



Discipline - Police Staff (Policy & Procedure)

OFFICIAL

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Policy

Statement

Public confidence in the police depends on police staff demonstrating the highest level of personal professional standards of behaviour. Those standards reflect the expectations that the police service and the public have of how police staff should behave.

Merseyside Police is committed to ensuring that all staff comply with The Police Staff Standards of Professional Behaviour. A breach of these standards may damage confidence in the police service and could lead to disciplinary action, which in serious cases may result in dismissal.

Aims

The main aim is to provide a consistent framework for the application of the discipline procedure, which ensures fairness, and where appropriate encourages the necessary improvements in an employee's conduct and behaviour. It also aims to ensure compliance with legislative requirements

Objectives

- a) To provide a fair, open, proportionate and consistent approach to the management of any instances of alleged misconduct by police staff.
- b) To adopt a discipline procedure, which is, fair and proportionate in its application
- c) To ensure that staff meet a satisfactory standard of conduct and behaviour
- d) To ensure that police staff, temporary / agency staff and contractors comply with the standards of behaviour code
- e) To reduce the number of Discipline cases, which lead to Employment Tribunals.

Application and Scope

All police staff, including the extended police family and those working voluntarily or under contract to Merseyside Police must be aware of, and are required to comply with, all relevant policy and associated procedures.

The procedures apply to all police staff of Merseyside Police except Directors of equivalent status to Assistant Chief Constables. Only section ~~13~~ 14 of this procedure applies to employees who are in their probationary period or temporary employees with less than 2 years' service if employed on or after 6th April 2012.

Outcome Evaluation

Outcomes will reflect specific objectives and be measured against these objectives on a routine annual basis by the Head of Employee Relations i.e. Number of disciplines, Appeals, Employment Tribunals. This information will be evaluated to identify any trends as and when required.

The Chief Officer is responsible for overseeing this Policy including the monitoring of its progress and implementing any changes required to ensure continued compliance with Employment Legislation.

Version History

28/04/2015	V 1.1 Paragraph 9.8.1 inserted re Summary Dismissal
04/09/15	V 1.2 to reflect structural change
08/03/16	V1.3 to reflect centralisation of PSD
09.07.18	V1.4 to reflect introduction of the Barred and Advisory List by the Home Office
01.09.20	V1.5 to reflect change in scheme of delegation, roles and responsibilities and post employment hearings.

Procedure

1. Introduction

- 1.1 The [Police Staff Council Standards of Professional Behaviour](#) set out the high standards that the police service and the public expect of all police staff. Any conduct that falls below the standards may be assessed as misconduct or gross misconduct.
- 1.1 It is **essential** to note that before considering any formal action under this policy and procedure, informal action consisting of advice from a Manager or Supervisor will normally be appropriate for first or isolated incidents of minor misconduct.
- 1.2 Only where **all** informal supportive actions have failed, or the misconduct is serious will formal action under this procedure be appropriate.

2 Definitions

- 2.1 Misconduct – a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action.
- 2.2 Gross misconduct – a breach of the standards of professional behaviour so serious that if proven, dismissal would be justified.

2.3 Appropriate Authority

- 2.3.1 All formal discipline cases will be referred to the Professional Standards Department (PSD) for initial assessment. The Appropriate Authority (Chief Superintendent PSD) has delegated authority from the Chief Officer to make decisions regarding initial assessment, and final determination.
- 2.3.2 Where it is assessed by PSD that the conduct, if proven, would constitute 'misconduct' or 'Gross Misconduct' then the matter will be fully investigated by a member of PSD.

2.4 Misconduct Meeting

- 2.4.1 A misconduct meeting will be held for cases where there is a case to answer in respect of misconduct and where the maximum outcome would be a final written caution
- 2.4.2 The Strand Lead/Departmental Head will conduct the misconduct meeting or delegate authority in accordance with the [Scheme of Delegation](#).

2.4.3 An Employee Relations Consultancy Advisor will attend to provide advice and guidance on procedural matters to the Strand Lead/Departmental Head, or person with delegated authority conducting the meeting.

2.4.4 The Presenting Officer will be determined by PSD--

2.5 Misconduct Hearing

2.5.1 A misconduct hearing will be held for cases where there is a case to answer in respect of **gross misconduct** or where the employee has a live final written caution at the time of the alleged misconduct, and there is a case to answer in respect of a further act of misconduct. The maximum outcome would be dismissal without notice.

2.5.2 A misconduct hearing will consist of a chairperson who will be a Strand Lead/Departmental Head and an Employee Relations Consultancy Advisor.

2.5.3 A misconduct hearing will be digitally recorded as per the PSC Handbook Part 3 Guidance, Police Staff Misconduct Procedures

2.5.4 It is important that misconduct hearings are only used for those matters where the individual has a live final written caution and has potentially committed a further act of misconduct that warrants misconduct proceedings or the misconduct alleged is so serious that it is genuinely considered that if proven or admitted dismissal from the police service would be justified.

