

PROFESSIONAL STANDARDS DEPARTMENT

Police Misconduct Process

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Introduction

On 1st February 2020, Phase 3 of the new legislative framework governing the Police Complaint and Conduct system for England and Wales was implemented. To provide some context, Phase 3 reforms are aimed at ensuring that Professional Standards Departments and the Independent Office for Police Conduct (IOPC) are investigating serious cases of alleged wrongdoing - not every mistake, performance issue or low-level misconduct. However, it is only right that serious allegations are fully investigated and, where necessary, individuals held to account but this should only be in cases where the seriousness justifies such a formal approach and this has formed the benchmark for changes to misconduct thresholds and revised definitions for conduct.

Professional Standards Department (PSD) handle both complaint and internal conduct matters. Conduct matters are different to complaints in that complaints are defined as ‘any expression of dissatisfaction with a police force that is expressed by, or on behalf of, a member of the public’. Whereas a conduct matter is defined as ‘any matter which is not and has not been subject of a complaint, where there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings’ (Section 12, Police Reform Act 2002).

The focus of this report is Conduct matters and the processes undertaken by PSD when misconduct is identified.

Definitions

The Police (Conduct) Regulations 2020 offer clearer definitions and thresholds in the disciplinary system;

Misconduct is defined as ‘...a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action’

Gross Misconduct is defined as ‘...a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal’

This infographic highlights what we mean by ‘raising the misconduct bar’;

Type of Allegation	Definition	How to be dealt with	Outcome
Gross Misconduct	"A breach of the Standard of Professional Behaviour that is so serious as to justify dismissal"	<ul style="list-style-type: none"> Formal investigation Misconduct Hearing 	<ul style="list-style-type: none"> Dismissal Reduction in Rank Final Written Warning
Misconduct	"A breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action"	<ul style="list-style-type: none"> Formal Investigation Misconduct Meeting 	<ul style="list-style-type: none"> Final Written Warning Written Warning
Practice Requiring Improvement (PRI)	"Underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the policing Code of Ethics"	<ul style="list-style-type: none"> Reflective Practice Review Process - Fact-finding - Discussion - Development Plan <p>NOT a form of Disciplinary proceeding.</p>	<ul style="list-style-type: none"> Identifying learning Proportionate remedial or restorative action Training Mediation Shadowing or mentoring Closer supervision Welfare interventions

Identifying Conduct Matters

PSD aims to be proactive and alert to the potential for conduct matters to arise and has clear processes in place to effectively record and respond to these matters.

The following are means of reporting internal conduct matters to PSD;

Crime-Stoppers:

This reporting facility went live in October 2019, replacing the previous 'Integrity Line'. Using Crime-Stoppers, which processes the reports on our behalf, gives far more confidence to reporting persons that the intelligence has been anonymised. Also, Crime-Stoppers has a facility which enables two-way contact which means, for the first time, Anti-Corruption Unit can send questions back to the reporting person should there be a need to, through the secure portal.

PSD3 - Internal misconduct referral form:

PSD developed a form for internal reporting of misconduct. This form is regularly reviewed to ensure it is current and purposeful and can be found in the 'Forms and Documents' section on the Professional Standards platform on the force intranet. There is a pre-submission check list at the very start of the form to prompt the reporting person to consider whether this reaches the threshold of misconduct, or whether, the matter is more suitable to deal with locally, by way of performance and/or management interventions.

Once the reporting person provides the essential details and an overview of the alleged misconduct, including which Standards of Professional Behaviour have allegedly been breached and to indicate whether there has been any alleged discrimination, they are expected to submit this to their Senior Management Team for their comments and considerations of the referral to PSD.

Process

Research and Fact Finding

A team of both staff and detectives in our Intake and Assessment unit triage, research, gather readily available evidence such as Body Word Video and CCTV and record reports of misconduct, escalating and referring matters where required.

This team provide the results of their fact finding to the Appropriate Authority and share their opinion as to whether referrals are required, either to the IOPC, or Data Protection Department for instance. Matters of urgency or of significant note are also raised in Daily Management Meetings for Senior Management awareness and discussion.

Severity Assessment

An individual of Chief Inspector rank (can be delegated to the rank of Inspector) oversees all reports of misconduct.

In cases of **'local' conduct**, the Appropriate Authority undertakes a Severity assessment in line with Regulation 14 of the Police (Conduct) Regulations 2020. In the spirit of the new regulations, the Appropriate Authority can, at the point of conducting a severity assessment, refer the matter to the Reflective Practice Review Process (RPRP) if the behaviour would amount to Practice Requiring Improvement (PRI) or to the Performance Regulations, or can decide to take no further action.

