

**Guidance on Misconduct and Special Case Hearings Held in Public,
Recruitment of Legally-Qualified Chairs and Orders to restrict or prohibit
compensation payments to senior officers**

Misconduct and Special Case Hearings that are held in Public

1. This guidance applies to misconduct hearings and special case hearings (including further hearings) in cases where an officer is given notice of referral to misconduct proceedings under regulation 21(1) or 43(1) of the conduct regulations on or after 1 May 2015. It does not apply to misconduct meetings or third stage unsatisfactory performance meetings.
2. The regulations are clear that such a misconduct hearing or special case hearing will be held in public, subject to the discretion of the person chairing or conducting the hearing to exclude any person from all or part of the hearing.

Consideration of whether to exclude any person from all or part of a hearing

3. In assessing whether any person should be excluded from a hearing or any part of a hearing, the person chairing or conducting the hearing may take into account a variety of factors. These may include but are not limited to those factors listed at (a)-(j) below.
 - a. The transparency of the police misconduct and/or complaints system;
 - b. The wider public interest¹ in the proceedings;
 - c. The vulnerability, physical and mental health and/or the welfare of witnesses who may be called to give evidence at the hearing;
 - d. Where a misconduct hearing is being held as a result of a public complaint; the vulnerability, physical and mental health and/or the welfare of the complainant(s);
 - e. The physical and mental health and/or welfare of the officer(s) subject to the misconduct hearing;
 - f. The welfare of any third party not listed above, i.e. a victim that is not a complainant or witness;
 - g. Any factors relating to sensitive police operations that may not be appropriate for public disclosure, including where there would be a risk of the identification of covert human intelligence sources, confidential informants or covert police assets;

¹ Public interest means the wider public interest in, for example, seeing justice done, understanding the police disciplinary system, upholding the integrity of the police etc. rather than the interest of the public in the case.

- h. Whether holding a hearing in public would jeopardise or interfere with any criminal proceedings;
 - i. Whether holding the hearing in public would interfere with the prevention or detection of crime or the apprehension of offenders;
 - j. Any relevant national security issues.
4. Having taken into account any of the factors listed at (a)-(j), any representations that have been made and any other factors they consider relevant, the person chairing or conducting the hearing should consider whether the particular circumstances of the case outweigh the public interest in holding the hearing in public. Effort should be made to ensure as much of a hearing is held in public as possible.
 5. Where a witness is unwilling to give evidence in public, the use of screens or other measures to ensure anonymity should be considered where appropriate.
 6. The presumption should be of transparency where possible. A hearing should not be held privately or notice withheld for administrative reasons; or because of concerns to the reputation of the force or police arising from the hearing being public.

Conditions imposed on attendance in order to facilitate the proper conduct of proceedings

7. The hearing should not be delayed solely in order to facilitate a complainant, interested person², or any other member of the public attending the hearing, although consideration will need to be given to whether a complainant or interested person is also a witness in the matter under consideration.
8. Members of the public attending a hearing are expected to do so at their own expense, except where they are attending as a witness. The appropriate authority should meet the reasonable expenses of any witnesses.
9. It will normally be appropriate for the person chairing or conducting the hearing to prohibit the taking of photographs and the use of film or sound recording equipment during the hearing, except for official use. The use of live, text-based communications for the purposes of simultaneous reporting of proceedings may be permitted if the person chairing or conducting the proceedings is satisfied that it does not interfere with the orderly conduct of proceedings.

² "Interested person" is defined as under section 21 of the Police Reform Act 2002. For example, where they have consented to receiving information, a person who is a relative of a person whose death is alleged to have resulted from the conduct that is complained about or the subject of a conduct manner.

10. At the discretion of the person chairing or conducting the proceedings, a hearing can be live streamed by the appropriate authority to a facility accessible to the public as an alternative to in person attendance where it would otherwise not be possible to allow public access to the hearing room or to allow for more people to view the hearing than can be accommodated.
11. In the case that more people wish to attend the hearing than can be accommodated, priority should be given to the complainant, any interested person, and, where appropriate, anyone acting as an observer on behalf of the IPCC.
12. The person chairing or conducting a hearing may also decide to impose other conditions in advance of, or during, a hearing. Conditions can include but are not limited to:
 - a. Requirements for members of the public to register and/or produce valid identification;
 - b. Restrictions on what can be brought into the hearing room or on to the premises where the hearing is to be held, whether for the purposes of security or otherwise;
 - c. Restrictions on the number of people that can be accommodated and the procedure where more people wish to attend a hearing than can be accommodated;
 - d. Any restrictions on reporting that members of the public or the media must adhere to in order to be granted access to the hearing.

