, the officer receiving the complaint will complete an electronic form BC21 and will hand to the complainant the appropriate [IPCC complaints leaflet](#). If not readily available a copy can be printed direct from the 'Forms' section on the PSD website, this includes versions in languages other than English and an easy read format.

All complaints will be emailed to the PSD where they will be subject of assessment and recording (see section 11 Initial Assessment). If a complaint is suitable for immediate local resolution then the need to send it in can be delayed for up to 7 days (refer to section 8).

10.3 Preservation of evidence

In appropriate cases, the officer receiving the complaint must take immediate steps to obtain and preserve evidence in relation to a

complaint. This duty must be carried out whether or not the complaint appears to relate to officers from this or another Force.

10.4 Medical examinations

Where the complainant alleges they have been the victim of an assault by a member of staff, immediate arrangements must be made for the complainant and staff member concerned to be medically examined, with their consent, by a Forensic Medical Examiner. Where consent is not forthcoming, serious consideration should be given to the attendance of a Forensic Medical Examiner, who may provide useful evidence, by visual examination.

Where a person is medically examined by someone other than a Forensic Medical Examiner, their written consent should be obtained allowing release of medical records. This form of consent is not affected by the sub judice rule.

10.5 Photographic evidence

Consideration should also be given to having the injuries photographed, either at the time or as soon as practicable. In the case of bruising, a further photograph taken after a period of time has elapsed may be appropriate.

10.6 Retention of clothing

Consideration should be given to obtaining clothing, etc., that may be bloodstained for example, as a result of an assault. Where property is taken into police possession in such circumstances, property other than found documentation should be completed on receipt of the property and a copy handed to the person from whom the property is obtained. This should be completed via the KIM property system.

10.7 Evidence elsewhere in the Force area

Additional steps should be taken to preserve evidence that may exist elsewhere in the force area from which the initial complaint was made. Where items form part of the force computer databases it is not always necessary to attach these as they are readily available to the Investigating Officer for examination e.g. custody record, CIS reports.

10.8 Other evidence

In some cases, it will be necessary to examine a police cell, interview room or police vehicle if it is considered that evidence may be found which could either support or negate the allegation. Photographs should be taken in appropriate cases and a scene of crime examination arranged. Consideration must be given to the closure of cell passages, withdrawal of police vehicles, etc., until a full examination has taken place.

10.9 Taking of statements from complainants

Statements will not usually be taken from complainants at the time they make their complaints. The Investigating Officer will normally take them. This applies irrespective of the sub judice rule. The exception is where the complainant will not be available at a later date, e.g. going abroad for some months or where they live some distance outside the Force area.

In lieu of the complainant's statement, the officer receiving the complaint will submit the complaint form BC21, together with a detailed report outlining the full circumstances of the complaint paying particular attention to the exact nature of the matters of complaint. This is particularly important in those cases where a decision needs to be made concerning referral to the IPCC.

11. Initial assessment (is this case one of misconduct?)

Initial reports or allegations indicating that the conduct of a police officer may have fallen below the Standards of Professional Behaviour (whether from members of the public or internally generated) must be formally assessed against the full range of options available for responding. This does not prevent dealing with suitable public complaints by way of LR when they are first reported.

The initial assessment will be carried out by the PSD, who will determine whether there is an indication that the allegation amounts to:

- Grievance
- Unsatisfactory Performance (dealt with under UPP)
- Direction and Control
- Civil claim issue
- Misconduct allegation
- Gross Misconduct allegation
- Criminal Conduct allegation
- Public complaint against police involving a conduct matter

The purpose of the initial assessment is to:

- Ensure a timely and proportionate response to an issue relating to conduct.
- Ensure that the most appropriate procedures are used.
- Identify the police officer(s) subject to the allegation and to eliminate those not involved.

PSD will determine whether to record the matter and whether the matter should be referred to the IPCC (in which case the initial assessment will

be provisional and PSD will be responsible for keeping the complainant informed).

The force **must** refer certain complaints to the IPCC, these include:

- Death or Serious Injury
- Serious Assault
- Serious Sexual Offence
- Serious Corruption
- Any criminal offence or behaviour aggravated by discrimination and relevant offence

In addition, the force may choose to make a voluntary referral to the IPCC.

If the complaint is one that will require a mandatory referral to the IPCC, the PSD must be informed as soon as possible.

The PSD will carry out notification of mandatory referral complaints. This must be done by no later than the end of the next working day.

Outside of office hours, the advice of the on-call PSD officer should be sought.

Where PSD determine that the report or allegation indicates that the conduct of a police officer did not meet the Standards of Professional Behaviour, they will decide whether it is necessary for the matter to be investigated, and whether the allegation, if proven or admitted, would amount to misconduct or gross misconduct. This is known as the 'severity assessment'.

Misconduct is defined as a breach of the Standards of Professional Behaviour.

Gross misconduct is defined as a breach of the Standards of Professional Behaviour so serious that dismissal would be justified.

