

Changes to the police complaints system and police misconduct system and the  
Police Appeals Tribunals rules for the MPS area  
January – November 2012

1. From 16th January 2012 new legislation comes into effect in the Metropolitan Police Service (MPS) area of London which makes changes to the police complaints system, the police misconduct system and the Police Appeals Tribunals Rules. This legislation is as follows:
  - The Police Reform and Social Responsibility Act 2011.
  - The Police (Complaints and Misconduct) (Amendment: Metropolitan Police) Regulations 2011.
  - The Police (Performance and Conduct) (Amendment: Metropolitan Police) Regulations 2011.
  - The Police Appeals Tribunals (Amendment: Metropolitan Police) Rules 2011.
2. The new arrangements under this legislation are set out below. For the police misconduct system and Police Appeals Tribunals rules this note should be read in conjunction with *Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures* which has not been updated to reflect these changes. New consolidated guidance will be produced for November 2012.

Police complaints and misconduct procedures

3. The Mayor's Office for Policing and Crime (MOPC) is now the appropriate authority for handling complaints and disciplinary action against the Commissioner of the MPS and the Deputy Commissioner or Assistant Commissioners of the MPS exercising the functions of the Commissioner in accordance with specific statutory or regulatory provisions.
4. The Commissioner of the MPS is now the appropriate authority for handling complaints and disciplinary action against all other officers in the MPS in other circumstances.
5. **Fast Track Procedures (Special Cases):** In the case of non senior officers the case will be heard by an Assistant Commissioner. In the case of a senior officer, the case will be heard by a panel as set out in Regulation 47A of the Police (Conduct) Regulations 2008, as inserted by the Police (Performance and Conduct) (Amendment: Metropolitan Police) Regulations 2011.

The decision as to whether a case is suitable for using the fast track procedure will be taken by the appropriate authority which must determine whether it believes the special conditions are satisfied having regard to the available evidence and any other relevant information. If the Commissioner delegates this decision, that decision must be authorised by a senior officer. The appropriate authority will be the MOPC in the case of the Commissioner, or a Deputy Commissioner or Assistant Commissioner exercising the functions of the Commissioner as described above, and will be the Commissioner in any other case.

*(These changes amend references in paragraphs 4 and 9 in annex A of the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures)*

6. **Misconduct Meetings/Hearings – Senior Police Officers:** Where a case against ACPO rank officers is referred to a misconduct meeting or hearing the misconduct proceedings shall be conducted by the following panel of persons appointed by the appropriate authority: -
- (i) A chair selected by the appropriate authority from a list of persons who satisfy the judicial-appointment eligibility criterion on a 7-year basis and have been nominated by the Secretary of State for this purpose.
  - (ii) Her Majesty's Chief Inspector of Constabulary (HMCIC) or an inspector of constabulary nominated by HMCIC; and
  - (iii) A person selected from a list of candidates maintained by the MOPC.

The senior officer concerned should be informed of the names of the persons appointed to conduct the misconduct proceedings together with the name of any person appointed to advise such persons at the proceedings as soon as reasonably practicable after they have been appointed.

The senior officer may object to any person hearing or advising at misconduct proceedings in accordance with regulation 21 of the Conduct Regulations. In doing so the senior officer concerned will need to set out clear objections as to why a particular person(s) should not conduct or advise at the proceedings.

If the senior officer concerned submits a compelling reason why such a person should not be involved in the proceedings then, in the interests of fairness, a replacement should be found. The senior officer will be informed who the replacement is and will have the right to object to such a person if he or she submits compelling reasons why the replacement should not be involved in the proceedings in accordance with the procedure set out in regulation 21 of the Conduct Regulations.

The chair of the misconduct proceedings shall, as soon as possible after the proceedings, submit a report to the appropriate authority, together with a copy to the senior officer concerned, setting out:-

- (a) Whether or not misconduct or gross misconduct has been found against the senior officer concerned. This should include any relevant findings of fact.
- (b) The reasons for that finding.
- (c) If that finding was that the conduct of the senior officer concerned amounted to misconduct or gross misconduct (as the case may be), a recommendation as to any outcome which in the opinion of the panel should be imposed
- (d) Any other matter arising out of the proceedings which it desires to bring to the notice of the appropriate authority.

On receipt of the report the appropriate authority will hold a further meeting or hearing at which the authority may impose any outcome that would have been available to the panel to impose under the regulations.

*(This replaces Annex B of the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures)*

#### The Police Appeals Tribunals Rules

7. For the purposes of the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures the following term should be used for 'Respondent'.

