



**POLICE
SCOTLAND**

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POILEAS ALBA

**Police Service of Scotland (Conduct)
Regulations 2014
Standard Operating Procedure**

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1. Purpose

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland, hereafter referred to as Police Scotland, Anti-Corruption Policy.
- 1.2 This SOP applies only where the conduct of the officer is alleged to have occurred on or after 1 April 2014. Where the conduct is said to have taken place prior to this date, the Professional Standards Department should be consulted for guidance on how to proceed.
- 1.3 The SOP provides general guidance and must be read in conjunction with The Police Service of Scotland (Conduct) Regulations 2014 and the Police Service of Scotland (Conduct) Regulations 2014 Guidance document.
- 1.4 The Police Service of Scotland (Conduct) Regulations 2014 introduce procedures for the assessment, investigation and disposal of misconduct allegations.
- 1.5 The Regulations apply to all Police officers up to and including the rank of Chief Superintendent. Any reference to 'constable' will include officers up to and including this rank. The Regulations do not apply to Special Constables (please refer to The Police Service of Scotland (Special Constables) Regulations 2013).
- 1.6 These misconduct procedures underpin the Standards of Professional Behaviour which set out the high standards that the service and the public expect of police officers. Any failure to meet these standards may undermine the important work of the police service and public confidence in it. The Standards of Professional Behaviour are set out in Appendix 'E'.
- 1.7 The purpose of initiating misconduct proceedings is to:
 - Establish the facts underlying the allegation;
 - Deal with cases of misconduct in a timely, proportionate, fair and effective way in order to enhance the confidence of the police service and the public;
 - Identify any underlying causes or welfare considerations; and
 - Identify any learning opportunities for the individual or the organisation.
- 1.8 This SOP applies to the handling of misconduct cases that have come to the notice of the Deputy Chief Constable (Designate) or Assistant Chief Constable (Professionalism & Assurance) on or after the 1st April 2014 and where the conduct giving rise to the case occurred on or after that date.
- 1.9 If misconduct proceedings have commenced under The Police (Conduct) (Scotland) Regulations 1996 then proceedings should continue under these Regulations using the Police Scotland SOP relevant to this legislation.
- 1.10 If misconduct proceedings have begun under The Police Service of Scotland (Conduct) Regulations 2013 or where new misconduct allegations relate to

events which took place prior to 1st April 2014 then 2013 Regulations and Police Scotland procedures in this regard should be used.

- 1.11 This SOP reflects the legislation and must be read in conjunction with the Scottish Government Guidance on the Police Service of Scotland (Conduct) Regulations 2014.
- 1.12 Process maps are contained within Appendix 'D' of this guidance to assist understanding.
- 1.13 An index of all forms is included at Appendix 'C'. The forms are available as individual documents.

2. Definitions

2.1 The SOP will use the following terms:

- a. "Conduct Regulations" – means The Police Service of Scotland (Conduct) Regulations 2014
- b. "Performance Regulations" – means The Police Service of Scotland (Performance) Regulations 2014
- c. "Misconduct proceedings" – means a misconduct meeting or a misconduct hearing
- d. "Senior Officer" – means an officer above Chief Superintendent rank.

2.2 All timescales mentioned are in terms of "working days," this term does not include Saturdays, Sundays or Public Holidays. For the purposes of the Regulations Public Holidays are not those defined by Police Scotland but are:

- New Year's day unless it is a Sunday, in which case 3rd January;
- 2nd January unless it is a Sunday, in which case 3rd January;
- Good Friday;
- The first Monday in May;
- The first Monday in August;
- Christmas day unless it is a Sunday, in which case 26th December.

2.3 For the purposes of the Regulations and any decision on the seriousness of the conduct the following definitions will be applied:

- Misconduct is a breach of the Standards of Professional Behaviour.
- Gross Misconduct is a breach of the Standards of Professional Behaviour so serious that demotion in rank or dismissal may be justified.
- Please refer to Part 1, Regulation 2 of the Conduct Regulations for a list of all definitions and interpretations.

- 2.4 Regulation 5(1) of the Conduct Regulations provide that the Chief Constable must designate a Deputy Chief Constable to exercise functions under these Regulations (and reference in these Regulations to the “Deputy Chief Constable” are, unless the context otherwise requires, reference to that individual).
- 2.5 Regulation 5(2) provides that the Deputy Chief Constable may direct or authorise another constable of at least the rank of Chief Inspector to carry out any of the Deputy Chief Constable’s functions under these Regulations.
- 2.6 References in this Standard Operating Procedure to the Deputy Chief Constable recognise that the function may be so delegated (e.g. to the Assistant Chief Constable (Professionalism & Assurance)).

3. Misconduct and Complaints

- 3.1 - **Misconduct** is defined as conduct (i.e. an act or omission) which amounts to a breach of the Standards of Professional Behaviour.
- **Gross Misconduct** means conduct which amounts to a breach of the Standards of Professional Behaviour so serious that demotion in rank or dismissal would be justified.
- **Unsatisfactory Performance / Attendance** are defined as an inability or failure of a police officer to perform the duties of their role or rank (or both) to a satisfactory standard.
- 3.2 The police misconduct procedures are designed to reflect what is considered to be best practice in other fields of employment while recognising that police officers have a special status as holders of the Office of Constable. It is important that managers understand their responsibility to, and deal promptly, and effectively with, unsatisfactory behaviour and complaints about the police from members of the public and/or colleagues. It is a key responsibility of all managers to understand and apply the procedure in a fair, proportionate and timely manner.
- 3.3 If there is sufficient information available, line managers can deal with minor matters which have been assessed as potential misconduct in a number of ways. The Professional Standards Department should be consulted before an assessment is made or where necessary investigation is commenced to ensure that there are no matters that need to be considered prior to any decision on a course of action.
- 3.4 If it is not possible to make an immediate assessment on whether a constable has breached one or more of the Standards of Professional Behaviour, some preliminary enquiry may be made but only to the extent that it is necessary to determine which procedure should be used. It is perfectly acceptable to ask questions to seek to establish which police officers may have been involved in a particular incident and therefore to eliminate those police officers not

involved. The Professional Standards Department should be consulted for further guidance if required.