Where appropriate the officer will be served with a notice under Regulation 14A/15 detailing the nature of the allegation and the assessment (see 12.1 for more details).

12. Appointment of the investigator

Following the initial assessment, if PSD determines that management action is not appropriate a further determination will be made to determine if the matter constitutes misconduct or gross misconduct.

If it is determined the alleged breach of the Standards of Behaviour amounts to misconduct and it would be appropriate to deal with the matter by way of local resolution (in the case of a complaint) or a proportionate investigation (except in a particularly complex case), he/she will refer the matter to a local Line Manager (via the nominated BCU/Directorate lead) to deal with the local resolution or investigate and prepare a report for the Head of PSD to consider. On completion of the investigation the file will be returned to PSD who will administer any appeal process prior to the recommendations of the Investigator being carried out. PSD will provide advice and assistance to the BCU or Directorate Investigator as required.

If it is determined that the matter constitutes gross misconduct (or is a particularly complex misconduct case), a full investigation will be carried out by a PSD Investigator.

The investigator should be a police officer not below the rank of Sergeant or equivalent police staff member and will:

- Have an appropriate level of knowledge, skills and experience to plan and manage the investigation.
- Not be an interested party.
- Not work directly or indirectly under the management of the officer concerned.

The appointment of an Investigating Officer does not necessarily mean that disciplinary action will ensue. No decision will be made with regard to disciplinary action until the report of the investigation has been fully considered.

13. Investigation

The PSD will ensure that a proportionate and balanced investigation is carried out as soon as possible after any misconduct is alleged or suspected, and that the investigation is carried out as quickly as possible allowing for the complexity of the case.

The Investigating Officer will keep the officer and their police friend informed of the progress of the investigation within at least 28 days from the start of the investigation, and thereafter within at least 28 days of the last notification.

In the case of a public complaint, the complainant will also be kept informed.

The investigation of formal complaints will be performed in accordance with the appropriate legislation, the Home Office Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures and Statutory Guidance issued by the IPCC.

13.1 Written Notices

Under Regulation 14A/15 as soon as reasonably practicable, the Investigator will give the officer concerned written notice of the investigation unless he/she considers that to do so might prejudice any investigation of the matter however, a notice must be served once the reason(s) for delay have ceased to apply.

The notice will be prepared by the PSD and either forwarded electronically to the officers Line Manager or a member of the PSD will complete service.

The service of a notice is not required when dealing with a local resolution.

If at any time before the start of the misconduct meeting the assessment of the conduct, or the level of the misconduct meeting, is changed, the officer will be given written notice of the change and the reasons for this. Where the alleged misconduct is as a result of a public complaint the complainant will be notified as well of any change and consideration will be given to any requirement to notify or update the IPCC.

13.2 Representations to the Investigator

The officer may provide a written or oral statement to the Investigator within 10 working days of the written notice of the investigation (Regulation 14A/15 notice) unless this period is extended by the Investigator.

In addition, the officer or his/her police friend may:

- provide any other document concerning the matter, and
- suggest particular lines of inquiry, including witnesses to be interviewed

The Investigator will consider such statements, documents or suggestions, and make a record of having received them and document reasons for following or not following any submissions made. The purpose is to enable a fair and balanced investigation report to be prepared and where appropriate made available for consideration at a misconduct meeting/hearing and to negate the need (except where necessary) for witnesses to attend a meeting/hearing.

Where there is a change in assessment level of the alleged misconduct matter the Investigator will notify the officer in writing as soon as practicable and the officer may make further representations as detailed above within 10 days of receipt of the notice.

13.3 Interviews during the investigation

It will not always be necessary to conduct a formal interview with an officer. In some cases, particularly low level misconduct cases, it may be more appropriate, proportionate and timely to request a written account or obtain a verbal account from the officer concerned.

Where the Investigator wishes to interview the officer, the regulations and associated guidance provide clear instructions on arranging this.

Where the officer is on certificated sick leave, and there is a need to interview them, advice should be sought from the Occupational Health Department to establish if the officer is fit for interview. (It may be that the officer is not fit for normal duty, but is perfectly capable of being interviewed.) Alternatively the officer concerned may provide a written response to the allegations within a specified period by answering questions posed by the Investigator. It is important that there is a balance between the welfare of the officer and the need for the investigation to progress as quickly as possible in the interests of justice.

13.4 Investigation report

As soon as practicable, on completion of the investigation, the investigator will submit a written report, using the appropriate template to the PSD.

If at any time during the investigation the investigator believes that the 'special conditions' (Fast Track procedures) are satisfied, whether or not the investigation is at an end they will follow the procedures detailed in Appendix B.

Based on the report, the Head of PSD will determine whether, on the balance of probabilities, there is a case of misconduct to answer (or not). If it is decided that there is no case of misconduct then management action may still be appropriate.

