



WEST YORKSHIRE POLICE AND CRIME PANEL

16 December 2016

MISCONDUCT HEARINGS FOR SENIOR OFFICERS

Misconduct hearings are held in cases where there is a case to answer for gross misconduct or where the police officer has a live final written warning and there is a case to answer in respect of a further act of misconduct. Since 1 May 2015 such misconduct hearings will routinely be heard in public subject to the discretion of the person chairing the hearing to exclude any person from all or part of it.

From January 2016 police misconduct hearings have been chaired by legally qualified persons (previously they were chaired by Chief Police Officers). This change was introduced by the Government to promote transparency, independence and justice. The Police and Crime Commissioner is responsible for appointing suitably qualified persons who may be called upon to chair the hearings and has collaborated with other forces in the North and East region to appoint 27 individuals to a joint list following a competitive recruitment campaign.

The arrangements for misconduct hearings for senior police officers are detailed in the attached appendix which has been prepared by West Yorkshire Police.

The attached paper describes the way that public misconduct hearings for other officers have been managed in West Yorkshire, utilising live streaming to a public audience in the Wakefield District Police HQ. It is anticipated that any misconduct hearings for senior officers will follow a similar format.

Where the chairperson has determined that public notice is given of the hearing this must be arranged by the appropriate authority by publishing the notice on its website at least 5 working days before the hearing is scheduled to take place. Notices will be published on either the OPCC or the Force website, therefore, as appropriate.

There have been no misconduct hearings relating to senior officers in West Yorkshire since these changes were introduced.

'What actions WYP will be taking around disciplinary hearings for senior police officers in public.'

The process for public disciplinary hearings for senior officers is contained within Home Office Guidance, Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures, version 4, revised May 2015. An extract from the document that relates specifically to this is shown below.

The proceedings and consideration of whether to exclude any person from all or part of a hearing are the same as non-senior officers.

Policy

Misconduct Meetings/Hearings - Senior Police Officers

1.1 This section sets out the persons who will hear a misconduct case involving a senior police officer that has been referred to either a misconduct meeting or misconduct hearing.

Misconduct Meeting/Hearings

2.1 Where a case 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 legally qualified person who shall be the chair¹;
- (ii) HMCIC or an inspector of constabulary nominated by HMCIC; and
- (iii) a person selected from a list of candidates maintained by a local policing body.

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

2.3 The senior officer may object to any person hearing or advising at a misconduct meeting or hearing within 3 working days starting with the first working day after he or she was notified of the person's name. In doing so the senior officer concerned will need to set out clear and reasonable objections as to why a particular person(s) should not conduct or advise at the proceedings.

2.4 If the senior officer concerned submits a compelling reason why such a person should not be involved in the proceedings, a replacement should be found and the senior officer will be notified of the name of the replacement and the senior officer concerned will have the same right to object to that person. The senior officer concerned may object to a person(s) conducting a misconduct meeting or hearing or advising at such proceedings if, for example, the person(s) have been involved in the case in a way that would make it difficult to make an objective and impartial assessment of the facts of the case.

¹ A list of such legally qualified persons is maintained by the Home Office.

2.5 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.

2.6 On receipt of the report the appropriate authority will hold a further meeting or hearing. The procedure for this further meeting or hearing is effectively the same as for any other meeting or hearing where outcome is to be decided – the relevant Conduct Regulations dealing with procedural requirements continue to apply. At the meeting or hearing the appropriate authority may record a finding that the conduct of the police officer concerned amounted to misconduct and take no further action or impose one of the outcomes listed at paragraph 2.205 of this guidance.

Guidance on Policy application

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;

- 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

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

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.

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.

Force Arrangements

West Yorkshire Police have been using this strand of the guidance as a way of facilitating the arrangements for Public Hearings. We live stream the Hearing from Headquarters Admin One to the Don Pedro Suite at Havertop within the media Suite, which to date has worked well. At the time of this report, West Yorkshire Police have not had any senior Police Officers subject to disciplinary procedures and have therefore not applied this process.

There is more detailed guidance offered to Appropriate Authorities in relation to attendance conditions, restrictions that can be placed on proceedings by the Chair and the need to publish proceedings pre and post event.

Further information can be found with the Home Office Guidance on Police Officer Misconduct