- 3.5 The Misconduct procedures should not be used as a means of dealing with unsatisfactory performance. The unsatisfactory performance procedures exist to deal with issues of individual satisfactory performance and attendance.
- 3.6 An investigation into a complaint is not automatically an investigation into whether a police officer has breached the standards of professional behaviour but rather an investigation into the circumstances that led to the dissatisfaction being expressed by the complainer of the actions of one or more persons serving with the police, whether criminal or non-criminal.
- 3.7 The vast majority of complaint investigations will not result in Misconduct Proceedings being taken against Police officers.
- 3.8 The local complaints handling procedure allows for complaints of a less serious nature to be resolved timeously by explanation, apology or assurance.
- 3.9 It may be appropriate in dealing with a complaint using local procedures for a manager to take improvement action and this is perfectly acceptable. Serious and criminal complaints are dealt with in a far more rigid fashion and are investigated by formally appointed Investigators.
- 3.10 A Misconduct investigation arising out of a complaint must be proportionate having regard to the nature of the allegation and any likely outcome. It is appropriate to make an assessment on whether proceedings would be justified before embarking on an investigation and legitimate for the matter to be resolved by improvement action without an investigation where the circumstances only warrant this.
- 3.11 Where, following the investigation into a complaint it appears that there is a case to answer in respect of misconduct then a Chief Inspector within the Professional Standards Department acting on the authority of the Deputy Chief Constable will determine whether the matter should be considered as misconduct or gross misconduct or neither. A Briefing Paper containing details of the circumstances should be sent to the Professional Standards Department who arrange for this assessment to take place. For example, a report may be submitted via line manager to the Divisional Superintendent (Support & Service Delivery).
- 3.12 Where it is assessed that there is a case to answer in respect of misconduct but not gross misconduct it may be determined that Improvement Action, action under the Performance Regulations or indeed no action, is an appropriate and proportionate response.
- 3.13 Guidance for the investigation of complaints about the police is available and is not considered further in this document. See Complaints about the Police SOP and the Sanctions to Solutions Abstract for Supervisors.

4. Police Representative

- 4.1 Constables who are subject to formal proceedings under the Conduct Regulations have a right to consult with, and be accompanied by, a police representative at any interview during an investigation into misconduct and at all stages of the misconduct proceedings. The police representative may be another constable or a representative of the Police Federation for Scotland or in the case of a Superintendent or Chief Superintendent, this may be another constable or a representative of any person representing the interests of Superintendents (including Chief Superintendents);
- 4.2 For further information, please refer to Regulation 6 of The Police Service of Scotland (Conduct) Regulations 2014 and the supporting Guidance.
- 4.3 If the Constable is required to attend a Misconduct Hearing or Appeal Hearing (provided that Appeal Hearing relates to the outcome of a Misconduct Hearing), the Constable may be entitled to be legally represented (save for certain exceptions). Please refer to Regulation 7 of the Conduct Regulations for further information.

5. Improvement Action

- 5.1 This SOP does not seek to prevent the manager's right to take appropriate action to manage staff. Taking improvement action, giving advice, arranging further training and use of the Personal Development Conversation (PDC) system are all relevant management tools if considered proportionate to the circumstances and once managers are satisfied that they have sufficient information.
- 5.2 Improvement action is a tool to be used by managers in the police service to intervene at the earliest opportunity to prevent misconduct occurring. Improvement 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 an improvement plan;
 - Providing further training, mentoring or guidance; or
 - Addressing any underlying causes of misconduct
- 5.3 The purpose of improvement action is normally to:
- Deal with misconduct in a timely, proportionate and effective way in order to enhance the confidence of staff, police officers, the police service and the public;
 - Identify any underlying causes or welfare considerations; and

- Improve conduct and to prevent a similar situation arising in the future.

5.4 However, where there is any doubt that behaviour has passed the threshold for disciplinary action under the Regulations the matter should be referred to the Professional Standards Department for assessment and consideration of investigation.

6. Suspension, Restriction or Change of Duty

6.1 Regulation 8 of the Conduct Regulations makes provision for constables who may be suspended from duty. Full details on suspensions are provided in the Suspension from Duty SOP. It should be noted that suspension is not a formal misconduct outcome and does not suggest any prejudgement.

6.2 There are occasions where a Constable be subject to duty restrictions as authorised by the Deputy Chief Constable (Designate) (or any other person acting under the delegated authority of the DCC (Designate)). Duty restrictions are not regulated under the Conduct Regulations but are applied by the DCC (Designate) in circumstances where one, or all, of the following risks are identified:

- Risk to the public;
- Risk to the officer / staff member;
- Risk to the Police Service of Scotland.

6.3 Duty Restrictions should be regarded as a protective measure rather than a punitive one and are applied in a way in which to guard against the public, the constable or the organisation being exposed to risk as a result of an individual's continued deployment.

7. Allegations of Criminal Offences

7.1 Regulation 9 of the Conduct Regulations makes provision for circumstances where it can reasonably be inferred that a constable may have committed a criminal offence. Where this is the case, the Deputy Chief Constable must refer the matter to the appropriate prosecutor and may suspend or postpone any misconduct proceedings under the Regulations until the appropriate prosecutor intimates that:

- a) criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation; or
- b) any criminal proceedings which have been brought have been concluded.

7.2 If misconduct proceedings are suspended or postponed an "Alleged Criminal Offences" form must be served on the constable advising that proceedings have been suspended or postponed and those proceedings, or any other proceedings under the Regulations, may be taken against the constable whether or not criminal proceedings are brought against the constable and

regardless of the outcome of those proceedings. The authority to make this determination is delegated to Chief Inspectors and above within PSD only.

8. Probationary Constables

8.1 Probationary Constables are expected to abide by the Standards of Professional Behaviour (Appendix 'E') and can be subject to the misconduct procedures. Probationary Constables may also be subject to the procedures set out in The Police Service of Scotland Regulations 2013. Misconduct by Probationary Constables should be dealt with under the Conduct Regulations first before any action under The Police Service of Scotland Regulations 2013 would be appropriate.

