

# Police misconduct hearings

THE WIDER WORLD OF TRIBUNALS

By Douglas Readings



The current arrangements for hearing allegations of misconduct against police officers have emerged out of a process of investigation and review over the last twenty years, including the inquiry chaired by Sir William Morris for the Metropolitan Police Service (December 2004), the Taylor Review of Police Disciplinary Arrangements (March 2005), and recommendations of the Police Advisory Board for England and Wales and of the Commission for Racial Equality.

The result is that in England and Wales most of the more serious allegations of misconduct against rank and file police officers are now heard at a Police Misconduct Hearing. The Policing and Crime Act 2017 extends the police discipline system to former officers and special constables. This includes those who resign or retire after a complaint is made, or when a complaint is received within 12 months of an officer resigning or retiring.

The Police Misconduct Hearing is unique. It combines features of a number of judicial and quasi-judicial bodies. It is both inquisitorial and adversarial. It is not part of HMCTS.

Until 2008 cases of alleged serious misconduct were heard by the Chief Constable, or on his behalf by another senior police officer. From 2008, a panel of three, comprising a senior police officer and another officer senior in rank to the accused officer, and a lay person, heard such cases. Since 2012 the panel for each case has comprised a legally qualified chair, a senior police officer (usually a Superintendent or Chief Superintendent) and a lay person. Since 2014 police misconduct cases have been heard in public, except where there are special reasons for all or part of a hearing to be in private.

I was recruited as a lay member in 2008 by the local Police Authority, and sat from time to time in cases heard locally by several Assistant Chief Constables. I found this useful experience when the time came to become a Legally Qualified Chair (generally called an LQC). I have also found it useful to revert to my role as a lay member sometimes and sit with another LQC.

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Hearings are not strictly adversarial. Misconduct allegations against police staff are investigated by the Professional Standards Department (PSD) of the relevant constabulary, in accordance with Home Office Guidance, and subject to intervention by the Independent Office for Police Conduct (formerly the Independent Police Complaints Commission). The PSD interview complainants and witnesses and the accused officer, and compile statements in a report which is put before a senior police officer of the constabulary, known as the Appropriate Authority (AA). The AA then assesses whether there is sufficient evidence to take the case forward as an allegation of “misconduct” or “gross misconduct”. If the decision is to proceed, then the hearing takes place at which the report is presented to the panel. The AA appears, usually by counsel, to present the case against the police officer in question, and the officer appears to defend the allegation. The officer is usually accompanied by an official of the Police Federation, who will often also instruct counsel. The AA frequently does not call any witnesses, because the report from the PSD constitutes the evidence which the accused officer has to answer. However, it is open to the LQC to give directions in advance of the hearing for witnesses to attend, and this will usually be done where there is a relevant fact in dispute which needs to be resolved by questioning a witness. Witnesses do not take an oath.

*First the panel decides ... whether the facts found proved amount to “misconduct” or to “gross misconduct”.*

Hearings are conducted in two parts. First the panel decides, by a majority if necessary, which of the disputed facts are found proved, on the civil standard of proof, and also decides whether the facts found proved amount to ‘misconduct’ or to ‘gross misconduct’. Misconduct is defined in the Police (Conduct) Regulations 2012 as: ‘a breach of the Standards of Professional Behaviour’, and gross misconduct is defined as: ‘a breach of the Standards of Professional Behaviour so serious that dismissal would be justified’.

The Standards of Professional Behaviour appear in Schedule 2 to the 2012 Regulations, and are statements of principle, which are brief enough to quote here.

## **Standards of professional behaviour**

### **Honesty and integrity**

Police officers are honest, act with integrity and do not compromise or abuse their position.

### **Authority, respect and courtesy**

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

### **Equality and diversity**

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

### **Use of force**

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

### **Orders and instructions**

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.

### **Duties and responsibilities**

Police officers are diligent in the exercise of their duties and responsibilities.

### **Confidentiality**

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

### **Fitness for duty**

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

### **Discreditable conduct**

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

### Challenging and reporting improper conduct

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

In making their decisions the panel may have regard to a Code of Ethics published by the College of Policing as well as Home Office Guidance. When the decision has been made and announced at the first stage, unless it is found that there is no misconduct, the panel then proceeds to the second stage. It listens to submissions, and decides what sanction, if any, it is fair and proportionate to impose, in order:

- to protect the public,
- to maintain public confidence in the police service, and
- to uphold high standards in policing and deter misconduct.

If gross misconduct has been found proved, the panel can dismiss the officer, impose a final written warning or an ordinary written warning, direct that the officer must receive management advice, or take no further action. If only misconduct is proved, there is no power of dismissal, unless the officer is in breach of an earlier final written warning. In deciding upon sanctions, panels are assisted by *Guidance on Outcomes in Police Misconduct Proceedings (2017)* published by the College of Policing. Appeal on a point of law only lies to the Police Tribunal.

With a legal chair and two wing members, one professional and the other lay, police misconduct hearings are recognisable as a tribunal system with jurisdiction covering the whole of England and Wales. Since there are many separate constabularies, they have pooled their resources to work together in several regions, and recruited pools of LQCs and lay members who sit in several police areas. However, in the absence of an overall national system, there would be a risk of LQCs developing a diversity of practice, and perhaps making inconsistent legal decisions. The College of Policing has been aware of this risk, and has helped to organise some joint training for LQCs. A voluntary Association of LQCs has also been formed recently, to encourage communication and the sharing of good practice.

From a lawyer's point of view, the police misconduct hearing is unique and interesting. It is both inquisitorial and adversarial. It combines an employer's disciplinary function with professional "fitness to practise" regulation in the public interest. It has to comply with detailed and precise procedural requirements, and at the same time to judge a police officer's conduct by reference to broad statements of principle.