2.6 Roles & Responsibilities

2.6.1 Responsibilities of Professional Standards Department

PSD will:

- retain all records relating to disciplinary matters.
- oversee all disciplinary allegations.
- arrange an initial Welfare meeting and further meetings should there be changes to the proposed hearing.
- lead on complex cases.
- arrange for Notice of Allegation to be served.
- compile the misconduct file for the hearing/meeting.
- ensure the file is quality assured by the Detective Inspector Complex Investigations prior to it being served.
- present the file at the hearing/misconduct meeting. This will be done by the Detective Inspector Complex Investigations supported by the PSD Investigating Officer.
- notify the College of Policing of details of staff that need to be entered on the Police Barred or Police Advisory list

2.6.2 Responsibilities of Managers

Managers are responsible for maintaining standards of professional behaviour. Managers should lead the process and are encouraged to seek professional HR advice from the Employee Relations Unit, People Services.

2.6.3 Responsibilities of People Services

People Services will:

- provide managers with advice and guidance relating to the management of discipline cases.
- support managers to deal with cases in line with this policy.
- provide guidance to Professional Standards Department on the compilation of the file, responsibility for the file remains with the Professional Standards Department.
- provide advice on procedural issues to the Chairperson of the hearing/meeting.

2.6.4 Responsibilities of Staff

- Staff should be familiar with the Police Staff Council Standards of Professional Behaviour document and their responsibilities to maintain satisfactory conduct at all times.
- If you are involved in this process at any stage, you have the right to representation from a recognised Trade Union Representative or a work colleague or a friend employed by Merseyside Police.
- You have a responsibility to organise any representation in good time. This is so that such representative(s) are aware of forthcoming meetings and available to attend scheduled meetings as required.

2.6.5 Responsibilities of a Witness

Witnesses will only be required in a hearing for the duration of their evidence and follow-up questions. However, all parties may agree that they should remain available. Witnesses are required to maintain confidentiality.

2.6.6 Responsibilities of the Chairperson (Misconduct Meeting)

A Misconduct Meeting will be chaired by a Senior Manager/Chief Inspector or Superintendent/Departmental Lead as per Scheme of Delegation.

The Chairperson will consider the allegations made against the employee and consider any mitigation provided. The Chairperson responsible for determining what if any action will be taken against the employee and what this will be up to a Final Written ~~Warning~~ Caution.

Responsibilities of the Chairperson (Misconduct Hearing)

A Misconduct Hearing will be chaired by a Strand Lead / Departmental Head.

The Chairperson will consider the allegations made against the employee and consider the mitigation provided and will then reach a decision to determine what if any action will be taken against the employee and what this will be up to Dismissal.

2.6.7 Responsibilities of the Representative

An employee has the right to be represented at all stages by an accredited representative of a recognised Trade Union. Alternatively you can bring a work colleague or a friend employed by Merseyside Police. An employee does not have the right to bring a person acting in a legal capacity.

The representative or companion may:

- Present and sum up the employee's case.
- Ask questions of the management representative or any witnesses.
- Confer with the employee during the meeting.
- Ask for an adjournment.
- Support the employee.

There is no right to legal representation at either a Gross Misconduct Hearing or a Misconduct Meeting.

3. Representation

- 3.1 At any stage of the procedure the employee has the right to be represented and/or accompanied by a representative of a recognised Trade Union, or work colleague or friend employed by Merseyside Police*. The attention of the employee will be drawn to this facility in a written notice. The Trade Union Representative or or a work colleague or a friend employed by Merseyside Police shall be given the opportunity to consult with the employee in private, prior to, or at any stage during the interview.
- 3.2 The Trade Union Representative or or a work colleague or a friend employed by Merseyside Police will be allowed to address the meeting/hearing to present and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. They will not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish to or prevent the employer from explaining their case.
- 3.3 Where formal action under this procedure against a representative (including a Health & Safety representative) of a recognised Trade Union recognised by the Chief Constable of Merseyside Police is being considered, the Manager or Supervisor must seek advice from the Head of Employee Relations. Discipline actions, will not proceed without either a branch officer or full-time official of the relevant Trade Union being informed. This will not preclude the suspension from duty of a recognised Trade Union representative in circumstances where consultation with a TU Advisor is impracticable.
- 3.4 There is no right to legal representation¹ at either a misconduct meeting or a misconduct hearing

*A solicitor employed by Merseyside Police may not accompany or represent a fellow employee in such circumstances; nor is it appropriate for an employee to be represented or be accompanied by their spouse.

4. Management Action

- 4.1.1 Management action is where the role of a manager is critical in ensuring early and swift intervention and effective management of police staff conduct.
- 4.1.2 Management action is not a formal misconduct outcome but is considered part of the normal managerial process.
- 4.1.3 Cases of minor misconduct are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct, and an informal approach may be particularly helpful where problems can be resolved quickly and confidentially. It is best practice for managers to make a diary note of the conversation.
- 4.1.4 The manager should determine whether management action is the most appropriate way of dealing with the issue, which may include:
- a) Pointing out where the behaviour fell short of the required standards.
 - b) Identifying expectation of future conduct.
 - c) Establishing an improvement action plan
 - d) Addressing underlying causes of the conduct through training, coaching, advice and support.
- 4.1.5 The Appropriate Authority on the professional Standards Department may consider that there is evidence of misconduct and breach of the Police Staff Council Standards, however their holistic perspective may assess that it remains appropriate to be dealt with by way of management action.