9. Misconduct Investigations & Proceedings

9.1 Preliminary Assessment

9.1.1 A Preliminary Assessment is carried out in accordance with Regulation 10 of The Police Service of Scotland (Conduct) Regulations 2014 by Chief Inspectors within the Professional Standards Department (PSD).

9.1.2 The purpose of a Preliminary Assessment is to:

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

9.1.3 The possible outcomes following a Preliminary Assessment are set out within Regulation 10 of the Police Service of Scotland (Conduct) Regulations 2014. Further context is provided in the Police Service of Scotland (Conduct) Regulations 2014 Guidance Document.

9.1.4 In very exceptional circumstances, following the Preliminary Assessment, there is provision for the Deputy Chief Constable (Designate) to assess the allegation as gross misconduct, however, determine that no investigation is necessary.

9.2 Appointment of an Investigator

9.2.1 Where the preliminary assessment is one of gross misconduct, or misconduct where the officer already has a live final written warning, the Deputy Chief Constable (Designate) (or delegated authority) will appoint an Investigator from within the PSD by completion of an Appointment of Investigator form.

9.2.2 In all other cases the Preliminary Assessment form will be passed to a Superintendent in the relevant Division/Department to appoint the Investigator where required. If the decision is to take no action, to take improvement action or refer the matter to be dealt with via the Performance Regulations,

the constable concerned will be notified and an Investigator will not be appointed.

- 9.2.3 Regulations 10(4) and (5) of the Conduct Regulations provide additional information and considerations regarding the appointment of an Investigator.

9.3 Notice of Misconduct Investigation

- 9.3.1 In terms of Regulation 11 of the Police Service of Scotland (Conduct) Regulations 2014, the Investigator must give the constable written notice that they are subject of a misconduct investigation as soon as reasonably practicable. A Notice of Misconduct Investigation form can be obtained from the Intranet.
- 9.3.2 Further guidance and information is contained within the Conduct Regulations and Section 5.8 of the Police Service of Scotland (Conduct) Regulations 2014 Guidance document.
- 9.3.3 In the interests of fairness, Investigators should not start an investigation until a Notice of Misconduct Investigation form 039-007 has been served, or the reason for non-service fully considered and documented.
- 9.3.4 The constable must be given the form to retain. A copy signed by the constable and the officer serving the form must be submitted with the Investigator's Report. If the officer refuses to accept the form this should be endorsed on the form by the Investigator.
- 9.3.5 If the constable makes a spontaneous statement in response to the service of the Notice of Misconduct Investigation form, this should be noted by the Investigator. It is emphasised that there is no requirement for the constable to make a statement at this point.
- 9.3.6 The responsibility for ensuring that the notice is served rests with the Investigator. Steps taken to serve the form should be recorded in the Log of Action and Investigation.
- 9.3.7 Where the Investigator has not been appointed via Divisional/Department Command the Investigator must advise the Local Policing Commander or nominated representative prior to the service of the Notice of Misconduct Investigation form.
- 9.3.8 At the time of service, the Investigator must be aware of the personal impact the procedure is having on the constable and if necessary liaise with their division/department to ensure provisions are made for the officer's welfare.

9.4 The Investigation

9.4.1 The purpose of an investigation is to:

- Gather evidence to establish the facts and circumstances of the alleged misconduct
- Assist the Deputy Chief Constable/ Superintendent to establish, on the balance of probabilities, based on the evidence and taking into account all of the circumstances, whether there is a case to answer in respect of either misconduct or gross misconduct or that there is no case to answer.
- Identify any learning for the individual or the organisation.

9.4.2 The Police Service of (Scotland) Regulations 2014 Guidance Document, provides additional information at Section 5.9 on matters to consider during a Misconduct Investigation and it is imperative that you read and understand both the Conduct Regulations and the Guidance prior to the commencement of an Investigation.

9.4.3 It is good practice to notify the constable of the progress of the investigation at least every 4 weeks, or sooner, from the start of the investigation. Fairness to the officer and consideration of their wellbeing is a primary consideration. It is also good practice to keep the police representative informed of progress at the same time. A record of progress updates should be maintained by the Investigator.

9.4.4 The Investigator must obtain comprehensive and relevant statements from all witnesses. This may be achieved by noting statements, adopting statements previously given or requesting operational statements from Police officers.

9.4.5 If a witness does not co-operate or is otherwise unavailable, any statement noted from the witness during criminal or other enquiries should be submitted together with a statement from the officer who originally took the statement.

9.4.6 The constable or their police representative, acting on the constable's instructions, is encouraged to suggest at an early stage any line of enquiry that would assist the investigation and to pass to the Investigator any material they consider relevant to the enquiry. The Investigator has a duty to consider the suggestions submitted. This may be done at any stage in the investigation, however further enquiries cannot be made where information has been provided after the conclusion of the investigation.

9.4.7 Where the investigation discloses further misconduct or criminality, this must be brought to the attention of the Professional Standards Department.

9.4.8 If new evidence emerges during the course of the investigation that may necessitate a fresh assessment of the circumstances, then the investigator should immediately contact the Professional Standards Department to request such an assessment. Matters can be, if so determined, moved from misconduct to gross misconduct, and vice-versa.

9.5 Alleged Criminal Offences Identified During Misconduct Investigation

- 9.5.1 If, during the course of a misconduct investigation, the Investigator discovers evidence of criminality on the part of any officer, the investigation should be immediately suspended and the appropriate prosecutor advised via the Professional Standards Department.
- 9.5.2 In general terms it is unlikely that Police Scotland would investigate misconduct while there is on-going criminal proceedings. Should circumstances arise where such a parallel investigation was initiated, then the Investigator would be specifically advised of their remit and terms of reference.