'Respondent' – In the case of an appeal brought by a police officer within the Metropolitan Police Service, other than the chief officer of police, the respondent will be the chief officer of that force. For the chief officer the respondent shall be a person designated by the relevant police authority.

*(This replaces the definition of 'Respondent' in para 1.3 in Annex C of the the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures).*

8. Where the appeal is made by a police officer within the MPS who is not a senior officer, the Tribunal appointed by the police authority will consist of; -
- (a) a legally qualified chair drawn from a list maintained by the Home Office;
  - (b) a serving senior officer (ACPO rank); and
  - (c) a retired member of a police force who was a member of an "appropriate staff association" at the time of their retirement.

An "appropriate staff association" means if the appellant was of the rank of chief superintendent or superintendent, the Police Superintendents' Association of England and Wales. In any other case, it means the Police Federation of England and Wales.

The composition of a Police Appeals Tribunal for senior officers is set out in Schedule 6 to the Police Act 1996 (as amended).

It is expected that a tribunal will take place as soon as reasonably practicable and in any case should take place no later than 3 months of the determination by a tribunal chair that a hearing should be held.

It will be the responsibility of the police authority to satisfy itself that the members who are to sit on a Police Appeals Tribunal are sufficiently independent of the matter so as not to give rise to any suggestion of unfairness.

*(This replaces section 3 of Annex C of the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures)*

### Transitional arrangements

#### 9. *The Police complaints system*

Where the Commissioner of the MPS or the MOPC replaces the MPA as the appropriate authority, the Complaints Regulations (as amended by the Police Complaints and Misconduct) (Amendment: Metropolitan Police) Regulations 2011) shall have effect as if anything done or treated as done by or in relation to the MPA in its capacity as appropriate authority had been done by or in relation to the Commissioner of the MPS or the MOPC.

#### 10. *The Police misconduct system*

Where the Commissioner of the MPS or the MOPC replaces the MPA as the appropriate authority in relation to any allegation, the 2004 and 2008 Conduct Regulations (as amended by the Police (Performance and Conduct)(Amendment: Metropolitan Police) Regulations 2011) shall have effect as if anything done or treated as done by or in relation to the MPA in its capacity as appropriate authority had been done by or in relation to the Commissioner of the MPS or the MOPC. Any decision taken under regulation 34(13) (procedure at misconduct proceedings) or 54(13) (procedure at special case hearing) of the Conduct Regulations in relation to a senior officer of the Metropolitan Police Force before the coming into force of the Police (Performance and Conduct)(Amendment: Metropolitan Police) Regulations 2011 shall be treated as if it had been taken by a panel of persons constituted in accordance with regulations 26A or 47A of the Conduct Regulations (as inserted by regulation 6(5) and (12) of Police (Performance and Conduct)(Amendment: Metropolitan Police) Regulations 2011), as the case may be.

Any decision taken under regulation 35(1) (outcome of misconduct proceedings) or 55(1) or (5) (outcome of special case hearing) of the Conduct Regulations in relation to a senior officer of the Metropolitan Police Force before the coming into force of the Police (Performance and Conduct)(Amendment: Metropolitan Police) Regulations 2011 shall be treated as if it had been taken by the appropriate authority under regulation 35(1A) or 55(1A) or (5A) of the Conduct Regulations (as inserted by regulation 6(9)(b) and (16)(b) and (d) of the Police (Performance and Conduct)(Amendment: Metropolitan Police) Regulations 2011, as the case may be.

#### 11. *The Police Appeals Tribunals Rules*

**Appeals already being dealt with under the 1999 Rules:** Where, as a result of the coming into force of rule 3(3) of the Police Appeals Tribunals (Amendment: Metropolitan Police) Rules 2011, a chief officer of police replaces a person designated by a police authority as the respondent in relation to any appeal, the 1999 Rules as amended by the Police Appeals Tribunals (Amendment: Metropolitan Police) Rules 2011 shall have effect as if anything done or treated as done by or in relation to the person designated by the police authority in his capacity as respondent had been done by the chief officer of police.

**Appeals already being dealt with under the 2008 Rules:** Where, as a result of the coming into force of rule 4(3) of the Police Appeals Tribunals (Amendment:

Metropolitan Police) Rules 2011, a chief officer of police replaces a person designated by a police authority as the respondent in relation to any appeal, the Police Appeals Tribunals Rules 2008 as amended by the Police Appeals Tribunals (Amendment: Metropolitan Police) Rules 2011 shall have effect as if anything done or treated as done by or in relation to the person designated by the police authority in his capacity as respondent had been done by the chief officer of police.