4.2 Formal Action

Severity Assessment

- 4.2.1 Where an allegation of misconduct is made against an employee, an assessment will be made by the Appropriate Authority in PSD as to whether the conduct (if proved or admitted) would amount to misconduct or gross misconduct.
- 4.2.2 The purpose of assessing whether the matter is potentially misconduct or gross misconduct is to:
- a) Allow the employee subject to the misconduct procedure to have an early indication of the possible outcome if the allegation is proven or admitted.
 - b) Give an indication of how the matter should be handled.
 - c) The Appropriate Authority will appoint a suitably qualified investigator to deal with the matter.
- 4.2.3 Where it is determined that the conduct, if proved, would constitute misconduct, it will be determined whether it is necessary for the matter to be investigated, or whether management action is the appropriate and proportionate response to the allegation. If PSD decide to take no action or management action, this should be notified to the

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- employee concerned, at the earliest opportunity by the PSD Investigating Officer in liaison with the Strand Lead/Departmental Head.
- 4.2.4 The assessment will also determine whether the misconduct proceedings would be addressed by a misconduct meeting, or misconduct hearing.
- 4.2.5 Upon completion of the assessment the Notice of Allegation will be prepared by the Investigating Officer.
- 4.2.6 Where an initial assessment is made and new evidence emerges during the investigation then a fresh assessment can be made. The matter may be moved up to a level of gross misconduct or down to a level of misconduct. In the interests of fairness, where a further severity assessment is made which alters the original assessment, then the employee will receive a revised Notice of Allegation, and will be provided with the reasons for the change in the assessment from PSD.
- 4.2.7 The same principle applies where the initial assessment suggests that the matter is one of misconduct but subsequent investigation reveals that it is not, and may be, for example, one of unsatisfactory performance.
- 4.2.8 In such cases the employee will be informed that the matter is now not being considered as a matter of misconduct, and will be dealt with via the Capability Policy for Police Staff (Performance).
- 4.2.9 Where there are possible or outstanding criminal proceedings against the employee an assessment will be made by PSD regarding whether the misconduct can be proceeded with. Misconduct action may be taken prior to or in parallel with any criminal proceeding, therefore where appropriate the investigation can proceed without the court case being finalised. Any action in relation to misconduct with related criminal matters requires consultation with the Police Decision Maker or Crown Prosecution Service via PSD.
- 4.2.10 Where potential prejudice to any criminal proceedings is identified the misconduct matter will still be investigated and a report submitted to the Appropriate Authority (PSD) who will decide whether there is a case to answer in respect of misconduct or gross misconduct. If a decision is made that the matter amounts to misconduct and that management action is appropriate, then this can be done without the need to refer the matter to misconduct proceedings. In all other cases where management action is not appropriate, no referral to disciplinary proceedings will take place if this would prejudice the criminal proceedings as criminal proceeding will take precedence.
- 4.3 Suspension from Duty**
- 4.3.1 As part of the Severity Assessment, suspension from duty may be considered if appropriate.
- 4.3.2 Suspension from duty is considered a neutral act, which does not imply that any discipline action has been or will be taken.

- 4.3.3 Suspension will only take place after careful consideration of all the facts and shall be for the shortest possible period. The decision to suspend an employee is not a presumption of guilt and should not be seen as misconduct action against them.
- 4.3.4 Wherever practicable, based on an assessment of risk, a temporary move to a new location or role within relevant and existing terms of employment must be considered first as an alternative to suspension.
- 4.3.5 Suspension must be authorised by the Deputy Chief Constable, although the decision may be communicated to the employee concerned by an appropriate manager.
- 4.3.6 Suspension will be with full pay and allowances.
- 4.3.7 The employee shall not be suspended from work unless the following conditions apply:
- a) Temporary redeployment to alternative duties or an alternative location is not appropriate in all the circumstances of the case.
 - b) It would prejudice the effective investigation of the case if the employee was not suspended.
 - c) The public interest regarding the nature of the allegation and other relevant consideration requires that he/she should be suspended.
- 4.3.8 Reasonable grounds for considering that the effective investigation might be prejudiced will include concern that the gathering of evidence could be compromised or witnesses tainted.
- 4.3.9 Where it is considered necessary to suspend an employee, a meeting must take place with the employee to inform them of the reason(s) why the suspension is taking place, this would normally take place with the line manager. The employee must be given the opportunity to have a recognised Trade Union representative or work colleague or friend employed by Merseyside Police present at this meeting.
- 4.3.10 Notification of suspension from work may be given orally or in writing. If given orally it will be confirmed in writing within 3 working days setting out the conditions of the suspension and details of the appointed liaison officer. The written notice shall contain the following information:
- a) That during the period of suspension they will receive their full pay entitlement including any allowances applicable at the time as defined in their conditions of service.
 - b) That they must remain available for interview and must obtain permission before taking leave away from home.
 - c) That suspension is not a presumption of guilt and should not be seen as misconduct action against them.
- 4.3.11 The Deputy Chief Constable will review the decision to suspend the employee on a 4 weekly basis or sooner where facts become known which would suggest that

suspension is no longer appropriate, or at any time following receipt of formal representation from the employee. Following a review of the suspension conditions the employee shall, within 3 working days, be notified of the outcome. If the suspension conditions remain satisfied the employee shall be given a summary of the reasons.

- 4.3.12 An employee suspended from work shall still be allowed to take their annual leave entitlement in the normal way whilst suspended provided they seek permission from the Investigating Officer.
- 4.3.13 The employee may be suspended from employment at any time and will stay suspended until:
- a) It is decided that the conduct of the employee shall not be referred to a meeting/hearing.
 - b) Such proceedings have been concluded.