9.6 Misconduct Interviews

- 9.6.1 Regulation 12 of the Conduct Regulations and Section 5.10 of the Guidance, provides additional information and direction in relation to Interviews during the misconduct investigation.
- 9.6.2 Where the constable intimates, following receipt of a Notice of Misconduct Investigation an intention to make oral representations, the Investigator **must** arrange an interview with them.
- 9.6.3 In any other case, the Investigator may arrange such an interview. All interviews should be corroborated.
- 9.6.4 While an interview must take place if the constable so requests, it will not always be necessary to conduct a formal interview in other circumstances. In some cases, particularly involving low level misconduct cases, it may be more appropriate, proportionate and timely to request a written account from the subject officer.
- 9.6.5 Please refer to the Police Service of Scotland (Conduct) Regulations 2014 Guidance document for procedures to be followed where a constable is on certified sick leave.
- 9.6.6 The Conduct Regulations Guidance document also provides important information on procedures to be followed in respect of the recording of interviews and the procedures to be followed at the conclusion of an interview. Please ensure you read Regulation 12 of the Conduct Regulations and Section 5.10 of the Conduct Regulations Guidance. Relevant forms can be found on the intranet or obtained from the Professional Standards Department.
- 9.6.7 Where an audio recording is given to a constable, they should be instructed to make suitable arrangements for the safe storage of the recording and advised against making inappropriate or otherwise improper use of same.
- 9.6.8 Regardless of whether the interview has an audio or written record the following statement must be read over to the officer at the commencement:

I am now going to conduct an interview with you in terms of Regulation 12 of the Police Service of Scotland (Conduct) Regulations 2014. The interview is going to be recorded. You are not under any obligation to answer my questions. The interview offers you an opportunity to make representations in response to the misconduct allegation(s). The recorded interview may feature in any subsequent Misconduct Hearing.

- 9.6.9 The purpose of the interview is to establish the facts of the case and it is not an adversarial interview. Where the officer refuses to make any comment, this should be noted and the officer reminded that this is their opportunity to suggest lines of enquiry that would assist the investigation in establishing the facts of the case.
- 9.6.10 The following good practice has been identified in regard to misconduct interviews. This is not an exhaustive list. Investigators should:
- Collate all available information in advance;
 - Plan the interview structure in advance, although plans should be flexible;
 - Have corroboration from an officer at least a rank above the subject officer;
 - Conduct the interview in a suitable venue free from interruption;
 - At the start use the Statement on the Draft Written Record of Misconduct including the specific allegations to set the scene and confirm understanding;
 - Maintain control and not allow the interview to go off track;
 - Ensure they understand the role of the Police Representative;
 - Not have prolonged debates; and
 - Remember the purpose of the interview is to establish the facts, it is not a criminal interview and the officer should be treated with due respect to the office they hold.
- 9.6.11 As the Regulations do not provide for repeated interviews it may be necessary for the investigator to adjourn an interview and seek to recommence at a later date, where for example the constable introduces previously unknown information which requires to be verified before questioning can be concluded.
- 9.6.12 Where a constable refuses or fails to agree and sign a copy of the forms at interview then this will be noted by the Investigator.
- 9.6.13 The constable may request changes they want to make to the record and a copy of this will be submitted with the Investigator's Report along with the Investigator's account of the record.

9.7 Investigator's Report and Supporting Documents

- 9.7.1 Regulation 13 of the Conduct Regulations and Section 5.12 of the Conduct Regulations Guidance Document provide details on the regulatory

requirements and good practice in relation to the Investigator's Report. At the conclusion of the misconduct investigation, the Investigator must determine whether, in their opinion, the constable has a case to answer in relation to the misconduct allegation. This will be recorded in the Investigator's Report. Both parts (disclosable and non-disclosable) of the Investigator's Report will be submitted to the Assistant Chief Constable Professionalism & Assurance via the Professional Standards Department in cases of Gross Misconduct or Misconduct with a live final written warning. If the matter is one of Misconduct, the Investigator's report is submitted to the Superintendent with responsibilities for such matters. Where the decision is taken to progress with misconduct proceedings, the Disclosable Investigator's Report will be disclosed to the constable.

- 9.7.2 In deciding whether there is a case to answer the Investigator must apply the standard of proof required in civil cases, that is, the balance of probabilities. Conduct will be proved on the balance of probabilities if the Investigator is satisfied by the evidence that it is more likely than not that the conduct occurred.
- 9.7.3 In coming to a decision Investigators should bear in mind the fact that police officers may be required to deal with some people who may have a particular motive for making false or misleading allegations against the constable.
- 9.7.4 The Investigator's Report should contain a concise summary of all the evidence. Where all the allegations are linked, a single summary is acceptable provided that there is a specific conclusion about each allegation. However, separate summaries of evidence should be provided where the allegations are not linked.
- 9.7.5 Investigators are not required to set out a rationale of why they have come to a particular decision, but their conclusion must be clearly supported by the available evidence. Where Investigator's want to explain a particular conclusion they should do so in the non-disclosable remarks section.
- 9.7.6 The report must contain the Investigator's opinion as to whether the misconduct allegation should be referred to misconduct proceedings. The Investigator must submit with the report all documents or other information relevant to that report or to the investigation including a copy of any audio recording made of an interview or any written record of such an interview.
- 9.7.7 The non-disclosable section will not be disclosed to the subject officer or any person appointed to consider misconduct proceedings. The officer's history of misconduct and the private addresses of civilian witnesses will be given in this section.
- 9.7.8 The non-disclosable section will also highlight any learning opportunities for either an individual or the organisation.

10. Misconduct Proceedings

10.1 Introduction

- 10.1.1 This section considers the process for determining the course of misconduct proceedings at the completion of the investigation phase.
- 10.1.2 On receipt of the Investigator's Report, the Assistant Chief Constable Professionalism & Assurance (on delegated authority), or as the case may be, Divisional Superintendent, must determine whether or not the constable has a case to answer in respect of misconduct, gross misconduct or neither. There are a range of possible outcomes available to the ACC (Professionalism & Assurance) or Divisional Superintendent. These are explained in Regulation 14 of the Conduct Regulations and must be followed.