If it is decided that there is a misconduct case to answer then the Head of PSD will determine whether the matter can be dealt with by way of management action without the need to refer to a meeting. This may be appropriate where the officer concerned has accepted that his or her conduct fell below the standards expected of a police officer, and demonstrates a commitment to improve his or her conduct in the future and to learn from that particular case.

In matters involving a public complaint, this decision may be subject to an appeal by the complainant to the IPCC. In such cases any action should be delayed until the appeal period has expired (28+2 days from being notified of outcome). If gross misconduct is identified there is no need to delay proceeding to a hearing.

14. Moving between misconduct and unsatisfactory performance procedures

It may not be apparent at the outset of an inquiry whether the matter is one of misconduct or unsatisfactory performance. It would be difficult to conduct parallel inquiries on the same matter under both procedures, and ideally it should be established at the investigation stage which procedure is appropriate.

Assessing a matter as misconduct or performance is an important distinction to make.

Misconduct procedures should be followed when dealing with behaviour falling below the standard required of a police officer, by reference to the Standards of Professional Behaviour.

The Unsatisfactory Performance Procedure (UPP) exists to deal with poor performance and issues of capability, competence or attendance. Capability and competence can be measured against the activities in the officer's role profile and through the force's PDR process.

If, on investigation, a matter that appears initially to relate to misconduct turns out to be a matter relating to unsatisfactory performance, the matter should be referred to the line manager to deal with under the UPP.

In very rare cases the matter may proceed to misconduct meeting or hearing, and the persons conducting those proceedings find that the conduct of the officer amounts to unsatisfactory performance as opposed to misconduct. In such a case, the finding would be 'no case to answer' for misconduct, and the matter would be referred back to the Head of PSD to consider if it would be appropriate to deal with the matter using the unsatisfactory performance procedure.

Material gathered under the UPP should not be used for the purposes of the misconduct procedure if this means that the safeguards for officers provided in the misconduct procedure – such as provision for formal notification – is undermined.

15. Dealing with misconduct

Where a matter has been assessed as misconduct on the basis of the information available at the initial assessment stage, there are 2 ways in which it can be dealt with:

- Management action
- Formal action for misconduct

15.1 Management Action

The purpose of management action is to:

- Deal with misconduct in a timely, proportionate and effective way that will enhance the confidence of staff, officers and the public.
- Identify any underlying causes or welfare considerations.
- Improve conduct and to prevent a similar situation arising in the future.

Management action may include pointing out how the behaviour fell short of the expectations set out in the Standards of Professional Behaviour, identifying expectations for future conduct, establishing a development plan and addressing any underlying causes of misconduct. The development plan will not refer to the details of the alleged misconduct matter but only the desired outcomes to be addressed.

If an officer does not agree to the management action, it can still be imposed providing such action is reasonable and proportionate.

The officer may, in some cases, be advised that if the misconduct is repeated or if there is further misconduct of a different type, then this may lead to formal action for misconduct.

Management action is not a formal misconduct outcome, but is considered to be part of the normal management responsibility of police managers and supervisors. Management action is always available including, during or after the process of resolving a complaint using local resolution.

Where a manager decides that management action is the most appropriate and proportionate way to deal with an issue of misconduct, there will usually be no requirement to conduct a formal investigation, and therefore no requirement to give a written notice to the officer concerned in accordance with the provisions in the Police (Conduct) Regulations 2008.

Note: No formal disciplinary action (other than management action) may be imposed on a police officer unless the case has been referred to a Misconduct Meeting, Misconduct Hearing or a Special Case Hearing.

15.2 Formal action for misconduct

There are two types of formal misconduct proceedings:

- **Misconduct Meeting** – for cases where there is a case to answer in respect of misconduct, and where the maximum outcome would be a final written warning.
- **Misconduct Hearing** – for cases where there is a case to answer in respect of gross misconduct, or where the officer has a live final written warning and there is a case to answer in respect of a further act of misconduct. The maximum outcome at this meeting would be dismissal.

PSD must be consulted before the formal misconduct procedures are used to ensure that there are no other matters that need to be considered prior to any investigation.

16. Misconduct Proceedings

16.1 Notification and timing of misconduct proceedings

Where the Head of PSD determines that there is a case to answer in respect of misconduct, proceedings will be arranged. In cases involving a public complaint these proceedings will NOT commence until the expiry of the appeal period (28+2 days) except in the case of a hearing which will proceed without delay. A meeting will be arranged and administered by the relevant BCU/Directorate. A hearing will be administered by the Office Manager in PSD.

A misconduct meeting will take place no later than **20 working days** after the date on which the documents and material were supplied to the officer concerned.

A misconduct hearing will take place no later than **30 working days** after the date on which the documents and material were supplied to the officer concerned.

The person chairing the proceedings may extend these time periods where they consider that it would be in the interests of justice to do so.

In cases involving a public complaint, the time limit when misconduct proceedings need to be held will not start until either the time for the complainant to appeal has elapsed without an appeal being notified or after the IPCC has made a determination in response to an appeal by a complainant (except in the case of a hearing where proceedings will go ahead without delay). Therefore, papers will not be served on the officer concerned until the 28+2 day appeal time has elapsed or after the IPCC has made a response to an appeal.