4.4 Investigation

- 4.4.1 Where an allegation has been assessed as either misconduct or gross misconduct, the relevant Appropriate Authority (PSD) will appoint an appropriate person to investigate the matter. All allegations of misconduct or gross misconduct not suitable for immediate management action will be dealt with by PSD.
- 4.4.2 The investigator must be a person who has the appropriate level of knowledge, skills and experience to plan and manage the investigation.
- 4.4.3 The purpose of the investigation is to:
- a) Gather evidence to establish the facts and circumstances of the alleged misconduct or gross Misconduct.
 - b) Assist the Appropriate Authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.
- 4.4.4 The investigator will as soon as reasonably practicable after being appointed, inform the employee that an allegation has been made which breaches the standards of professional behaviour. Prior to the employee being informed a welfare meeting will be co-ordinated with the employee's line managers to ensure support is in place. The allegations will be communicated via the Strand Lead or designated officer following the welfare meeting chaired by PSD.
- 4.4.5 The Notice of Allegation and any additional associated documentation should ordinarily be given to the employee in person. Where this is not possible the notice must be sent to the employee's home address and be sent by recorded delivery. The responsibility for ensuring the notice is served rests with the appointed investigator.
- 4.4.6 Within 10 working days of service of the Notice of Allegation, if appropriate, the employee may provide a written response to the allegations to the appropriate authority.

- 4.4.7 In the interests of fairness, care should be taken where an incident is being investigated to ensure that the notification is given to the employee as soon as practicable after an investigator is appointed (subject to any prejudice to that or any other investigation).

4.5 Investigation Interview / Written response

In all cases a formal interview with the individual will be considered, however it may not always be appropriate. If the Investigator does not believe an interview to be required, they must liaise with an Employee Relations Consultancy Advisor.

- 4.5.1 The investigator and the employee concerned should agree a date and time for the interview. The employee may consult with any **recognised Trade Union** representative or fellow companion or friend employed by Merseyside Police. A mutually agreeable date should be reached however where no agreement can be reached the investigator has the right to specify a time and date, giving at least 10 working days advance notice. Any proposed change should be within 5 working days of the original agreed date.
- 4.5.2 The investigator will be responsible for providing the employee with written notification of the date, time and place of the interview, advising them of their right to be accompanied by a **recognised Trade Union** representative or work colleague or friend employed by Merseyside Police. This notification must also contain sufficient information about the alleged misconduct to enable the employee to prepare for the interview.
- 4.5.3 Documentary evidence shall be subject to the Harm test and will not be supplied to the employee if the investigator considers that preventing disclosure is necessary:
- To prevent the premature or inappropriate disclosure of information that is relevant or may be used in any criminal proceedings.
 - In the interests of national security.
 - For the prevention or detection of crime or the apprehension or prosecution of offenders.
 - For the prevention or detection of misconduct by other police officers or police staff or their apprehension for such matters.
 - Justified on the grounds that providing the information would involve disproportionate effort in comparison with the seriousness of the allegation.
 - Necessary and proportionate for the protection of the welfare and safety of any informant or witness.
 - Otherwise in the public interest – with rationale

It may be appropriate in complex cases for the investigative interview to be recorded. The tape recording of interviews must be proportionate to the allegations in question and should be subject to agreement with the individual and his/her representative.

- 4.5.4 In cases of alleged criminal conduct the interview **will** be digitally recorded.

A written record will be taken of the investigative interview that the individual will have the opportunity to comment on as being a true and accurate record of the interview.

- 4.5.5 The appointed investigator will be responsible for notifying the employee and witnesses where appropriate, of the progress and status of the investigation at least every 4 weeks in writing, commencing from the date of service of the notice of investigation.

4.6 Investigation Report

- 4.6.1 The appointed investigator will be responsible for compiling a full report once all the allegations have been fully investigated. The misconduct investigation shall only be deemed as completed when the appropriate authority is satisfied that all the allegations have been fully addressed and the investigator's report conforms to the required standard.

- 4.6.2 The report to the Appropriate Authority should:

- a) Provide an accurate and objective summary of the alleged misconduct, evidence sought during the investigation and subsequent recommendations.
- b) Refer to and include any relevant documents, including witness statements.
- c) Indicate whether there is a case to answer or not.
- d) Indicate what information is disclosable for the purpose of the file (NB protection of whistle blowers)

- 4.6.3 When the Appropriate Authority is satisfied that the investigation is complete and all the issues have been fully addressed, it will determine whether the employee has a case to answer to or not.

- 4.6.4 Where it is determined that there is no case to answer, the Appropriate Authority may:

- Take no further action
- Refer the matter to the Strand Lead/Department Head for management action

- 4.6.5 Where it is determined that there is a case to answer in respect of misconduct, or gross misconduct, the appropriate authority may:

- Refer the matter to the -Strand Lead /Department Head for management action
- Refer the matter to misconduct proceedings

- 4.6.7 The Appropriate Authority will inform the employee of its decision, in writing, within 15 working days of the completion of the investigation.