10.2 Arrangements for Misconduct Meetings / Hearings

- 10.2.1 Arrangements of misconduct proceedings are explained in detail within Regulation 15 of the Conduct Regulations. You must refer to the Regulations and Section 5.13 of the Conduct Regulations Guidance Document. These procedures must be followed and regulatory timescales must be adhered to.
- 10.2.2 The relevant Regulation 15 and Regulation 15(5) forms – 039-015 and 039-016 can be downloaded from the intranet or by contacting Professional Standards Department.
- 10.2.3 It is best practice to deliver the Misconduct Forms (Regulation 15 forms) personally to the constable and provide at least 35 working days' notice of the proposed date and time of any proceedings.
- 10.2.4 When providing the constable with the Regulation 15 forms, the following documents must also be provided:
- a) copies of any statements made by the constable during the investigation;
 - b) the disclosable report submitted by the Investigator; and
 - c) any other relevant documents obtained during the course of the misconduct investigation (e.g. witness statements and ancillary documentation).
 - d) The names and disclosable addresses of any witnesses on whom the Deputy Chief Constable/Superintendent proposes to rely at the misconduct proceedings and a summary of the evidence each witness will give. Civilian witness addresses will normally be given as care of Police Scotland. Where a copy of a statement is given to the subject officer this will negate the need for a summary to be given.
- 10.2.5 However, documents referred to at b) and c) above will not be supplied where the Assistant Chief Constable Professionalism & Assurance/Superintendent considers that preventing the disclosure is necessary under certain circumstances. These are detailed in Regulation 15(13) of the Conduct

Regulations and Section 5.13 of the Conduct Regulations Guidance Document and must be referenced at this stage in the Misconduct process.

- 10.2.6 **Not more than 10 working days from the date of receipt of the misconduct form**, the constable **must** provide to the Deputy Chief Constable with written notice of whether they accept the conduct is theirs and whether said conduct amounts to Misconduct (or Gross Misconduct). This notice may take the form of a letter or a completed Constable's Notice of Acceptance form (Regulation 15(5) form 039-016).
- 10.2.7 You must ensure the officer has complied with all aspects of the regulatory requirements outlined in Regulation 15(5) in their response. Although completion of the Regulation 15(5) form is best practice, they may wish to provide their response by letter.
- 10.2.8 Following receipt of the constable's response (Regulation 15(5) form 039-016) the Assistant Chief Constable Professionalism & Assurance/Superintendent must, by service of a Notice of Requirement to attend Misconduct Proceedings (Regulation 15(9) form 039-017) require the constable to attend misconduct proceedings. This can be done in person or by email (ensure confirmation of receipt is obtained). Please ensure you refer to Regulation 15(9) of the Conduct Regulations at this stage in the proceedings
- 10.2.9 In order to maintain confidence in the misconduct procedures it is important that the misconduct meetings/hearings are held as soon as practicable and extensions to the timescales should be an exception rather than the rule. To that end, managers appointed to conduct misconduct meetings/hearings are to ensure that a robust stance is taken in managing the process whilst ensuring the fairness of the proceedings. Extensions may be appropriate for example if the case is particularly complex. It will not normally be considered appropriate to extend the timescale on the grounds that the constable concerned wishes to be represented by a particular lawyer.

10.3 Person(s) Appointed to Hold Misconduct Meetings / Hearings

- 10.3.1 Regulation 16 of the Conduct Regulations and Section 6.3 of the Conduct Regulations Guidance Document provide procedures to be followed and additional information on persons appointed to conduct misconduct proceedings. Please ensure you refer to this Regulation when arranging a misconduct meeting or hearing. Appointment of Constable to Conduct Misconduct Proceedings form 039-018 are available on the intranet.

10.4 Provision of Documents to the Chair of Misconduct Meetings/Hearings

- 10.4.1 The person(s) conducting the misconduct meeting/hearing, hereinafter referred to as the 'Chair' shall be supplied with:
- A copy of the Regulation 15 notice (Form 039-015) previously given to the constable;
 - A copy of the Investigator's Report Disclosable Section or such parts of the report that relate to the constable concerned, any other relevant document gathered during the course of the investigation and a copy of any statement the constable made;
 - The Regulation 15(5) Constable's Notice of Acceptance Form 039-016 submitted by the constable or any response submitted by the officer under the terms of Regulation 15(5) including all information the constable is required to provide under Regulation 15(5).
- 10.4.2 The documents for the meeting/hearing should be given to the Chair as soon as practicable after they have been appointed to conduct the meeting/hearing.

10.5 Witnesses

- 10.5.1 Procedures and advice pertaining to the agreement and requirement of witness attendance are set out in **Regulation 17** of the Conduct Regulations and **Section 5.16** of the Conduct Regulations Guidance Document. Please ensure you read these documents prior to the receipt of the constable's Regulation 15(5) form.
- 10.5.2 No person is to give evidence at proceedings unless the person conducting the proceedings reasonably considers it is necessary for the witness to do so. Generally speaking, a witness will only be required at the proceedings if the Chair reasonably believes the attendance of the witness is necessary to resolve disputed issue in the case.
- 10.5.3 Not more than 10 working days after receiving lists of witnesses the Chairs must decide which, if any, of the listed witnesses should give evidence at those proceedings; and notify the officer and the Deputy Chief Constable/ Superintendent of that decision on a Determination of Witness form 039-019, which is available via the Intranet.
- 10.5.4 Where the Chair rejects the request for a particular witness(es), they shall provide the constable and the Deputy Chief Constable/ Superintendent with their reasons. These should be recorded on a Determination of Witnesses form (Form 039-019).
- 10.5.5 Further advice may be obtained by contacting Professional Standards Department.