Procedure on receipt of a notice of misconduct proceedings
The officer concerned will respond to the notification within **14 working days** stating:

The officer concerned must also provide copies of any documents he/she intends to rely on at the misconduct meeting.

16.2 Persons conducting misconduct meeting/hearing

Where a case is referred to a **misconduct meeting**, the meeting will be conducted by a person who is not an interested party and:

- Is a Chief Inspector and who is at least one rank higher than the officer concerned, or

- A police staff member who is more senior than the officer concerned.

A police staff manager will not be appointed to conduct a misconduct meeting if the case substantially involves operational policing matters.

An appropriate manager (whether a police officer or police staff HR manager) may also be appointed as an adviser to the person conducting the meeting. Their role is to advise on the procedure to be adopted. They do not form part of the decision making process. In addition, the adviser must be sufficiently independent from the case to avoid any suggestion of unfairness.

Where the case is referred to a **misconduct hearing**, the hearing will be conducted by a panel of 3 persons comprising:

- 1) Chair - who will be an Assistant Chief Constable (ACC) or a Senior HR Professional namely, the HR Director.
- 2) Wing member will be;
 - where the chair is an ACC, a police officer of the rank of Superintendent or above, or an HR Professional; or
 - where the chair is a Senior HR Professional, a police officer of the rank of Superintendent or above
- 3) Wing member will be a person selected by the Office of the Police and Crime Commissioner from a list of candidates trained in the conduct of misconduct hearings.

The Senior HR Professional will have sufficient seniority, skills and experience to be the panel chair and will be senior in rank to the officer concerned.

16.3 Procedure at the misconduct meeting/hearing

The person(s) conducting the meeting or hearing will determine the course of the meeting/hearing in accordance with the principles of natural justice and fairness.

The purpose is to hear the evidence of the alleged misconduct and to give the officer the opportunity to put forward his/her views.

Generally, proceedings will be conducted without witnesses unless the person conducting or chairing the meeting/hearing reasonably believes his or her attendance is necessary to resolve disputed issues in that case.

A meeting/hearing may take place if the officer fails to attend.

In cases where the officer is absent through, for example sickness or injury a short delay may be reasonable to allow him or her to attend. If such a delay is not possible or is considered inappropriate then the

person conducting the meeting/hearing may allow the officer to participate by telephone or video link. In these circumstances a police friend will always be permitted to attend to represent the officer.

The person chairing the proceedings will review the facts of the case and decide whether, on the balance of probabilities, (or because the officer concerned admits it is the case) the conduct of the officer constituted misconduct (in the case of a misconduct meeting) or gross misconduct (in the case of misconduct hearing) or not.

In the case of a misconduct hearing, any decision will be based on a majority (with the Chair having the casting vote if necessary). The panel will not indicate whether the decision was taken unanimously or by majority.

A record of the proceedings at the meeting will be taken and, in the case of a misconduct hearing, this will be by means of a verbatim record (by tape recording or any other recording method).

16.4 Outcomes of meetings/hearings

The person conducting a misconduct meeting may impose the following disciplinary action:

- Record a finding of misconduct but take no further action
- Management Advice
- Written Warning
- Final Written Warning

The panel at a misconduct hearing may impose the following disciplinary action:

- Record a finding of misconduct but take no further action
- Management Advice
- Written Warning
- Final Written Warning
- Dismissal with Notice (with pay in lieu with minimum 28 days notice)
- Dismissal without Notice

Where a first or final written warning is given, management action may also be given.

Where a first written warning is given, the officer will be told that any future misconduct may result in further action being taken which may lead to a final written warning. A first written warning will be put on the officer's personal file and will remain live for 12 months from the date the warning is given. If any improvement action is required, this will be specified, with timescales and will be linked to an appropriate PDR entry.

Where a final written warning is given, the officer will be told that any future misconduct may result in further action being taken, which may lead to dismissal. A final written warning will be put on the officer's personal file and will remain live for 18 months from the date the warning is given. If any improvement action is required, this will be specified, with timescales and will be linked to an appropriate PDR entry.

Where a case has been referred to a misconduct meeting, and the officer concerned has a live first written warning, the person conducting the meeting cannot impose another written warning. They will have to decide whether to take no action, give management advice, or if they determine that a written warning is appropriate, they will impose a final written warning.

Where a case has been referred to a misconduct hearing on the grounds that the officer has a live final written warning, and the officer admits or is found to have committed a further act of misconduct, the persons conducting the hearing cannot impose another written or final written warning. They will have to decide whether to take no action, give management advice or if they determine that a written warning or a final written warning is appropriate, they will dismiss the officer unless they are satisfied that there are exceptional circumstances that warrant the officer concerned remaining in the police service (in such a case dismissal with notice may be appropriate).

