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## SI0416

# Police Misconduct

This Service Instruction sets out how misconduct matters involving police officers up to and including Chief Superintendent rank will be dealt with and applies to matters coming to attention on or after 1<sup>st</sup> June 2016.

Where there has been a breach of the Code of Ethics, the PSNI will deal with it in a fair, proportionate and timely manner.



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## 1. Introduction

This Service Instruction sets out how misconduct matters involving police officers up to and including Chief Superintendent rank will be dealt with. Any matters coming to the attention of the Appropriate Authority prior to 1 June 2016 will be dealt with under the Royal Ulster Constabulary (Conduct) Regulations 2000 and associated NIO Guidance, and SP 9/12 will continue to apply.

## 2. Principles

The purpose of police misconduct procedures are threefold:

1. To maintain public confidence in, and the reputation of the PSNI;
2. To uphold high standards in policing and deter misconduct;
3. To protect the public.

Where there has been a breach of the Code of Ethics, the PSNI will deal with it in a fair, proportionate and timely manner. This Service Instruction is designed to provide an overview of the way in which

conduct issues will be dealt with, although the primary reference documents are the [Police \(Conduct\) Regulations \(Northern Ireland\) 2016](#); the [Police Appeals Tribunals Regulations \(Northern Ireland\) 2016](#); and associated Guidance issued by the Department of Justice.

## 3. Roles and Overview of Process

Decisions as to whether a matter is investigated, and following investigation, whether an officer should face misconduct proceedings, are made by the Appropriate Authority (AA). For Police Ombudsman and Discipline Branch matters the Appropriate Authority is the D/Superintendent within Discipline Branch. For locally arising matters this role will be fulfilled by the local Superintendent. This does not however limit the ability of local supervisors and managers to take normal management action as part of their normal management role.

Misconduct Proceedings can take two forms – Misconduct Meeting, and

Misconduct Hearing. Misconduct Meetings are normally conducted by a local Chief Inspector, depending on the rank of the officer concerned. There may be occasions where Discipline Branch will appoint a Superintendent or above to conduct a Misconduct Meeting.

Misconduct Hearings are normally only held for gross misconduct matters, with the exception of when an officer who is in receipt of a Final Written Warning (FWW) comes under notice for a further conduct matter during the validity period of the FWW. Gross misconduct is defined as a breach of the Code of Ethics where the misconduct is so serious that dismissal would be justified.

[Appendix A](#) details the misconduct outcomes available to Misconduct Meetings and Hearings.

‘Management Action’ is action or advice designed to improve the conduct of the officer concerned. It is not a misconduct outcome arising from a Meeting or Hearing, but can be directed by the Appropriate Authority following the initial assessment, or following an investigation. In any case

where the Appropriate Authority directs Management Action, the officer will be notified in writing of the decision. Management Action would normally be given by the second line manager. Whilst it is not a misconduct sanction, it does need to be notified to Discipline Branch on [zDisciplineBranchOCMT](#) for record purposes. It may also be appropriate to make reference to it on an officer’s IPR.

[Appendix B](#) provides an overview of misconduct procedures.

Full process maps in relation to assessments, determinations and misconduct proceedings are available on the Discipline Branch page on Policenet.

## 4. Suspension and Repositioning

Regulation 10 of the Police (Conduct) Regulations relates to suspension. Decisions relating to suspension may only be taken by an officer of ACC rank or above.

The suspension conditions are that repositioning (duties or location) is not

appropriate, AND EITHER investigation of the case may be prejudiced unless the officer is suspended, OR it is in the public interest that the officer is suspended having regard to the nature of the allegations and other relevant considerations.

Relevant considerations may include:

- Any apparent aggravating or mitigating factors;
- The strength of evidence;
- The public interest, the reputation of the Police Service and the potential impact on public confidence;
- Whether effective investigation of the allegation may be compromised if the officer remains in post;
- The nature of the current post held, alternative posts, and the potential risk to the individual, public, colleagues, operations or the investigation if the officer is not suspended;
- The likely outcome should the matter be proven at criminal/misconduct proceedings;
- The impact on organisational efficiency. By its nature, the above list is not exhaustive.

Once a decision has been taken to suspend an officer, they will be notified of the suspension in writing with a summary of the reasons. If they are notified verbally, the suspension will be confirmed in writing within three working days.