Public notice of the hearing and representations to the person chairing or conducting a misconduct hearing regarding public attendance

13. Regulations 27A and 44A provide that the person chairing or conducting a misconduct or special case hearing may require the appropriate authority to give public notice of a hearing. This does not affect any notice in relation to a hearing that should be provided under the regulations to the officer concerned, any complainant, interested person, witness or the IPCC.
14. The presumption is that a misconduct hearing or a special case hearing should be held in public. There may be some circumstances where this is not appropriate, or where certain parts of the hearing will need to be held in private. There may also be circumstances in which it would not be appropriate for the officer concerned to be named prior to a hearing, or for the allegation to be made public. As such the power of the person chairing or conducting a hearing to require notice to be given to the public is an enabling power. There is however an expectation that notice will be given where a hearing is to be held wholly or partly in public in the absence of a compelling reason for not doing so.
15. There is provision made in the regulations for representations to be made in advance to the person chairing or conducting a misconduct or special case hearing by:

- a. the officer concerned;
- b. the appropriate authority (except where the appropriate authority is conducting the hearing);
- c. any complainant(s);
- d. any interested person(s);
- e. any witnesses; and
- f. the Commission (IPCC),

in relation to whether any person should be excluded from the whole or part of a hearing, whether any conditions should be imposed on attendance in order to facilitate the proper conduct of the proceedings and (in the light of those representations) whether the person chairing the hearing should require public notice of the hearing to be given and, if so, the content of such a notice. It is for the person chairing or conducting the hearing to determine the deadline by which any such representations must be made. The appropriate authority should inform any parties listed at (a)-(f) of this deadline.

16. The person chairing or conducting the proceedings should consider any representations made prior to the deadline they specify in relation to whether any person should be excluded from the whole or part of a hearing, or whether any conditions should be imposed on attendance in order to facilitate the proper conduct of the proceedings, before deciding whether notice of the hearing should be published, or what the content of any notice should be. This is because the expectation is that notice will be given where a hearing is to be held wholly or partly in public in the absence of a compelling reason for not doing so and therefore consideration should be given to representations on the issue of attendance first and then consideration given to representations on the issue of notice in the light of the former issue.
17. Where notice is required, this must be published by the appropriate authority on its website at least 5 working days before the day on which the hearing is due to take place.
18. There may be certain circumstances where it would not be appropriate for an officer to be named, for example, a firearms officer where a court has made an anonymity order, or where the officer is an undercover officer and their identity should be protected. Similarly, where the naming of an officer or notice of the subject matter of an investigation could risk the identification of a vulnerable victim or complainant against their wishes, this should be considered by the person chairing or conducting the hearing.
19. Notices given to the public should also contain information relating to any conditions that the person chairing or conducting the proceedings has decided to impose on attendance, which have been determined at the point where the notice is required.

20. Where a decision is taken in advance to hold all of the hearing in private, then in the interests of transparency the person chairing or conducting the hearing may consider that it would be appropriate to ask the appropriate authority to publish a notice on its website explaining the decision.

Decisions at the hearing itself to exclude any person from all or part of the hearing

21. In the interests of efficiency and fairness, it will usually be better for representations to be provided and considered in advance of the hearing wherever possible and this should be encouraged by the person conducting or chairing the hearing. However, the appropriate authority, the officer(s) subject to the hearing, the IPCC, the complainant, any interested person or their representatives may, at the discretion of the person conducting or chairing the hearing, make oral or written representations at the hearing itself, whether or not they have already made written representations in advance of the hearing, in relation to circumstances of the case that in their view should lead to any person being excluded from all or any part of the proceedings. It may be appropriate for the person chairing or conducting the hearing to direct that the public be excluded whilst any oral representations are heard.

22. If, after a hearing has already begun to be held in public, the person chairing or conducting the proceedings reaches a decision to exclude any persons from the proceedings or any part of the proceedings they should announce their decision openly at the hearing with reasons, unless they consider that it would be inappropriate to do so.

23. Where the officer concerned requests that any person at the hearing be excluded while a submission is made in mitigation on the officer's behalf, the person conducting or chairing the misconduct proceedings may require those persons to withdraw while the submission is made.