Where it is determined that such exceptional circumstances exist, the persons conducting the meeting will extend the current final written warning for a further 18 months from the date of the meeting. These 18 months will be added to any unexpired time on the current final written warning. An extension to a final written warning can only be given on one occasion.

Exceptional circumstances may include where the misconduct which is the subject of the latest hearing pre-dates the misconduct for which the officer received his/her original final written warning; or the misconduct in the latest case is significantly less serious than the conduct that led to the current final written warning being given.

Where the question of disciplinary action is being considered, the person or persons conducting the misconduct proceedings will have regard to the officer's record of police service and any oral or written submissions by the officer or his representatives.

A record of the misconduct meeting will be taken, and the officer concerned, will, on request, be supplied with a copy of the record of the proceedings.

In cases involving a public complaint, the complainant will be informed of the outcome.

16.5 Expiry of Warnings

Notification of written warnings issued, including the date issued and expiry date will be recorded on the officer's personal record, along with the written notification of the outcome and a summary of the matter.

Where a police officer with a live written warning transfers from one force to another, then the live warning will transfer with the officer and will remain live until the expiry of the warning, and should be referred to as part of any reference before the officer starts.

Where an officer with a live written warning takes a career break or has an extended period of absence (e.g. maternity, paternity, adoption leave etc), then any time on such leave will not count towards the period of the written warning. For example, if an officer has a first written warning that has been live for 6 months, then goes on a career break for 12 months, on their return to Force they will still have 6 months before the written warning expires.

16.6 Right of appeal

The officer has the right to appeal against the finding and/or the outcome imposed at a misconduct meeting or hearing.

The officer will give written notice of their appeal within 7 working days of receipt of the written notice of the finding and outcome of the misconduct proceedings. They will specify the grounds of their appeal and whether a meeting is requested.

Appeal following misconduct meeting

The appeal meeting will be conducted by an officer of at least the rank of Superintendent or police staff member who is not an interested party and at least one rank or grade higher than the officer or police staff member who conducted the misconduct meeting.

If the case substantially involves operational policing matters, the appeal will be conducted by a police officer.

An appropriate manager (whether a police officer or police staff HR manager) may be present to advise the person conducting the appeal on procedural matters.

The person conducting the appeal will decide whether the notice of appeal sets out arguable grounds for appeal. If they determine that there are no arguable grounds, then he/she will dismiss the appeal.

An appeal is not a repeat of the misconduct meeting. It is to examine the particular part(s) of the misconduct case in question and which may affect the finding or outcome.

The person determining the appeal will:

- confirm or reverse the decision appealed against
- deal with the officer concerned in any way in which the person conducting the misconduct meeting could have dealt with him/her including (unless a final written warning was imposed) imposing a more severe disciplinary action than that appealed against up to a maximum of a final written warning

The decision of the person determining the appeal will take effect from the date of the written notice of the outcome of the misconduct meeting.

In cases where the IPCC made a direction to the Chief Constable, the IPCC will receive written notice of the determination of the appeal with a summary of the reasons.

There is no further recourse for appeal against a finding at a misconduct meeting.

Appeal following misconduct hearing

Following a misconduct hearing the officer may appeal to a Police Appeals Tribunal (PAT). The PAT will consist of a Chair and 3 members appointed by the Office of the Police and Crime Commissioner. The process is managed by the Office of the Police and Crime Commissioner.

The PAT can increase any outcome imposed as well as reduce or overturn the decision of the original hearing.

17. Withdrawal of case

If at any time before the beginning of misconduct proceedings the DCC may direct that the case be withdrawn. In such cases the force may: –

- take no action
- take management action; or
- refer the matter to be dealt with under the Performance Regulations

18. Competency Related Threshold Payment

A finding or admission of misconduct at a misconduct meeting/hearing will not automatically result in the removal of an officer's Competence Related Threshold Payment.

Where an officer has received a written warning or a final written warning this may trigger a review of the appropriateness of that officer continuing to receive such payments. However, the misconduct must be considered alongside the other criteria for receiving the payments in reaching a

decision as to whether it is appropriate and justified to remove such payments.

19. Requirement for police officers to reveal relevant misconduct findings to the CPS

Following the judgement in R -v- EDWARDS (1991) the prosecution has an obligation to notify the defence in criminal trials of certain criminal and discipline proceedings/convictions involving police officers who are witnesses. The PSD will notify the CPS of all officers who are subject of this.

In cases where the officer is required to submit a statement of evidence or equivalent document (e.g. pocket book) in a case where a file is required they should complete a form MG6B. This form should then be attached to the file. The CPS will then decide whether or not to disclose the information to the defence.

Applicable cases:

- All charged cases.
- Cases started by means of summons that are 'crime summons' cases, punishable by imprisonment.
- Where there is a specified offence e.g. no insurance and person pleads not guilty.