11. Guidance for Officers Appointed to Conduct Proceedings

11.1 Introduction

- 11.1.1 Regulation 18 of the Police Service of Scotland (Conduct) Regulations 2014 provides details on the procedures to be followed at a misconduct meeting or hearing. It is essential that you refer to both the Conduct Regulations and the Conduct Regulations Guidance Document as soon as you are appointed as a Chair or an Assessor for such proceedings.
- 11.1.2 The principles herein also apply to those appointed to conduct a Performance Hearing under Regulation 32 (1) of the Performance Regulations.
- 11.1.3 It will be for the Chair to determine the procedures and course of the meeting/hearing in accordance with the principles of natural justice and fairness. It is intended that the proceedings will be an inquisitorial rather than an adversarial examination of the facts.
- 11.1.4 With the exception of the fore-going paragraph, the Regulations do not go into any great detail of how the proceedings progress. It is therefore suggested that the following procedure is adopted:
- Introductions;
 - Confirm the allegation against the officer;
 - Confirm what is admitted and what is contested;
 - Deal with the contested issues; (by way of representations and witness testimony);
 - Give the officer their opportunity to make representations; and
 - Retire to consider finding.
- 11.1.5 The Draft Written Record of Misconduct Proceedings form contains a narrative to be read out at the opening of proceedings to set the scene and ensure the subject officer(s) are aware of their rights and how the proceedings will progress.
- 11.1.6 The person conducting the meeting/hearing will have read the Investigator's report together with any account given by the subject officer concerned during the investigation.
- 11.1.7 The person conducting the meeting/hearing will also have had the opportunity to read the relevant documents attached to the Investigator's report.
- 11.1.8 The Regulations provide detail on matters which the Chair must permit at the meeting/hearing and should be adhered to.
- 11.1.9 Guidance is also provided on procedures to be followed on methods to record proceedings. You may make an audio recording of the misconduct meeting or hearing. If no audio recording is made, a written record of the misconduct

proceedings must be prepared and the person conducting misconduct proceedings must provide a draft of the recording to the constable.

11.1.10 The constable must also be given the opportunity to make representations in relation to said draft. Such representations must be considered by the person conducting the misconduct proceedings and once representations (if any) have been considered, a copy of the final written record of the proceedings must be sent to the constable.

11.1.11 Form 039-020 (draft written record) and Form 039-021 (final written record) should be used to record proceedings where an audio recording is not made.

11.2 Joint Meetings/Hearings

11.2.1 Section 6.4 of the Conduct Regulations Guidance Document provides information on instances where more than one officer is required to appear at proceedings stemming from the same incident. It is essential that you refer to this section for information on joint meetings/hearings.

11.3 Meeting/Hearing in Absence of Officer Concerned

11.3.1 Regulation 19 of the Conduct Regulations and Section 6.5 of the Conduct Regulations Guidance Document provides information on instances where an officer cannot attend or fails to attend a misconduct meeting/hearing. Please refer to the Guidance for further information.

11.4 Attendance of Third Parties

11.4.1 With limited exceptions Misconduct proceedings are to be held in private. The exceptions will not apply to any part of the proceedings where disciplinary action is being considered and no person who is to be called as a witness should be admitted prior to giving their evidence.

11.4.2 Regulation 20 of the Conduct Regulations and Section 5.14 of the Conduct Regulations Guidance Document provide further instruction and guidance in respect of the attendance of third parties at misconduct hearings/meetings.

11.5 Coming to a Determination

11.5.1 The person conducting the proceedings will consider the facts of the case and will decide on the balance of probabilities whether the Subject Officer's conduct amounted to Misconduct/Gross Misconduct or neither.

11.5.2 It is for the person conducting the proceedings to determine the admissibility of evidence and the weight attached to that evidence. However, this should be considered within the over-arching principal of fairness to the subject officer.

11.5.3 In coming to a determination the person appointed to conduct the proceedings must consider which allegations are established and why. They should be clear on what evidence is available to support or refute each

allegation. Not finding an allegation established may not compromise the whole case or even the credibility or reliability of witnesses speaking to those particular facts.

- 11.5.4 Where witnesses give evidence, the person conducting the proceedings should consider whether they were credible and reliable. This may be evidenced in their demeanour, candour and character and whether they remained consistent when challenged. However, the persons conducting the proceedings must consider the veracity of each witness on their own merits and should not follow a prescriptive formula.
- 11.5.5 While there is no need for corroboration, the person conducting the proceedings should consider which pieces of evidence support each other and help establish the picture of what occurred.
- 11.5.6 The person conducting misconduct proceedings may be asked to consider technical evidence or hear evidence of opinion. They should ensure that they fully understand what they are being told. There is no harm in seeking an explanation or asking questions to establish absolute clarity of the points being made.
- 11.5.7 There is no prescriptive formula for coming to a determination, although the following list of questions may assist in coming to a conclusion:
- What is your assessment of the evidence?
 - Does it build a reliable, compelling and credible case?
 - Does it prove a breach of the standards of professional behaviour?
 - What are the real issues?
 - What has been admitted/denied?
 - What are the material disputes?
 - Is there sufficient proof?
 - Are the witnesses reliable and credible?
 - What do the documents show?
 - Does one piece of evidence support another?

11.6 Determination

- 11.6.1 Regulation 21 of the Conduct Regulations provides direction for the Chair of a misconduct meeting/hearing when making a determination. Further guidance is set out in sections 6.7 to 6.11 of the Conduct Regulations Guidance document.
- 11.6.2 Where the person conducting the proceedings determines that the conduct does not amount to misconduct or gross misconduct, they may take no further action, take improvement action or refer the matter to be dealt with under the Performance Regulations.

11.7 Performance

- 11.7.1 In normal circumstances it will be apparent at the outset of an investigation whether the matter is one of misconduct or unsatisfactory performance or attendance. However, in some cases it may not be clear that the Performance procedures should be used until the matter has been fully considered at misconduct proceedings.
- 11.7.2 In such cases, a finding on the facts of the case by the person conducting the meeting or hearing can be used for the purposes of the Performance Regulations. The person conducting the meeting/hearing should in such cases make a finding that the conduct did not amount to misconduct and refer the matter for progress under the Performance Regulations.

11.8 Disciplinary Action

- 11.8.1 Regulation 22 of the Conduct Regulations provides direction on disciplinary action following the conclusion of misconduct proceedings. Furthermore, sections 6.9 to 6.11.10 of the Conduct Regulations Guidance Document also provides details of disposals available to a Chair at misconduct meetings/hearings. The Regulations must be followed when disciplinary action is being considered.
- 11.8.2 The person conducting the proceedings should also consider the impact of the allegations on the public perception of the Police Service of Scotland and the need to set and maintain standards for policing.
- 11.8.3 The person conducting the meeting/hearing is also entitled to take account of any early admission of the conduct on behalf of the subject officer concerned and attach whatever weight to this as he or she considers appropriate in the circumstances of the case.
- 11.8.4 In addition, the subject officer concerned and his or her police representative (or where appropriate legal representative) will be given the opportunity to make representations on the question of the most appropriate outcome of the case.