24. The decision about whether to allow any person to remain or not whilst submissions are made in mitigation is a decision for the person chairing or conducting the hearing having considered any representations made by the officer either in advance of the hearing or at the hearing itself. If any person has been excluded whilst mitigation is given, the person conducting or chairing the meeting must, subject to the need to keep them excluded for any other reason, invite them back into the hearing for the communication of the finding and the outcome of the proceedings.

25. If the person chairing or conducting the hearing decides that the public should be excluded from all or part of the hearing, the person chairing or conducting the hearing should consider whether it would be appropriate in the circumstances to nonetheless allow any complainant(s) and/or any interested person (and person accompanying such a person) to attend or remain in attendance.

26. The person conducting the proceedings or the panel may deliberate in private, in the absence of the public and the parties and their representatives, at any time.
27. The Chair may exclude from any hearing any person whose behaviour, in their opinion, is likely to disrupt the orderly conduct of the proceedings.
28. Under regulation 32 of the conduct regulations, where it appears to the person chairing or conducting a hearing that any person may in giving evidence disclose information that, under the harm test, ought not to be disclosed to any person attending the hearing, the person chairing or conducting the hearing must require such attendees to withdraw while the evidence is given.
29. Although the regulations allow for any person to be excluded by the chair, a person acting as an observer on behalf of the Commission should not normally be excluded unless it appears to the chair that there is a compelling reason for doing so.

Nominations of legally-qualified chairs by Local Policing Bodies

30. This guidance applies to the nominations of legally-qualified persons to chair misconduct hearings concerning non-senior officers where an officer is given notice of referral to misconduct proceedings under regulation 21(1) of the conduct regulations on or after 1 January 2016.
31. Whilst the chairs of misconduct hearings are not judicial appointments, anyone nominated to chair misconduct hearings by the Local Policing Body must fulfil the judicial appointment eligibility condition as set out in section 50 of the Tribunals, Courts and Enforcement Act, on a 5-year basis.
32. The expectation is that anyone nominated to chair misconduct hearings by a Local Policing Body will be independent of the police and that therefore they will not be under the direction and control of a chief officer of police, either as a member of police staff or as a member of a police force or a special constable.
33. The Local Policing Body should also give consideration to whether there is any other potential conflict of interest that may make it inappropriate for a person to be nominated to chair misconduct hearings.
34. Legally-qualified chairs may be paid on a fee paid basis as advertised by the Local Policing Body when nominating persons to the list. The fees may be set at any rate specified by the Local Policing Body, this rate may be lower than, but should not exceed, the fee rate specified by the Home Office for Police Appeals Tribunal chairs.

Orders to restrict or prohibit compensation payments to senior officers

35. The current arrangements for compensation for senior officers are not set out in regulations or determinations made by the Secretary of State but are instead set out in Police Negotiating Board Circular 10/3:
<http://www.local.gov.uk/web/workforcelibrary/police-negotiating-board-circulars>
36. The Circular provides for compensation to be payable where a Local Policing Body decides not to extend a chief officer's fixed term appointment or where they are required to resign in the interests of efficiency or effectiveness under sections 38(3), 39(5) and 40(4) of the Police Reform and Social Responsibility Act 2011.
37. Under regulations 35(12) and 55(11), where a senior officer is given a final written warning (or such a warning is extended) at a further misconduct hearing or special case hearing, the appropriate authority may make an order in relation to the compensation payable if that officer's fixed term of appointment is not extended or the officer is required to resign or retire before the expiry of the fixed term.
38. It is open to the person conducting the further meeting or hearing to make any such order as they see fit where the outcome given is a final written warning or an extension of a final written warning. Relevant considerations include:
- a. the seriousness of the misconduct, including whether the outcome would have been dismissal in the absence of personal mitigation;
 - b. the extent to which the conduct could be seen as harmful to public confidence in the police or the police disciplinary system;
 - c. the extent to which the payment of compensation (or payment above a certain level) could harm public confidence in the police, given the disciplinary outcome.
39. Such an order may:
- a. prohibit the payment of compensation to the officer concerned;
 - b. prohibit the payment of compensation above a specified amount; or
 - c. make provision as to the method by which the compensation is to be calculated.
40. Where a final written warning is cancelled as the result of an appeal to the Police Appeals Tribunal, any order made will also be cancelled.