The obligation to disclose only applies in the following circumstances:

- disciplinary findings of guilt at misconduct proceedings except where they have been expunged, charges arising out of neglect of health, improper dress or untidiness or entering licensed premises or where the officer has received management advice
- relevant formal written warnings
- disciplinary proceedings which have not yet been completed
- criminal convictions, criminal cautions and penalty notices for disorder for recordable offences
- criminal proceedings for recordable offences which have not been completed – includes offences for which reported for summons

Where it has been identified that an officer has failed to comply with their obligations under R – v – Edwards the matter will be referred to the Head of PSD for appropriate action to be taken.

Information about officers suspended but who have not been charged will be revealed to the prosecutor by the Head of PSD. This applies to both criminal and disciplinary matters.

20. Allegations that police officers have committed criminal offences

Where any allegation is made that a police officer may have committed a criminal offence, the allegation will be fully investigated in line with the procedures for investigating crime. In appropriate cases an advice file will be prepared and submitted, through the CPS.

21. Reporting of any action taken against an officer for a criminal offence, conditions imposed by a court or receipt of any penalty notice

Police officers are required to report as soon as reasonably practicable any occasion in the UK or elsewhere where they have been subject to arrest, a summons for an offence, a penalty notice for disorder, an endorsable fixed penalty notice for a road traffic offence, or a charge or caution for an offence by any enforcement agency.

They must also report as soon as reasonably practicable all convictions and sentences and conditions imposed by any court, whether criminal or civil (excluding matrimonial proceedings but including non-molestation orders or occupation orders).

‘Conditions imposed by a court’ would include, for example, the issue of an Anti-Social Behaviour Order, a restraining order, or a bind-over.

The officer must report the particulars of the matter to their BCU Commander/Directorate Head and subsequently report the result. Any such reports received will be forwarded to the Superintendent, PSD.

Officers required to attend court in such circumstances will do so in plain clothes.

Appendix A: Standards of Professional Behaviour

Honesty and Integrity

Police officers are honest, act with integrity and do not compromise or abuse their position.

Authority, Respect and Courtesy

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

Equality and Diversity

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

Use of Force

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Orders and Instructions

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.

Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

Confidentiality

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

Fitness for Duty

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

Discreditable Conduct

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

Challenging and Reporting Improper Conduct

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

Appendix B: Fast Track Procedures (Special Cases)

This procedure applies where the matter has been certified as a Special Case because the 'special conditions' have been satisfied or because the IPCC has given a direction under paragraph 20H(7) of Schedule 3 to the Police Reform Act 2002.

Special conditions exist where there is sufficient evidence in the form of written statements or other documents or materials, without further evidence, to establish on the balance of probabilities that the conduct of the officer concerned constituted gross misconduct and it is in the public interest for the officer to cease to be a police officer without delay.

However, at any stage before the Special Case hearing, based on the emerging evidence from the investigation, the Chief Constable may direct that the case be dealt with by a Misconduct Meeting or a Misconduct Hearing (except in a case where the IPCC has directed that the matter should be dealt with as a Special Case).

There may also be cases where the special conditions are met, but it would not be appropriate to apply them, for instance, where it might prematurely alert others who are, or may be, the subject of an investigation.

1. Notice of referral to a Special Case Hearing

Where it has been determined that the matter will be referred to a Special Case Hearing, the officer will be given a written notice of the decision, and a description of the conduct which is alleged to be gross misconduct.

He/she will also be supplied with copies of the following:

1. The certificate issued under Regulation 19 (10) of the Police (Conduct) Regulations 2008 certifying the case as a special case (Taylor 9a)
2. Any statements he or she has made to the Investigator during the course of the investigation
3. The Investigator's report (if any) or any parts of the report that relate to the officer concerned
4. Any relevant statements or other documents gathered during the course of the investigation

If the officer fails to, or is unable to attend that meeting, written notice will be left with someone at, or sent by recorded delivery to, his/her last known address.

2. Timing of the Special Case Hearing

The hearing will take place not less than **14 days (10 working days), and not more than 21 days (15 working days)**, from the date on which notice of referral to a Special Case Hearing is given to the officer.

3. Procedure on receipt of the notice

Within **7 working days** of the date on which the written notice and documents are sent to the officer concerned, the officer will provide written notice of:

1. Whether or not he/she accepts that their conduct constituted gross misconduct
2. Where he/she accepts that their conduct constituted gross misconduct, any submission he/she wishes to make in mitigation
3. Where he/she does not accept that his/her conduct constituted gross misconduct
4. The allegations he/she disputes and his/her version of events, and
5. Any arguments on points of law that he/she wishes to be considered by the person conducting the hearing

At the same time the officer concerned will provide the person conducting the hearing with copies of any documents he/she intends to rely on at the hearing.

4. Conducting the Special Case Hearing

The Chief Constable will conduct the hearing (or if not available or involved in the case a Chief Constable from another Force).

5. Attendance of the officer, and others, at the Special Case Hearing

If the officer fails to attend the hearing, his/her police friend and Counsel or Solicitor may attend, and the hearing may proceed and be concluded in their absence.