Once suspended, an officer must surrender their identity card and may no longer exercise police powers. The person notifying the officer concerned of the suspension must make arrangements to secure the officer's uniform and notebooks/journals. Access to PSNI IT systems will be suspended, and the officer will not be permitted access to police premises except when accompanied and for official purposes. A suspended officer remains subject to the PSNI Code of Ethics.

It is the responsibility of the officer's Senior Management Team to appoint a welfare and liaison officer, consider the officer's suitability to access firearms (see Chapter 8 of the Conflict Management Manual), and to consider conducting a risk assessment in conjunction with Occupational Health and Welfare. The officer's senior management will also be responsible for notifying PPS of the suspension, so that PPS can make an informed decision on any cases in which the officer is a witness. Suspension does not preclude an officer's attendance at court as a witness.

Welfare contact should take place on at least a monthly basis, and if the officer is dismissed at a misconduct hearing, this contact should continue for a month after the officer leaves the Service.

**Representations and Review:**

The officer or their 'police friend' can make representations against the suspension within 10 working days of being notified of the suspension, or at any time during the suspension if they believe circumstances have changed.

A 'police friend' is defined as a police officer who is not otherwise involved in the matter. Regulation 6 outlines the role of the police friend.

The Appropriate Authority will review the suspension before the end of twenty working days of the suspension if a review hasn't already taken place following representations. A review will also be conducted when circumstances have changed, whether that has been notified by the IO, or by the officer or their police friend through representations. The Appropriate Authority will notify the officer in writing of any review within three working days of the review taking place and of the reasons for the decision.

**Pay, Allowance and sickness**

The PSNI Regulations 2005 specify that a suspended officer will, with certain exceptions, receive full pay. The exceptions are when an officer's whereabouts is unknown, or if they are in custody following conviction.

An officer who is temporarily promoted at the time of suspension will revert to their substantive rank once suspended.

Officers who are suspended from duty are still permitted to take their annual leave entitlement in the normal way whilst suspended, providing they seek permission from their line management. When considering the granting of annual leave, managers should liaise with Discipline Branch to ensure there will be no impact on the investigation, or criminal/misconduct proceedings. Any annual leave not taken by the police officer concerned will still be subject to the rules governing the maximum number of days which can be carried over and it is the officer's personal responsibility to ensure they avail of their annual leave allowance.

An officer may still be suspended even if they are currently on sick leave. However, any relevant matters of a medical nature must be notified to Discipline Branch for inclusion on the report recommending suspension. The advice of OHW may be sought prior to making the decision on whether to suspend. The suspension will take effect immediately the officer is notified of suspension and not when the officer returns to duty off sick leave. Practical consideration must be given to ensuring appropriate support is available if

an officer on sick leave is suspended. Any illness or injury whilst on suspension should be reported by the officer to their line manager in the normal way. Medical certificates must be forwarded promptly in accordance with current instructions. Sickness which occurs while an officer is suspended will count in respect of Regulation 27 of the PSNI Regulations 2005 (reduction in pay after six months/one year).

## 5. Investigation

Regulations 11 – 20 of the Police (Conduct) Regulations relate to investigations.

The purpose of an investigation is to gather evidence to establish the facts and circumstances of alleged misconduct, and to assist the Appropriate Authority to determine if there is a case to answer for misconduct or gross misconduct.

If an officer is to be investigated, they will be served with a Regulation 16 notice (or in PONI cases, a Regulation 17 notice). This will describe the alleged conduct along with



the officer's rights. Any investigating officer (IO) must have the skills and experience to plan and manage an investigation. There is no requirement for them to be a rank above the officer concerned.

An officer or their police friend may make representations to the IO within 10 working days following receipt of a Regulation 16 or Regulation 17 notice. This period can be extended by the IO. The officer may provide a written or oral statement relating to the investigation, or provide relevant documents, including, for example, suggestions as to lines of enquiry or witnesses to be spoken to. The IO will record receiving any representations and give consideration to them.

If an officer is to be interviewed, the IO will attempt to agree a date and time for the interview, although if it cannot be agreed, the IO will specify the date and time for the interview. This will be confirmed in writing and the officer has a duty to attend. They may be accompanied by a police friend. The IO shall provide information in advance to enable the officer to prepare for interview. It is for the IO to determine what

material he or she believes is appropriate to provide in advance.