5. Misconduct Proceedings

5.1.1 When the decision has been made to refer the matter to misconduct proceedings the Appropriate Authority will ensure, as soon as is reasonably practicable, that the employee receives a written notice with the following information:

- a) Notification of the referral to a misconduct meeting or hearing
- b) Details of the alleged conduct and how it amounts to misconduct or gross misconduct specifically identifying what Police Staff Council Standards of Professional Behaviour are deemed to have been breached and how
- c) The name of the person appointed to conduct the meeting or hearing and the Employee Relations Consultancy Advisor. This shall not include any person with a previous involvement in the investigation or the case.
- d) A copy of any statement the employee may have made to the investigator
- e) Subject to the HARM test - A copy of the investigation report or parts thereof (together with any documents attached or referred to in that report as related to the employee).
- f) Any other relevant document gathered during the course of the investigation
- g) Advised of the right to representation by a recognised Trade Union or work colleague or friend employed by Merseyside Police.
- h) Advise that a misconduct hearing/meeting may be digitally recorded

5.1.2 The management report will be prepared by PSD and the presenting officer determined by the Appropriate Authority.

6. Objections

6.1 Following notice of referral to a misconduct meeting/hearing or appeal, the employee may object to any of the person(s) appointed to conduct the proceedings or any persons named who will advise at the proceedings.

6.2 Any objection must be in writing to the Appropriate Authority, detailing the full grounds of the objection and must be submitted within 3 working days, with valid reasons, following receipt of the notice:

- Misconduct meeting – objections to Detective Superintendent PSD
- Gross Misconduct hearing – objection to Detective Chief Superintendent PSD.
- Appeal – objection to Head of People Services.

6.3 The Appropriate Authority will notify the employee whether it upholds or rejects the objections. If the objections are upheld, the person(s) to whom the employee objects to should be replaced.

7. Procedure & Timescales

- 7.1.1 The misconduct meeting/hearing will take place no later than 30 working days following service of the notice. In the interest of justice this period may be extended by the person(s) conducting the meeting/hearing if deemed necessary, with rationale/justification.
- 7.1.2 The date and time of the meeting/hearing should be agreed with the employee, at least 10 working days notice must be given of any meeting/hearing. If no agreement can be reached then the person(s) conducting the meeting/hearing will set a date and time. The Employee Relations Consultancy Advisor shall provide the employee with a written notice giving details of the date and time of the meeting/hearing at least 10 working days in advance of any such meeting/hearing taking place.
- 7.1.3 If the employee is a recognised Trade Union representative then subject to the consent of the employee, the person conducting the meeting/hearing should discuss the case with a senior Trade Union representative or a full time official of the Trade Union concerned in order to avoid any perception that the proceedings are a criticism of the Trade Union.
- 7.1.4 If the employee or their representation is unable to attend the meeting/hearing, the employee can propose an alternative date and time which must be reasonable and within 5 working days of the specified date. If reasonable the meeting/hearing should be held on the proposed alternative date and the employee should be provided with an amended notice.
- 7.1.5 The employee and the person(s) conducting the meeting/hearing will be supplied with the same documents at least 10 working days in advance of the meeting/hearing. It is essential that the person(s) conducting the proceeding must fully appraise themselves of all the evidential and procedural issues set out in the documentation. The documentation will include:
- a) Written notice of the referral to the misconduct meeting/hearing;
 - b) The conduct that is the subject of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be;
 - c) A copy of any statements the employee may have made to the investigator during the course of the investigation;
 - d) A copy of the investigators report and any other relevant documentation that has been gathered during the course of the investigation;
 - e) Any documents provided by the employee in response to the notice of referral to a meeting/hearing.
 - f) Any other documents that are deemed appropriate to be considered at the misconduct proceedings.
- 7.1.6 If the employee fails to attend the meeting/hearing, they may still be represented by a recognised Trade Union representative or work colleague or friend employed by Merseyside Police. Where the employee fails to attend the meeting/hearing without good cause then the case may still proceed and be concluded in their absence.

7.1.7 When making a determination to proceed without the presence of the employee, the person conducting the meeting/hearing shall take into consideration the nature of the allegation, any live sanctions and any medical opinion on whether the person is fit to attend the meeting/hearing.

7.1.8 Where an employee raises a grievance during the misconduct proceedings the proceedings may (if appropriate) be temporarily suspended in order to deal with the grievance. Where the grievance and misconduct proceedings are related, it may be appropriate to deal with both issues concurrently. The misconduct procedures should be capable of dealing with issues relating to those proceedings. For example, if the grievance related to the person appointed to hear the matter at a meeting/hearing then the provision will exist to object to that person and therefore the reason for the grievance will have been resolved.

7.2 Format of Misconduct Proceedings

7.2.1 At the meeting/hearing the person conducting the proceedings will explain the allegation against the employee and the structure that the proceedings will follow.

7.2.2 The Presenting Officer will present the management case and outline the evidence that has been gathered.

7.2.3 The employee will be allowed to set out their case and answer any allegations that have been made.

7.2.4 The employee will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given the opportunity to raise points about any information provided by witnesses.

7.2.5 The person conducting the proceedings may ask questions of the employee, the Presenting Officer and any witnesses. Each participant may ask further questions of any witness by way of re-examination to clarify any matter.

7.2.6 The meeting/hearing will be conducted with such formality as is necessary to ensure fairness but the person conducting the proceedings may permit such additions to this procedure to assist in ensuring that reasonable steps are taken to consider all relevant information. The Chairperson may adjourn it for such purpose and such periods as are reasonable.

7.2.7 The Presenting Officer and the employee or their representative shall have an opportunity to sum up their case.

7.2.8 The employee's Trade Union Representative or or a work colleague or a friend employed by Merseyside Police will be allowed to address the meeting/hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting/hearing and confer with the employee during the proceedings. They will not, however, have the right to answer questions on the employee's behalf, address the meeting/hearing if the employee does not wish it or prevent the employer from explaining their case.