11.9 Notification of the Outcome

- 11.9.1 Regulation 23 of the Conduct Regulations and Section 6.12 of the Conduct Regulations Guidance Document provides information on timescales and procedures to be followed by a Chair at the conclusion of a misconduct hearing/meeting. A Notification of Determination and Action form (039-022) should be completed and given to the Constable not later than 10 working days from the date of conclusion of the proceedings.) Please refer to the Regulations and Guidance for further information.
- 11.9.2 In cases where the action is to be a Written Warning or Final Written Warning, the Notification of Determination and Action form will serve as that warning.

- 11.9.3 In a case where a written warning is given, the notification must explicitly advise the officer that neither a verbal or written warning can be given for a period of 12 months from the date of that warning.
- 11.9.4 In a case where a final written warning is given the notification must explicitly advise the officer that apart from exceptional circumstance a verbal, written or final written warning cannot be given for a period of 18 months from the date of that warning.
- 11.9.5 The Notification of Determination and Action form is where the person conducting the proceedings records their determination and rationale for coming to that conclusion. Each allegation should be considered on its own merits and the document must be clear and to the point, avoiding any unnecessary comment. Specimen copies of this form are available but a rote copy of these is best avoided to ensure that the specific issues in the particular case are considered. The determination should be stated in clear and simple terms and avoid the use of legal language.
- 11.9.6 The determination should set out what is admitted, what is disputed and what facts are found proven by the person conducting the meeting/hearing and why they reached that finding. Where the person conducting the proceedings chose to believe a particular witness over another one, or came to a particular conclusion this should be explained in their determination. Why a particular course of action was chosen should be explained together with why the alternatives were discounted.
- 11.9.7 Section 6.13 of the Conduct Regulations Guidance document provides further information on the Expiry of Warnings given under the Conduct Regulations.

12. Right of Appeal

12.1 Introduction

- 12.1.1 Regulation 24 of the Conduct Regulations provides information and direction on procedures to be followed when a subject officer wishes to appeal against any determination made by a Chair under Regulation 21(1) or the disciplinary action ordered.

12.2 Appeal Procedure

- 12.2.1 Regulation 25 of the Conduct Regulations provides direction on the general appeal procedure. Further information is provided in Section 7.2 of the Conduct Regulations Guidance Document.
- 12.2.2 Where the person determining the appeal decides to hold an appeal hearing, they must send a Notice of Requirement to Attend Appeal Hearing (Form 039-024)
- a) requiring the subject officer to attend an appeal hearing; and
 - b) specifying a date and time for that hearing.

12.3 Outcome of Appeal

- 12.3.1 Regulation 26 of the Conduct Regulations provides direction on Outcomes of Appeal. Further information is provided in Section 7.3 of the Conduct Regulations Guidance Document.
- 12.3.2 The person determining the appeal must complete a Determination of Appeal - Notice of Decision Form (039-025) notifying the subject officer in writing of the decision and the reasons for that decision. Specimen copies of this form are available but a rote copy of these is best avoided to ensure that the specific issues in the particular case are considered.

12.4 Procedure Where Misconduct Allegation Remitted Back

- 12.4.1 Regulation 27 of the Conduct Regulations provides direction on procedures to be followed where the misconduct allegation is remitted back to the person who conducted the misconduct proceedings.
- 12.4.2 Before making a determination the person conducting the misconduct proceedings may, by notice in writing, require the subject officer to attend a further meeting or hearing and the rules for such a hearing will apply as if it were a new hearing.
- 12.4.3 As soon as reasonably practicable after a determination is made the person conducting the misconduct proceedings must notify the subject officer of that determination.

13. Document Retention

- 13.1 Relevant documentation in respect of Conduct Investigations will be retained on the Professional Standards Centurion Database or in hard copy format by the Professional Standards Department.
- 13.2 All records will be retained, reviewed and destroyed in accordance with the Record Retention SOP.

List of Associated Legislation

- General Data Protection Regulation
- Data Protection Act 2018
- Police Service of Scotland (Conduct) Regulations 2014
- Police Service of Scotland (Conduct) Regulations 2013
- The Police (Conduct) (Scotland) Regulations 1996
- The Police Service of Scotland (Performance) Regulations 2014

List of Associated Reference Documents

Policy

- Anti-Corruption Policy

Standard Operating Procedures

- Complaints About the Police SOP
- Record Retention SOP
- Suspension from Duty SOP

Guidance

- Sanctions to Solutions Abstract for Supervisors
- Scottish Government Guidance on the Police Service of Scotland (Conduct) Regulations 2014

List of Associated Forms

Form	Description
<p>039-001</p> <p>Reg 8 (4) Notification of suspension form</p>	<p>Normally be issued by the Assistant Chief Constable Professionalism & Assurance but in exceptional circumstances may be issued by an officer of higher rank than the officer suspended.</p> <p>Suspension conditions specified on the form must be met.</p> <p>Copy to be issued to/ signed by suspended constable.</p>
<p>039-002</p> <p>Reg 8(5)(b) Review of suspension</p>	<p>Completed by Assistant Chief Constable Professionalism & Assurance.</p> <p>Use of suspension must be reviewed at least every 4 weeks and sooner if information becomes known that would mean suspension was no longer relevant.</p> <p>Copy to be issued to suspended constable.</p>
<p>039-003</p> <p>Reg 9 Alleged Criminal offences</p>	<p>Completed by Chief Inspector, Professional Standards. Notifies the officer that as it can be reasonably inferred that they have committed a criminal offence the matter is being considered by the appropriate prosecutor and the DCC has suspended misconduct proceedings until the case is concluded/discontinued by the prosecutor.</p> <p>Copy to be issued to/ signed by constable.</p>
<p>039-004</p> <p>Reg 10 Preliminary assessment form</p>	<p>Completed by Chief Inspector, Professional Standards. Provides initial assessment of conduct and action required.</p> <p>Referred to either;</p> <ul style="list-style-type: none"> • Professional Standards if gross misconduct; or • Divisional Superintendent if assessed as misconduct or neither misconduct/gross misconduct if improvement action/ procedures under performance regulations is required
<p>039-005</p> <p>Reg 10 (4) Appointment of Investigator</p>	<p>Completed by either Chief Inspector, PSD (gross misconduct) or Divisional Superintendent (misconduct). Includes a declaration of impartiality to be signed by investigator appointed, retained and submitted with Investigator's report.</p>