Where the officer notifies the person conducting the hearing in advance that they are unable to attend due to incapacity or some other unavoidable reason, that person may allow the officer to participate in the hearing by telephone, or other means – in which case their police friend, Counsel or Solicitor may attend the meeting.

Where it appears to the person conducting the hearing that the officer could not properly participate in the hearing in such a way, they may adjourn the hearing.

In cases where the IPCC have given a direction on the case, the person conducting the hearing may ask the Commission to attend to answer questions. Where the IPCC is asked to attend, it may instruct Counsel or a Solicitor to represent it and will notify the complainant and any interested person accordingly. The officer concerned will also be informed.

The person conducting the hearing may ask the Investigator or a nominated person (i.e. someone who has sufficient knowledge of the investigation of the case to be able to assist the person conducting the hearing) to attend to answer questions.

Where the misconduct matter is the subject of a public complaint, the complainant or any interested person may attend the hearing up to and including the point at which the finding is determined by the person conducting the hearing. They will not be permitted to remain in the hearing whilst character references or mitigation are being given, or the point at which the question of disciplinary action is determined. The complainant will have no right or opportunity to put questions to the officer concerned.

However, the Chief Constable has a duty to inform the complainant of the outcome of the hearing whether they attend or not.

Where a complainant attends a hearing he/she is entitled to be accompanied by one other person and, if they have a special need, one further person to accommodate that need. The complainant is there to observe and has no active part to play in the process.

6. Procedure at a Special Case Hearing

The person conducting the hearing may determine their own procedure, and may adjourn the hearing from time to time if it appears necessary or expedient to do so. However, the meeting will not be adjourned solely to allow the complainant or any interested person to attend.

At the hearing the police friend, Counsel or Solicitor, may make representations on behalf of the officer and confer with the officer concerned. They may not answer questions posed to the officer during the hearing.

The person conducting the hearing may allow any document to be considered regardless of whether a copy of it has been supplied to him/her by the officer concerned in advance of the meeting, and providing the officer concerned consents, if they have not been supplied with a copy of in advance of the meeting.

No witnesses will attend a Special Case Hearing. However, complainants and interested persons (as defined) have a right to attend.

The person conducting the hearing will review the facts of the case and decide whether or not the conduct of the officer constituted gross misconduct - on the balance of probabilities or because the officer admits that is the case.

7. Outcome of a Special Case Hearing

Where the person conducting the hearing finds that the conduct of the officer constituted gross misconduct, he/she will impose disciplinary action that may be:

1. A final written warning (unless a final written warning has been imposed on the officer within the 18 months prior to the assessment of the conduct which led to the Special Case hearing)
2. Dismissal with notice, or
3. Dismissal without notice

In any other case, the person conducting the hearing will:

- Dismiss the case, or
- Refer the case back to be treated as if it was not a 'special case'

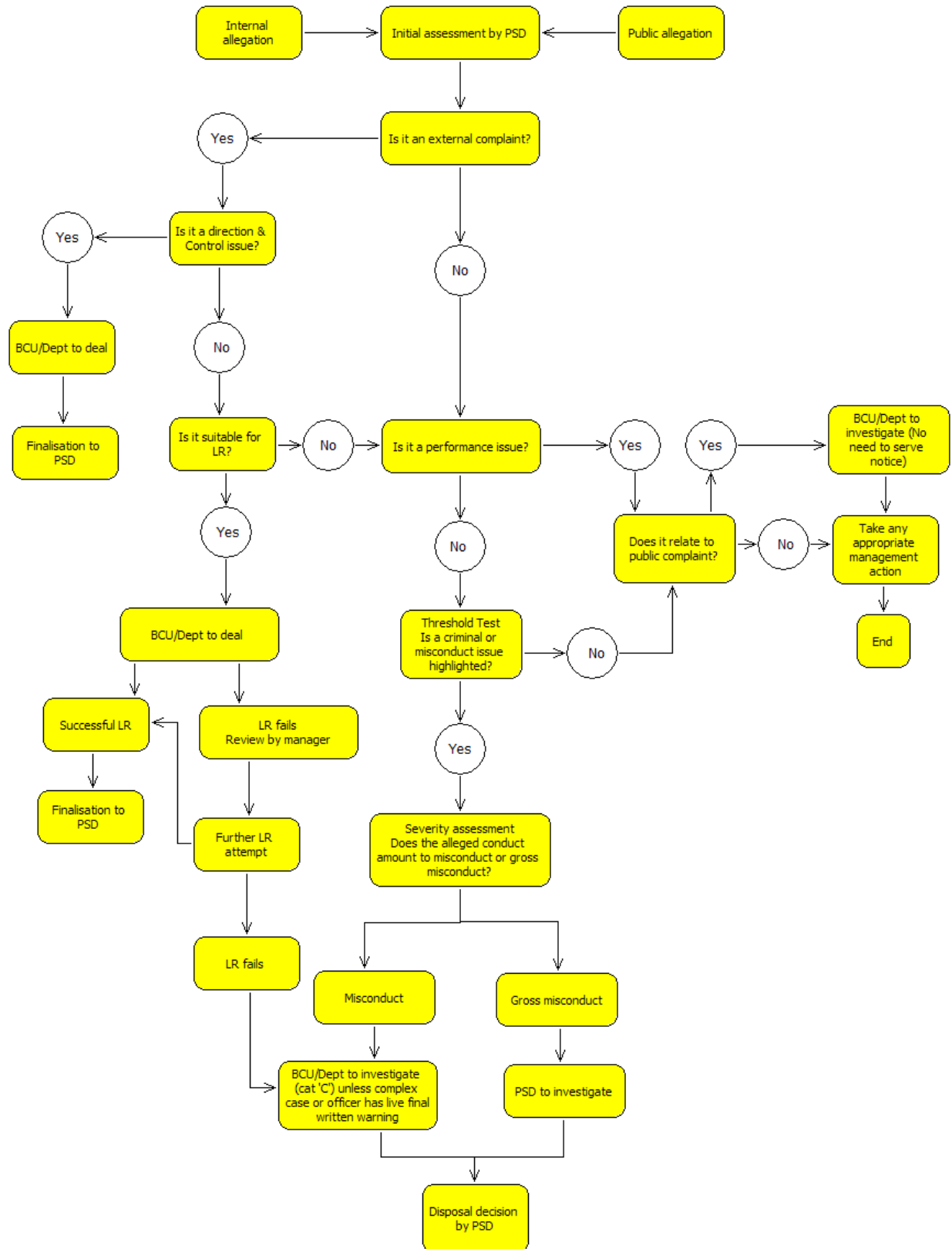
The disciplinary action will take effect from the date on which it is notified to the officer, and in the case of dismissal with notice, the person conducting the meeting will decide the period of notice to be given, subject to a minimum period of 28 days.