- 7.2.9 The Chairperson conducting the meeting/hearing shall ask those present with the exception of the Employee Relations Consultancy Advisor to withdraw to consider what decision to take.
- 7.2.10 Should it be necessary to ask any person to return to clarify any point both parties will be invited to return. In reaching the decision the person conducting the proceedings shall consider all the information available bearing in mind any conflicting evidence.
- 7.2.11 The Chair will decide whether or not the case is proven and ask the employee/representative and the presenting officer to provide any further representations to consider.
- 7.2.12 The Chairperson conducting the meeting/hearing shall ask those present with the exception of the Employee Relations Consultancy Advisor to withdraw to consider the appropriate sanction.
- 7.2.13 The decision will normally be given orally at the end of the period of deliberation. If this is not practicable the decision will be communicated in writing as soon as possible. In all cases the decision will be communicated in writing.

7.3 Extensions to Timescales

- 7.3.1 Extensions to timescales will be the exception rather than the rule, and will only be considered in exceptional circumstances. Any extension to established timescales within this policy and procedure must be both reasonable and justifiable, closely monitored by the Appropriate Authority, and agreed in writing with all parties as soon as practicable.

7.4 Witnesses

- 7.4.1 The Presenting Officer and the employee have the right to call witnesses appropriate to the case in question. Details of any proposed witnesses must be submitted to the Employee Relations Consultancy Advisor within 5 working days of the meeting/hearing. The Employee Relations Consultancy Advisor will formally warn the witnesses required to attend on behalf of both parties.

8. Outcome of the Misconduct Proceedings

- 8.1 If the Chairperson finds that the employee's conduct did fail to meet the PSC Standards of Professional Behaviour then they will determine the most appropriate outcome.
- 8.2 In considering the question of outcome the Chairperson conducting the meeting/hearing will need to take into account any previous written cautions that were **live at the date of the alleged** conduct in question, any aggravating or mitigating factors and have regard to the employee's record of service, including any previous live misconduct outcomes.

- 8.3 A previous written caution is **'live'** for the purposes of misconduct proceedings if it had not expired on the date upon which the report of the alleged misconduct or gross misconduct is received and assessed and not the date upon which the actual misconduct meeting or misconduct hearing is held.
- 8.4 The Chairperson is also entitled to take account of any early admission of the conduct on behalf of the employee and attach whatever weight to this as they consider appropriate in the circumstances of the case.
- 8.5 In addition both the employee and their recognised Trade Union representative or work colleague or friend employed by Merseyside Police should be given the opportunity to make representations for consideration by the Chair.
- 8.6 The person conducting the proceedings shall provide a written notice of the finding and outcome to the employee as soon as practicable after the conclusion of the meeting/hearing and in any case within 5 working days.
- 8.7 The written notice shall set out the finding of the person conducting the meeting/hearing, any disciplinary outcome imposed and the right to appeal against the finding and/or outcome.

8.8 **Available Outcomes at Misconduct Meeting/Hearing**

- Not proven
- No further action
- Management advice
- Written caution
- Final written caution

- 8.8.1 A copy of a written caution will be placed on the employee's personal file and will be recorded on the HR system. The warning will include the nature of the unsatisfactory behaviour or conduct, the consequences of any further misconduct or any failure to improve and, where appropriate, the standards to be achieved, together with the employee's right to appeal against the decision.
- 8.8.2 Written cautions will remain live for 12 months from the date the caution is given.
- 8.8.3 Final written warnings will remain live on file for 18 months from the date the caution is given.
- 8.8.4 The cautions may be accompanied with Improvement Plans to address the Standards of Behaviour breached.

8.9 **Available Outcomes at Misconduct Hearing**

- 8.9.1 At a misconduct hearing **in addition** to the outcomes available above the Chairperson will also have available the outcomes of:

a) Dismissal with notice - The notice period should be determined by the persons conducting the hearing subject to a minimum of 28 days.

b) Dismissal without notice - Dismissal without notice will mean the employee is dismissed from the police service with immediate effect.

8.9.2 Employee Relations advice will be given to the Chairperson of the hearing regarding which outcome ~~would~~ may be appropriate based on the circumstances.

9. Dismissal

9.1 Dismissal will not normally be appropriate for the first instance of misconduct unless it constitutes gross misconduct.

9.2 Whenever a Strand Lead/Departmental Head is considering a decision to dismiss an employee, the question of whether continued employment in another role is appropriate should be considered. This course will only be adopted where dismissal from the current post is justified.

9.3 Where continued employment in another role is being considered it may be necessary to defer confirmation of the decision until that role has been identified. Otherwise the dismissal outcome will normally be oral at the conclusion of the Hearing and will in any case be confirmed in writing as soon as practicable.

9.4 Employees with more than 1 year's service if employed before 6th April 2012, ~~or~~ 2 years or more service, if employed on or after 6th April 2012 have the right to request a 'written statement of reasons for dismissal'. This will be provided within 14 days of the request being made unless it is not reasonably practicable.

9.5 A female who is dismissed during pregnancy or maternity leave is automatically entitled to the written statement without having to request it irrespective of length of service.

9.6 An employee who is dismissed while absent from work during an ordinary or additional adoption leave period is entitled to a written statement without having to request it and irrespective of whether they have been continuously employed for any period.