The IO will notify the officer of the progress of the investigation within 20 working days of the service of the Regulation 16 or 17 Notice, and thereafter when circumstances change.

At the conclusion of an investigation, the IO will prepare a report to the Appropriate Authority summarising the evidence, attach or refer to any relevant documents, and provide a clear opinion on whether there is a case to answer in respect of misconduct, gross misconduct, or if they believe there is no case to answer. [Appendix C](#) shows the investigation process.

Nothing in this section affects powers of investigation under PACE.

## 6. Appropriate Authority Determination

Once the investigating officer has submitted their report, the Appropriate Authority makes their determination. The

chart contained within [Appendix D](#) demonstrates the decision-making process:

## 7. Meetings/Hearings

Misconduct proceedings may take the form of a Misconduct Meeting (held locally, and in relation to misconduct matters); or a Misconduct Hearing (in relation to gross misconduct, or in misconduct cases, where a final written warning is in place).

[Appendix E](#) and [Appendix F](#) outline the procedures to be followed before and during Misconduct Meetings and Hearings.

## 8. Appeals

Appeals from Misconduct Meetings are dealt with by an officer of at least one rank above the officer who conducted the Misconduct Meeting. Appendix G outlines the process. Appeals from Misconduct Hearings are dealt with by a Police Appeals Tribunal. It should be noted that a misconduct outcome can be increased as well as decreased at appeal.

## 9. Record Keeping

All misconduct outcomes arising from Misconduct Meetings or Hearings will be recorded by Discipline Branch.

Additionally, any management action arising from a matter which has been assessed by an Appropriate Authority as a misconduct matter must also be notified to Discipline Branch on [zDisciplineBranchOCMT](#).

It may be appropriate for management action which is taken in the course of normal management activity to be noted on an officer's IPR.

Guidance is available on the Discipline Branch intra-net site on the circumstances in which revelation of misconduct sanctions must be advised to PPS.

## 10. Regulation 13 processes for Probationer Officers

There are separate processes for dealing with probationer officers who it appears will not become 'efficient or well conducted' police officers. The Probationer Management Policy refers. There may be

occasions where it is appropriate to deal with conduct issues pertaining to a probationary officer under those procedures. Each case will be considered on its merits, taking cognisance of the nature of the conduct and the strength of evidence against the officer.