However, where a case is **'recordable' conduct**, the Appropriate Authority can undertake a preliminary assessment if the conduct alleged falls under the, to establish if there is an *indication* of misconduct. The Appropriate Authority is responsible for appointing an Investigator and providing some direction as to the serving of written notices and possible restrictions and/or suspension.

Investigation

PSD's Investigation Team is made up of nine detectives ranging from Constables to Inspectors, who, when appointed, must draw clear and unambiguous a terms of reference for the investigation and gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct. A clear terms of reference is essential in order to establish what is being investigated and must be shared with the officer/staff member subject of the investigation so that they can provide clear accounts in response.

In cases of 'recordable' conduct, the responsibility of undertaking the Severity assessment falls to the appointed Investigator, in consultation with the Appropriate Authority, as per Regulation 16 of the Police (Complaints and Misconduct) Regulations 2020.

In the case of recordable conduct, and subject to the harm test, the investigator must give the officer/staff member concerned a written notice of investigation in line with Regulation 17 of the Police (Conduct) Regulations 2020.

The aim of the written investigation report is to 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.

It is also worth noting that PSD have developed the formal role of Welfare Support Officers within South Wales Police as we recognise that being subject of an investigation by PSD or the IOPC can be a highly stressful experience and may impact greatly upon the individual under investigation and their family. Supporting colleagues under such circumstances is an absolute priority, therefore, PSD will facilitate the appointment of a Welfare Support Officer to those individuals who find themselves subject of a misconduct investigation.

Whilst on the topic of investigations, the 2020 Regulations have introduced new requirements so as to improve timeliness and increase transparency. For example, to improve fairness and transparency, the terms of reference and the report on investigations will now be disclosed to all parties, helping to reduce mistrust and giving individuals more clarity about the purpose and conclusions of an investigation. Furthermore, investigators are also required to provide an explanation where investigations take longer than 12 months to the Local Policing Body, including next steps.

Report of Investigation

An individual of Chief Inspector rank (can be delegated to the rank of Inspector) must, upon receipt of the Investigators written report and in line with Regulation 23 of the Police (Conduct) Regulations 2020, determine whether the officer/staff member concerned has a case to answer in respect of misconduct or gross misconduct or whether the officer has no case to answer.

If there is a case to answer, the Appropriate Authority must determine whether or not misconduct proceedings should be brought against the officer and, if so, what form these proceedings should take.

Where the Appropriate Authority determines that there is no case to answer or that no misconduct proceedings will be brought, it must assess whether the case amounts to Practice Requiring Improvement (PRI), Unsatisfactory Performance (UPP) or it should take no further action.

Misconduct Proceedings

Having determined that the officer/staff member has a case to answer in respect of misconduct, those proceedings must be a misconduct meeting. Having determined that the officer/staff member concerned has a case to answer in respect of gross misconduct, those proceedings must be a misconduct hearing.

The misconduct meeting process is currently managed by the Supervisor of the Case Management and Outcomes Unit, whereas, the Presenting Office manage the process for those cases going to a misconduct hearing.

Where proceedings are agreed, the officer/staff must receive a written notice of referral in line with Regulation 30 of the Police (Conduct) Regulations 2020. During this period, the officer/staff member concerned must provide written notice to the Appropriate Authority stating whether or not they accept that their conduct amounts to misconduct or gross misconduct, as the case may be. The officer/staff member concerned will have the opportunity to provide mitigation, propose witnesses and supply supporting documents which the person chairing the proceedings must consider.

In the case of misconduct hearings, the Police (Conduct) Regulations 2020 have introduced a Misconduct pre-hearing which is an opportunity to involve all parties to the hearing in order to agree the timing of the hearing, agree some of the preliminary legal arguments, disclosure and points of law allowing for a potentially a shorter and more focused full hearing.

Following proceedings, the officer/staff member must be provided with a notification of the outcome which provides the right to Appeal.

Statistics

The following data surrounding internal conduct matters might be of interest;

- Since 1st February 2020, PSD have received 114 internal conduct referrals
- Out of the 114 referrals, 11 cases have been taken to Misconduct Meetings and currently, none of these cases have been taken to a Misconduct Hearing
- In addition, around 40 cases have been dealt with under the Reflective Practice Review Process with the emphasis on learning.
- Due to the complex nature of some of the investigations, some of these are still ongoing, and, indeed there are many cases where a decision to take no further action has been taken due to there being no evidence of wrongdoing.