9.7 The statement can be used in evidence proceedings, for example, in relation to a complaint of unfair dismissal.

9.8 Where the dismissal is for gross misconduct it will normally take immediate effect i.e. without notice or pay in lieu of notice. The letter of dismissal will include the nature of the unsatisfactory behaviour, conduct or attendance together with the employee's right to appeal against the decision. (See [Scheme of Delegation](#)).

9.9 Summary Dismissal

9.9.1 In exceptional circumstances the Force may dismiss a member of staff without notice or pay in lieu of notice. Summary Dismissal must only be considered in cases involving acts of gross misconduct. Should this be the case there is still a requirement to go through a fair procedure therefore professional HR advice should be sought from an Employee Relations Consultancy Advisor before considering such action.

9.9 Post Employment Disciplinary Hearing

9.9.2 The Police Barred and Advisory List Regulation allows Forces to continue with an investigation and hold a misconduct hearing even if an employee retires or resigns whilst under investigation for a misconduct allegation.

9.9.3 If a member of police staff resigns prior to or during a discipline investigation they will be placed on the Police Advisory List. This is a list held by the College of Policing that includes police staff who have resigned or retired during an investigation or who leave the organisation before an allegation comes to light.

9.9.4 The format of a Post-Employment Disciplinary Hearing will be the same, as if the hearing was being held whilst they were still in employment.

10. Gross Misconduct

10.1 Gross misconduct is conduct, which leads to an irretrievable breakdown of the trust and confidence in an employee, which forms an essential element of the employment contract. Examples of offences of gross misconduct which have led to the dismissal of employees and which, if committed by an employee of Merseyside Police, will be regarded as serious breaches of Police Staff Council Standards of Professional Behaviour include:

- a) Criminal Convictions
- b) Unauthorised removal of or malicious damage to Merseyside Police property;
- c) Stealing from Merseyside Police, its members of staff or the public, and other offences of dishonesty;
- d) Sexual offences;
- e) Discrimination including harassment on the grounds of a Protected Characteristic-
- f) Fighting;
- g) Physical assault;
- h) Falsification of financial records including subsistence and expense claims;
- i) Falsification of qualifications which are a stated requirement of employment or which result in financial gain;

- j) Serious breaches of safety regulations which endanger the employee or other people, including deliberate damage to, neglect of, or misappropriation of safety equipment.
- k) Breaches of the Data Protection Act in respect of personal information.
- l) Serious complaints made by the public and dealt with in accordance with IPCC requirements

This list is neither exclusive nor exhaustive. There may be other offences of a similar gravity, which would constitute gross misconduct.

10.2 For offences of suspected or alleged gross misconduct immediate suspension with pay may apply, followed by dismissal without notice if the offence is established and there are no acceptable mitigating circumstances. Any offences may also be subject to a criminal investigation.

~~10.3~~ However, suspension for suspected or alleged misconduct is not automatic, and will be determined by the Deputy Chief Constable in consultation with the Head of PSD

11. College of Policing Barred & Police Advisory List

The police barred list is a statutory-approved list which acts as a bar on working within policing and certain law enforcement bodies. The intention of the list is to ensure that those who do not meet the high standards required of the police service are not able to continue to work within policing. Police staff who are dismissed with a finding of gross misconduct will be automatically included on the barred list for a period of 5 years.

If a member of police staff resigns prior to or during a discipline investigation they will be placed on the Police Advisory List. This is a list held by the College of Policing includes police staff who have resigned or retired during an investigation or who leave the organisation before an allegation comes to light.

Police staff held on the Police Advisory List who are subject to disciplinary proceedings will be barred from re-joining any police force. If an allegation is subsequently found against them, they will transfer to the Police Barred List.

If practicable, a discipline hearing will be held during the employee's notice period. If it is not possible to do so within the timescales, a post-employment hearing may be held after the employee's date of resignation in some cases.

The post-employment hearing will be held in accordance with the police staff discipline policy. The ex-police staff member will be invited to attend, however if an employee chooses not to attend, the hearing will be held in their absence.

The ex-police staff member will be entitled to be represented at the hearing by a recognised Trade Union representative/ex colleague/friend employed by Merseyside Police, in accordance with the discipline policy.

The ex-police staff member will have the right to appeal any sanction imposed at the hearing in accordance with the discipline policy.

If the ex-police staff member has a finding of 'would have been dismissed', they will automatically transfer from the Police Advisory List to the Police Barred List for a period of 5 years. They will not be able to apply for positions within policing whilst held on the Barred List.

Removal of barred status

Five years after being dismissed, an individual can apply to the College of Policing (COP) for their barred status to be removed. The COP will make their decision based on:

- if the individual can demonstrate their suitability to be employed by a policing body.
- circumstances that led to the original findings.
- the impact of removing the barred status might have on public confidence.

This appeal is in relation to removal of barred status and not an appeal against the outcome of the disciplinary hearing. The normal appeal process should be followed for the appeal against the outcome of the hearing.