## Appendix A Misconduct Outcomes

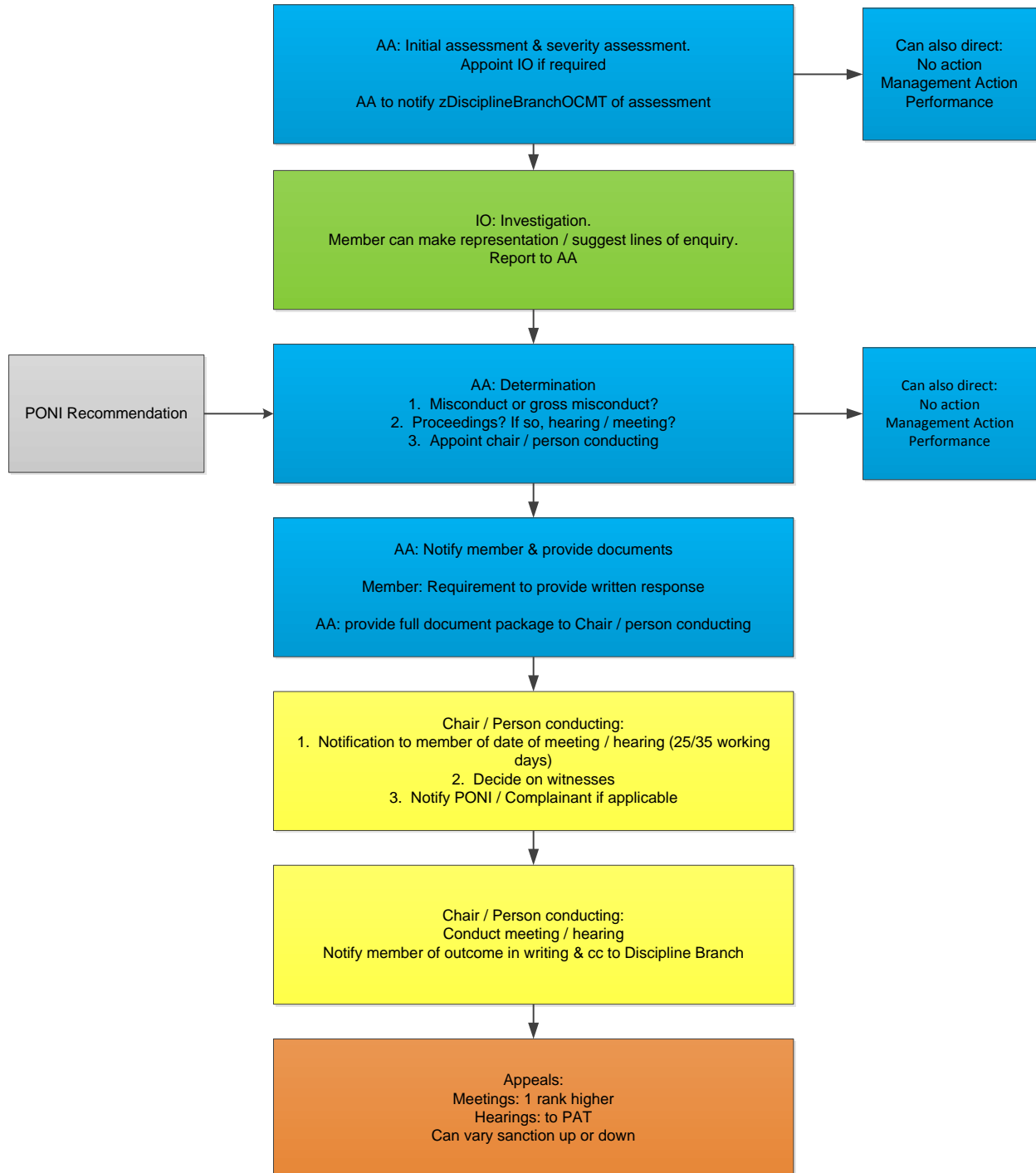
Misconduct Meeting or Hearing	Misconduct Hearing
Management Advice	All misconduct outcomes available to Misconduct Meeting, and in addition:
Written warning (valid for 12 months)	Extension to FWW (for further 18 months. Once only, in exceptional circumstances)
Final Written Warning (valid for 24 months)	Reduction in rank
	Dismissal with notice
	Dismissal without notice

Roles within the following appendices are colour coded as follows:

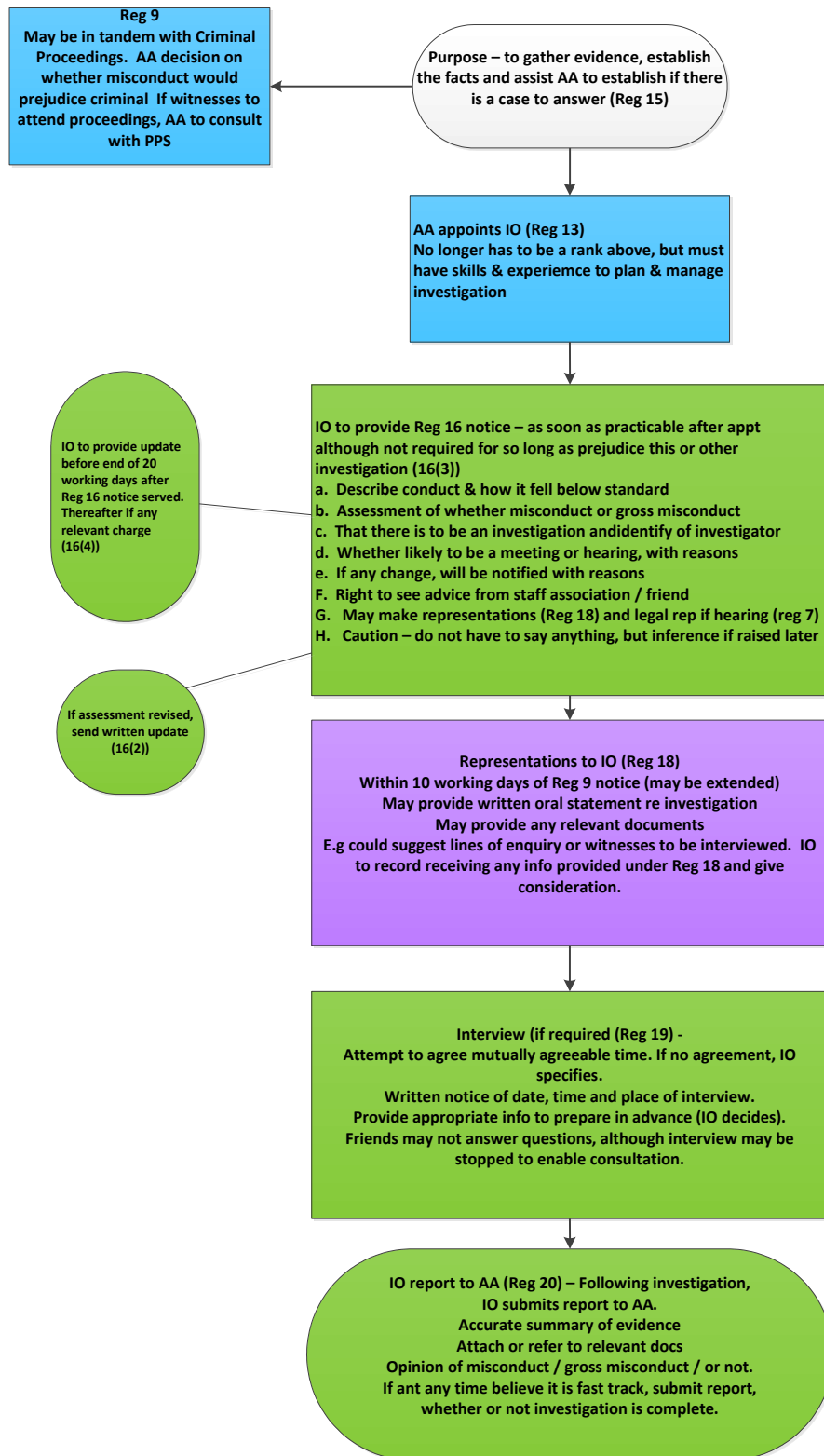
### Key Code

Appropriate Authority	
Investigator	
Officer concerned	
Chair / Person conducting	
Appeal officer	
PONI	

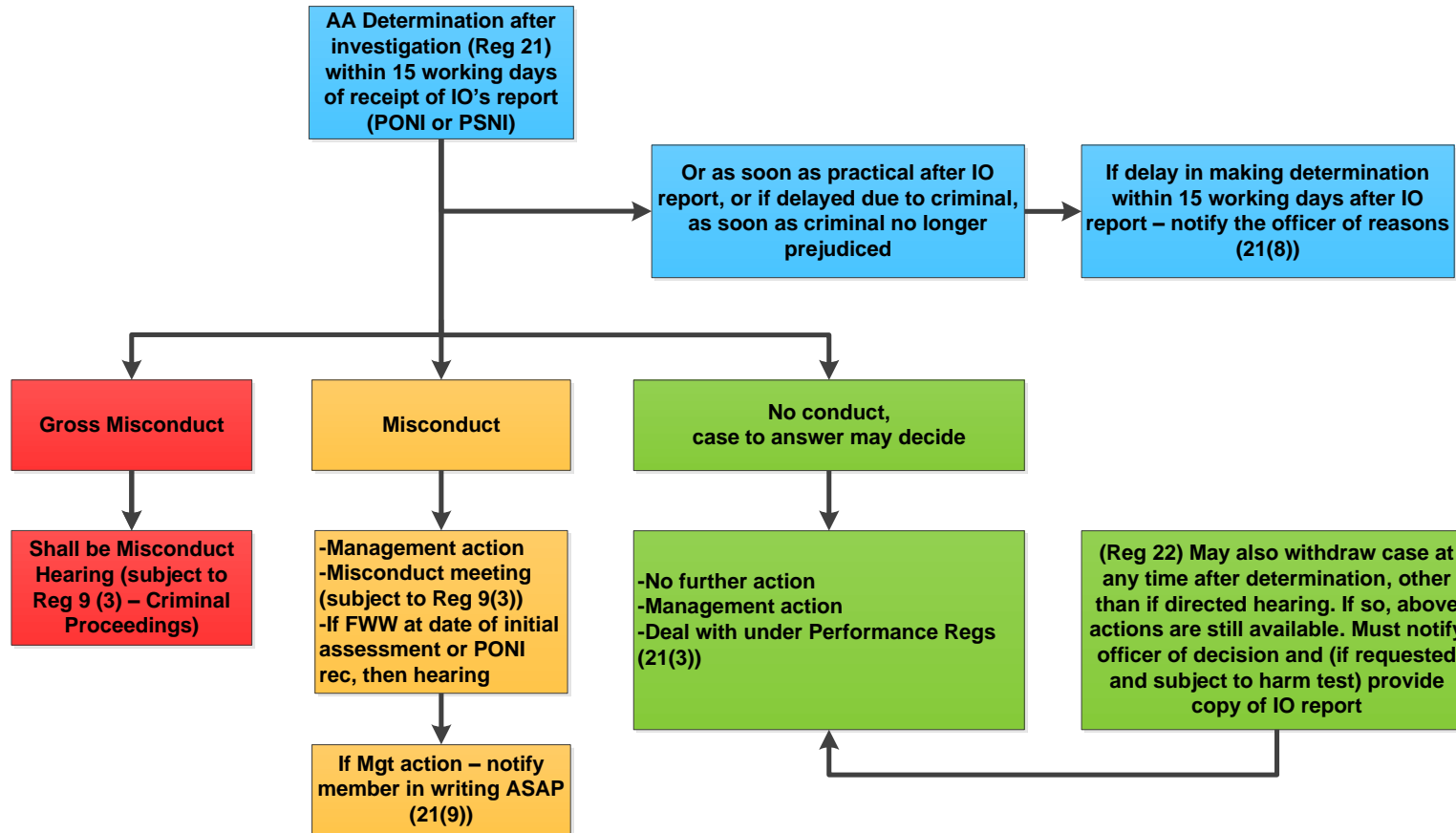
## Appendix B Overview of Misconduct Processes