Written notice of the outcome will include notice of the right of appeal to a Police Appeals Tribunal.

A *verbatim* record of the hearing will be taken, and the officer, on request, will be supplied with a copy of the proceedings.

Appendix C: Overview of Process When an Allegation or Complaint Is Made

Note: Dept = Directorate



Appendix D: Welfare Provision

It is recognised that suspension from the Force, being the subject of a gross misconduct investigation and/or the appearance before gross misconduct proceedings is a serious matter, which inevitably causes stress to the individual, and to their families. In these cases the appointment of a welfare liaison person will be mandatory.

Although the following guidance is aimed at individuals who have been suspended, are the subject of a gross misconduct investigation or are facing gross misconduct proceedings it is recognised that other members of staff may require enhanced welfare provision following the service of a notice of investigation. The person serving the notice should assess whether a welfare liaison person should be allocated.

An individual who finds themselves in such a position should be strongly advised to see their GP who would be able to undertake an assessment related to their mental health and prescribe any appropriate treatment which could include medication or counselling.

The individual should be given details regarding the Force's Employee Assistance Programme which is available 24 hours a day, 365 days per year. Currently this service is provided by CiC and details can be found on the Occupational Health Unit website. It should be made clear to the individual that this service can be accessed at anytime by them or any immediate family members for confidential counselling, help and information services.

The respective BCU Commander/ Directorate Head will be responsible for ensuring the well being of such members of staff. In this respect they must ensure that a welfare liaison person is appointed who is acceptable to the affected individual. The individual may nominate a person who should not be connected with any matter subject of the investigation. Such a nomination will be taken into consideration when appointing a welfare liaison person.

In cases where an individual meets the criteria of a 'vulnerable person' then the welfare liaison person should treat them in the same way as a member of the public.

The welfare liaison person must make contact with the individual at monthly intervals or more frequently if necessary, ensuring at the very least that the individual understands the ready availability of welfare support. A record of such contact must be made. In the event of the welfare liaison person being unable to fulfil their responsibilities for any reason, they should make arrangements for another person to take over the welfare liaison role. This person should receive an appropriate handover to enable them to effectively under take that role.

The record of welfare contact must be available at all times for examination by the HR Officer who should review it and report to the BCU/Directorate Head on

a monthly basis. At the conclusion of the process the documents will be filed with the case file within PSD.

Prior to the monthly suspension review conducted by the Deputy Chief Constable the welfare liaison person will be contacted by PSD for an update. This will be fed into the review process. In all other cases the investigating officer will make contact with the welfare liaison person (as a minimum in line with the 28 day updates) to identify any issues impacting on the individual or investigation.

The welfare liaison person should ensure that the individual retains professional links with the force including updates through weekly orders, career developments, and alterations in legislation, police procedures, and directorate changes.

The role of the Occupational Health Unit will be to offer advice to the BCU/Directorate related to the individual. This will be as a result of an individual being seen by Occupational Health via the referral process.

The individual may wish to seek the support of a Trade Union or Staff Association Representative. Where an individual has been suspended the welfare liaison person should liaise with the individual's representative to decide on the most appropriate way of maintaining contact and ensuring the welfare of the suspended person.