12. Review of Discipline Action

- 12.1 Where the relevant discipline sanction period has passed and no further allegations or discipline actions are outstanding, the HR Shared Services will remove the caution from the Force computerised personnel system. HR Shared Services will destroy all documentation relating to the discipline, and there will be no records retained on the HR computerised or paper personal files.
- 12.2 Where a caution has been expunged, it must not be referred to in any further discipline hearings. Records of historic disciplinary cases will only be retained on the Force's PSD Centurian System and will be subject to the provisions of the Data Protection Act

13. Appeals

13.1 Appeals against Finding or Outcome of Misconduct Proceedings

- 13.1.1 Where an employee feels that disciplinary action taken against them under this procedure is wrong or unjust they can appeal against the decision.
- 13.1.2 The employee must give written notice of appeal stating the grounds for appeal to the Head of People Services within 10 working days commencing the first working day following the receipt of the letter (unless this period is extended by the Head of People Services in exceptional circumstances).
- 13.1.3 If the conduct was admitted, the employee may only appeal against the misconduct outcome. If the conduct was denied, the employee may appeal against both the finding and/or the misconduct outcome.

13.1.4 The grounds for appeal are as follows:

- a) The finding and/or misconduct outcome imposed was unreasonable with reasons.
- b) There is evidence that could not reasonably have been considered at the misconduct meeting/hearing which could have materially affected the finding or decision on misconduct outcome
- c) That there was a serious breach of procedures or other unfairness which could have materially affected the finding or decision on outcome

If the case does not meet the threshold for an Appeal the employee will be informed with the rationale by the Head of People Services.

13.1.5 Appeals will be conducted in accordance with the Scheme of Delegation and will be heard by those of a higher rank or grade than the Chairperson who conducted the misconduct meeting/hearing and who has had no previous involvement in the investigation of the case or in the misconduct meeting/hearing. In addition an Employee Relations Consultancy Advisor totally unconnected with the case will also be present to advise the Chairperson conducting the appeal on procedural matters only.

13.1.6 Where the final outcome was up to and including a final written caution, the appeal will be heard in accordance with the Scheme of Delegation.

13.1.7 Where the final outcome was dismissal with or without notice then the appeal will be heard by the Appeal Panel as per the [Appeal Procedure](#).

13.1.8 Following receipt of the notice of appeal the Head of People Services shall as soon as practicable give the employee written notice of the Appeal meeting, the person appointed to hear the Appeal and the person appointed to act as Employee Relations Consultancy Advisor (if applicable).

13.1.9 The person determining the appeal will be provided with the following documents:

- a) The notice of appeal from the employee setting out the grounds of appeal.
- b) The record of the original misconduct meeting/hearing.
- c) The documents that were given to the person who held the original misconduct meeting.
- d) Any evidence that the employee wishes to submit in support of their appeal that was not considered at the misconduct meeting/hearing.

13.1.10 The person appointed to deal with the appeal will hold an appeal meeting in accordance with the agreed Appeal Procedure. The employee has the right to be represented by a recognised Trade Union representative or a work colleague or a friend employed by Merseyside Police at the appeal meeting. If the employee fails to attend the meeting without good cause then the person conducting the appeal may proceed in their absence.

13.1.11 If the employee and/or recognised Trade Union representative or work colleague or friend employed by Merseyside Police are not available at the date or time specified by the persons conducting the appeal, the employee may propose an alternative time. Provided that the alternative time is reasonable and should normally fall within a period of 5 working days beginning with the first working day after that proposed by the persons conducting the appeal the appeal should be postponed to that time.

13.1.12 The person conducting the appeal may consider:

a) Whether the finding of the original misconduct meeting/hearing was unreasonable having regard to all the evidence considered, or if the finding could now be in doubt due to evidence which has emerged since the meeting.

b) Any outcome imposed by the misconduct meeting/hearing which may be considered as too severe having regard to all the circumstances of the case.

c) Whether the finding or outcome could be unsafe due to procedural unfairness and prejudice to the employee (although the persons conducting the appeal must also take into account whether the unfairness or prejudice could have materially influenced the outcome).

13.1.13 An appeal is not a repeat of the misconduct meeting/hearing. It is to examine a particular part(s) of the misconduct case which is under question and which may affect the finding or the outcome based on the appellant's grounds for appeal. The person determining the appeal may uphold the decision that was appealed against.

13.1.14 The employee shall be notified in writing, by or on behalf of the person conducting the appeal meeting, giving details of the determination of the appeal within 2 working days of the conclusion of the appeal meeting.

14. Temporary Employees and those in Probationary Period

14.1.1 This procedure applies to the dismissal of employees who are in their probationary period or temporary employees with less than 2 years service. In these circumstances where a recommendation is to be made for dismissal, a hearing will be arranged between the employee and the appropriate manager as per the Scheme of Delegation, who is to make the decision whether to dismiss.

14.2.1 Prior to such a recommendation being made, the Appropriate Authority will ensure that an investigation appropriate to the circumstances has been undertaken. This includes having taken advice and guidance from the Head of People Services.

14.2.2 The manager presenting the recommendation at the hearing will ensure that the employee is invited to the meeting in writing at least 10 working days in advance.

14.2.3 The invitation must specify the time, place and date of the hearing together with details of the matter to be considered. The employee will be advised of the right to be accompanied and/or represented and be provided with a copy of any documents

to be presented to the Chairperson at the hearing. The reasons for the recommendation for dismissal will be presented and the employee will be given an opportunity to respond.

- 14.2.4 At the conclusion of the hearing the Chairperson will normally advise the employee of the decision orally, and in any case confirm the decision in writing. The letter confirming the decision will provide details of the right of appeal. If the employee is dissatisfied with the decision they may appeal against the decision. The appeal will be considered at a meeting between the employee and a Chief Officer.