## Appendix C Investigation Process



## Appendix D Appropriate Authority Determination



## Appendix E Notification of Proceedings and Procedure Prior to Meeting/Hearing (Reg 23)

Notice of Proceedings	Member response (Reg 24)	Agreement of witnesses Reg 24(4)	Supply of documents & witness list to Chair (Reg 25 & 29)	Decisions for Chair prior to proceedings
<p>Once decision to refer to Meeting / Hearing, AA to give written notice of:</p> <p>a) The referral;</p> <p>b) Summary of conduct, and why it is misconduct / gross misconduct;</p> <p>c) Name of person conducting or chairing, along with information on how to object to the appointment;</p> <p>d) Information re police friend / legal representation;</p> <p>e) Provide a copy of the officer's statement, along with IO report and other documents (subject to harm test).</p>	<p>Within 20 working days of receipt of notice of proceedings (can be extended in exceptional circumstances) member to give written notice:</p> <p>a) If he or she accepts the conduct amounts to misconduct / gross misconduct;</p> <p>b) If accepts, any written mitigation;</p> <p>c) If does not accept, written notice of:</p> <ul style="list-style-type: none"> <li>• Allegations he or she disputes and their account</li> <li>• Arguments on points of law</li> <li>• Any documents he or she disputes, and why</li> <li>• And provide a copy of any document he or she intends to rely on.</li> </ul>	<p>Within 3 working days of receipt of member response, both AA &amp; member supply each other with a list of witnesses along with brief details on what evidence they can provide. Where possible AA &amp; member agree list of witnesses.</p> <p>Note Reg 25 states that no witness shall give evidence unless the person chairing the Meeting or Hearing reasonably believes it is necessary for the witness to do so in the interests of justice.</p>	<p>AA to supply to chair:</p> <ul style="list-style-type: none"> <li>• Documents provided to member under Reg 23(1)</li> <li>• Member response documents</li> <li>• List of witnesses (Reg 25)</li> <li>• Any other relevant documents if case disputed.</li> </ul> <p>AA to also provide member with the above list of documents and copy of any document not already supplied.</p>	<p><b>Once appointed:</b> Chair to provide written notice of date, time &amp; place of proceedings.</p> <p>Meeting = 25 working days from date of Reg 23(1) notice</p> <p>Hearing = 35 working days from date of Reg 23(1) notice.</p> <p>Ideally agree date &amp; time. If not, specify. Also notify PONI (if relevant), complainant &amp; any interested party.</p> <p>Chair may extend if in the interests of justice to do so. Any decision to extend (or not) in writing to AA &amp; member.</p> <p><b>On receipt of docs:</b> Chair to determine which witnesses to attend. Only attend if Chair believes necessary. If officer – ordered to attend. If other – advise of date, time &amp; place. (Reg 25)</p>