039-006 and 039-006A Log of action and investigation	Completed by the Investigator. Documents actions and decisions taken throughout the investigation. Submitted with Investigator's report.
039-007 Reg 11 Notice of Misconduct investigation	Completed by Investigator. Notifies constable of allegations and initial assessment. Issued to constable. Copy signed by constable to be retained and submitted with Investigator's report.
039-008 Reg 11(2) Revised notice of misconduct investigation	Completed by Investigator. Notifies constable if there has been a change of assessment (e.g. initially assessed as misconduct but information gleaned during investigation now means that if proven the alleged conduct would amount to gross misconduct) Issued to constable. Copy signed by constable to be retained and submitted with Investigator's report.
039-009 Reg 12 Notice of Misconduct interview	Completed by Investigator. Details time/date / location of interview and provides any information the constable needs to prepare for that interview. Issued to constable. Copy signed by constable to be retained and submitted with Investigator's report.
039-010 Reg 12 (8) Draft written record of misconduct interview	Completed by Investigator. Provides draft record of the interview and allows the constable to make representations as to its accuracy. To be signed by constable and submitted with the Investigator's report.
039-011 Reg 12 (8) Final written record of misconduct interview	Completed by Investigator. Provides record of the interview. Issued to constable. Copy signed by constable to be retained and submitted with Investigator's report.
039-012 Reg 13 Investigator's report- Disclosable	Completed by Investigator. Provides investigators determination on the allegations and whether the matter should be referred to misconduct proceedings. To be submitted to Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct).

<p>039-013</p> <p>Reg 13 Investigator's report- Non Disclosable</p>	<p>Completed by Investigator. Contains witness details, investigating officers remarks and any learning opportunities for the service or individual. To be submitted to Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct).</p>
<p>039-014</p> <p>Reg 14 Determination on misconduct proceedings</p>	<p>Completed by Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct). Provides their determination on whether the constable has a case to answer and whether misconduct proceedings are appropriate.</p>
<p>039-015</p> <p>Reg 15 Misconduct form</p>	<p>Completed by Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct). Informs the constable that misconduct proceedings are being taken. Copy to be issued to/ signed by constable.</p>
<p>039-016</p> <p>Reg 15 (5) Constables notice of acceptance</p>	<p>Completed by the Constable. Outlines whether they accept/ do not accept that they conducted themselves in the manner outlined in the allegations and whether they accept/ do not accept the assessment of misconduct/ gross misconduct. Allows the constable to provide their account. Copy to be forwarded to Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct) not more than 10 working days from receipt of the misconduct form.</p>
<p>039-017</p> <p>Reg 15 (9) Notice of requirement to attend misconduct proceedings</p>	<p>Completed by Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct). Requires constable to attend at misconduct proceedings. Copy to be issued to/ signed by constable.</p>
<p>039-018</p> <p>Reg 16 Appointment of constable to conduct misconduct proceedings</p>	<p>Completed by Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct). Appoints Constable to chair the misconduct proceedings. Includes a declaration of impartiality to be signed by Constable appointed.</p>

<p>039-019</p> <p>Reg 17 Determination of witnesses</p>	<p>Completed by Constable appointed to Chair proceedings. Determines which witnesses have to attend the proceedings for the purpose of giving evidence. To be forwarded to the Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct) and to be issued to/signed by the constable. Assistant Chief Constable Professionalism & Assurance (gross misconduct) or Divisional Superintendent (misconduct) must thereafter notify the witnesses to give evidence in writing, not less than 5 working days prior to the date of proceedings.</p>
<p>039-020</p> <p>Reg 18 (6) Draft written record of misconduct proceedings</p>	<p>Completed by the Constable appointed to Chair proceedings. Provides draft record of the proceedings and allows the constable to make representations as to its accuracy. To be signed by constable.</p>
<p>039-021</p> <p>Reg 18 (6) Final written record of misconduct proceedings</p>	<p>Completed by the Constable appointed to Chair proceedings. Provides record of the proceedings and allows the constable to make representations as to its accuracy. To be signed by constable.</p>
<p>039-022</p> <p>Reg 23 Notification of determination and action</p>	<p>Completed by the Constable appointed to Chair proceedings. Notifies the constable as to the chairs determination on the conduct and what improvement or, as the case may be, disciplinary action required. Copy to be issued to/ signed by constable – Not later than 10 working days from conclusion of the proceedings.</p>
<p>039-023</p> <p>Reg 24 Written appeal notice</p>	<p>Completed by the constable. Outlines the nature and grounds of the officers' appeal. To be submitted to Deputy Chief Constable not more than 30 working days from receipt of the notification and determination form.</p>
<p>039-024</p> <p>Reg 25 (6) Notice of requirement to attend appeal hearing</p>	<p>Completed by Determining constable. Specifies time/date/location of appeal hearing. Copy to be issued to/ signed by constable.</p>

<p>039-025</p> <p>Reg 26 Determination of appeal – notice of decision</p>	<p>Completed by Determining constable. Notifies the constable on the determination of their appeal. Copy to be issued to/ signed by constable – Not later than 60 working days from the date the appeal notice was submitted.</p>
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Process Maps

The Misconduct Proceedings Process and Misconduct Investigation process can be found at the link below:

- [Misconduct Investigations and Proceedings Process Maps](#)

Standards of Professional Behaviour

- **Honesty and Integrity**
- **Authority, Respect and Courtesy**
- **Equality and Diversity**
- **Use of Force**
- **Orders and Instructions**
- **Duties and Responsibilities**
- **Confidentiality**
- **Fitness for Duty**
- **Discreditable Conduct**
- **Challenging and Reporting Improper Conduct**