## Appendix F Conduct of Meetings/Hearings

<b>Persons conducting Meetings / Hearings</b>	Meetings: C/Inspector or Superintendent. At least one rank higher Hearings: ACC (Chair), Superintendent & Layperson Regs specify other arrangements for Directed Hearings, & senior officer Meetings & Hearings.
<b>Persons attending Meetings / Hearings</b>	<p>Member – may use video link to facilitate their attendance. Police Friend / counsel may attend even if member doesn't. Meeting / Hearing may proceed in member's absence.</p> <p>Witnesses, where Chair has deemed their attendance necessary. May be accompanied by one other person at discretion of Chair. If witness fails to attend, Meeting / Hearing may proceed in their absence.</p> <p><b>For Hearings only:</b></p> <ul style="list-style-type: none"> <li>• IO (PONI or PSNI) or deputy to attend if requested.</li> <li>• PONI as observer if their investigation. To withdraw whilst mitigation given.</li> <li>• Complainant. May be accompanied by one other person, and if special need, one further person to accommodate that need.</li> <li>• Interested person. May be accompanied by one other person, and if special need, one further person to accommodate that need.</li> </ul>
<b>Procedure at Meetings / Hearings</b>	<p>Chair decides what questions to be put to witnesses. May draw inferences if new material / explanation raised and not raised beforehand. May allow new documents to be submitted. Chair may adjourn if it appears necessary or expedient to do so. Reg 35(5) outlines role of police friend at Meetings / Hearings.</p> <p>Role of Meeting / Hearing is to review the facts and decide on balance of probabilities (or if conduct is admitted) if: At a Meeting: misconduct or not. At a Hearing: gross misconduct, misconduct or not.</p> <p>Once finding made, decide on outcome. Consider police record, character witnesses etc before determining outcome - Reg 36(12).</p> <p>Minutes to be taken at Meetings. Verbatim record made at Hearings.</p>
<b>Notification of finding &amp; outcome</b>	Finding and outcome to be notified by Chair as soon as practicable, and written notice & summary of reasons to be provided within 5 working days of decision, along with info on right of appeal, to include name of person to whom appeal to be sent. AA to send copy to PONI if PONI case.

## Appendix G Misconduct Meeting Appeals

Grounds of appeal	Notice of appeal	Appointment of appeal officer and supply of documents	Determination of appeal
<p>a) Misconduct finding and / or outcome was unreasonable;</p> <p>b) There is evidence that could not reasonably be considered at Meeting which could have <u>materially</u> affected finding or outcome;</p> <p>Serious breach of procedures or other unfairness which could have <u>materially</u> affected finding or outcome.</p>	<p>Member to submit notice of appeal within 7 working days after notice of outcome. Extendable for exceptional circumstances.</p> <p>Notice to state grounds and whether meeting is requested.</p> <p>Submit appeal notice to Discipline Branch.</p>	<p>Discipline Branch to appoint appeal officer (at least 1 rank higher and not interested party).</p> <p>Provide written notice to member of name of appeal officer, any person appointed to advise, and ability to object within 3 working days to appointment of appeal officer or advisor.</p> <p>If objection to appeal officer or advisor, Supt Discipline Branch to decide if objection valid and replace if appropriate.</p> <p>Once appeal officer determines appeal to take place, Discipline Branch provide appeal officer with:</p> <ul style="list-style-type: none"> <li>• Documents provided to Misconduct Meeting;</li> <li>• Notice of appeal;</li> <li>• Minutes from Misconduct Meeting;</li> <li>• Any new evidence provided.</li> </ul>	<p>Appeal officer to determine if there are arguable grounds for appeal set out in notice.</p> <p>If no – dismiss appeal</p> <p>If yes :</p> <p>If meeting requested, meet within 5 working days after determining grounds for appeal have been met. May extend in the interests of justice. Attempt to agree date &amp; time, otherwise specify.</p> <p>Provide written notice to member of date, time &amp; place of Hearing.</p> <p>May vary outcome up or down within the outcomes available to the original Misconduct Meeting.</p> <p>Provide written notice within 3 working days of determination, along with reasons.</p>

## Appendix H Contact Us

**Service Instruction Author**

**Branch Email**

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