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# Guidance on outcomes in police misconduct proceedings

**BetterPartnerships**<sup>TM</sup>  
for **BetterPolicing**

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# 1 Introduction

- 1.1 This guidance has been issued by the College of Policing pursuant to section 87 of the Police Act 1996.<sup>1</sup> It applies to all police forces maintained by the Secretary of State for the Home Department.<sup>2</sup>
- 1.2 The guidance is intended to assist persons appointed to conduct misconduct proceedings (misconduct hearings, misconduct meetings, and special case hearings) under Parts 4 and 5 of the Police (Conduct) Regulations 2012 (the Conduct Regulations).<sup>3</sup> The guidance may also be used to inform assessments of conduct under Regulation 12 of the Conduct Regulations or paragraph 19B of Schedule 3 to the Police Reform Act 2002. The guidance is designed to ensure consistency and transparency in assessing conduct and imposing outcomes at the conclusion of police misconduct proceedings.
- 1.3 The guidance does not override the discretion of the person(s) conducting the meeting or hearing. Their function is to determine the appropriate outcome and each case will depend on its particular facts and circumstances. Guidance cannot and should not prescribe the outcome suitable for every case.<sup>4</sup>
- 1.4 Instead, this guidance outlines a general framework for assessing the seriousness of conduct, including factors which may be taken into account. These factors are non-exhaustive and do not exclude any other factor(s) that the person(s) conducting the proceedings may consider relevant.
- 1.5 The contents of this guidance will be reviewed annually and updated if necessary.

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<sup>1</sup>As amended by section 32 of the Policing and Crime Act 2017.

<sup>2</sup>Pursuant to sections 2 and 5A of the Police Act 1996.

<sup>3</sup>Unless otherwise stated, all references to regulations are to the Conduct Regulations. These regulations apply to the conduct of a police officer (Regulation 5), which is defined as 'a member of a police force or special constable' (Regulation 3(1)).

<sup>4</sup>*Council for the Regulation of Health Care Professionals v General Medical Council* [2004] EWHC 1850 at [24].

## 2 Police misconduct proceedings

- 2.1 Police officers exercise significant powers. The misconduct regime is a key part of the accountability framework for the use of these powers. Outcomes should be sufficient to demonstrate individual accountability for any abuse or misuse of police powers if public confidence in the police service is to be maintained. They must also be imposed fairly and proportionately.
- 2.2 When determining the appropriate outcome to impose, consider the purpose of police misconduct proceedings.
- 2.3 The purpose of the police misconduct regime is threefold:
  - maintain public confidence in and the reputation of the police service
  - uphold high standards in policing and deter misconduct
  - protect the public.
- 2.4 These aims derive from the following authorities on the nature and purpose of professional disciplinary proceedings:
  - a. *Bolton v Law Society*<sup>5</sup>, in which Sir Thomas Bingham MR (as he then was) explained the apparent harshness of sanctions imposed by the Solicitors Disciplinary Tribunal:

‘The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.’

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<sup>5</sup>[1994] 1 WLR 512 at p. 518H.

- b. *Redgrave v Commissioner of Police of the Metropolis*<sup>6</sup> where Lord Justice Simon Brown stated, by reference to the dental profession:

‘The purpose of disciplinary proceedings against a dentist who has been convicted of a criminal offence by a court of law is not to punish him a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession.’

- c. *R (Green) v Police Complaints Authority*,<sup>7</sup> where Lord Carswell stated, in relation to the police service:

‘Public confidence in the police is a factor of great importance in the maintenance of law and order in the manner which we regard as appropriate in our polity. If citizens feel that improper behaviour on the part of police officers is left unchecked and they are not held accountable for it in a suitable manner, that confidence will be eroded.’

- d. *R (Coke-Wallis) v Institute of Chartered Accountants*,<sup>8</sup> in which Lord Collins reaffirmed the purpose of professional disciplinary proceedings to be:

‘...to protect the public, to maintain public confidence in the integrity of the profession, and to uphold proper standards of behaviour: see eg *Bolton v Law Society* [1994] 1 WLR 512, 518, per Sir Thomas Bingham MR; *Gupta v General Medical Council* [2002] 1 WLR 1691, para 21, per Lord Rodger of Earlsferry.’

## 2.5 The College’s Code of Ethics<sup>9</sup> states:<sup>10</sup>

While the great majority of people in policing act with honesty and integrity, any unprofessional behaviour detracts from the service provided to the public and harms the profession’s reputation.

## 2.6 The Code of Ethics underpins and expands on the Standards of Professional Behaviour set out in Schedule 2 of the Conduct Regulations.

<sup>6</sup>[2003] 1 WLR 1136 at [33], approving the dictum of Lord Diplock in *Zideman v General Dental Council* [1976] 2 All ER 334.

<sup>7</sup>[2004] UKHL 6 at [78].

<sup>8</sup>[2011] UKSC 1 at [60].

<sup>9</sup>Issued by the College of Policing as a code of practice under s. 39A of the Police Act 1996.

<sup>10</sup>Latest edition of the Code of Ethics dated July 2014, at [1.1.2].

- 2.7 The Home Office guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (HOG)<sup>11</sup> confirms that the Code of Ethics ‘...should inform any assessment or judgement of conduct when deciding if formal action is to be taken under the Conduct Regulations.’
- 2.8 Consult the Code of Ethics and the HOG when determining any alleged breach of the Standards of Professional Behaviour.
- 2.9 Be aware of and to adhere to human rights and equality legislation. In determining the appropriate outcome to impose, have regard to the principle of proportionality, weighing the interests of the public with those of the officer.
- 2.10 Misconduct proceedings are not designed to punish police officers. As stated by Lord Justice Laws in *Raschid v General Medical Council*:<sup>12</sup> ‘The panel then is centrally concerned with the reputation or standing of the profession rather than the punishment of the doctor.’
- 2.11 The outcome imposed can have a punitive effect, however, and therefore should be no more than is necessary to satisfy the purpose of the proceedings.<sup>13</sup> Consider less severe outcomes before more severe outcomes.<sup>14</sup> Always choose the least severe outcome which deals adequately with the issues identified, while protecting the public interest.<sup>15</sup> If an outcome is necessary to satisfy the purpose of the proceedings, impose it even where this would lead to difficulties for the individual officer.
- 2.12 Ensure that processes and procedures are fair, objective, transparent and free from unlawful discrimination.
- 2.13 Do not use the procedures under the Conduct Regulations as a means of dealing with unsatisfactory performance.<sup>16</sup> The Police (Performance) Regulations 2012 exist to address unsatisfactory performance, attendance and issues of capability.

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<sup>11</sup>Home Office Guidance Version 4, revised May 2015, at [1.3].

<sup>12</sup>[2007] 1 WLR 1460 at [18].

<sup>13</sup>*Chaudhury v General Medical Council* [2002] UKPC 41.

<sup>14</sup>*Giele v General Medical Council* [2005] EWHC 2143 (Admin); *R (on the application of James) v Nursing and Midwifery Council* [2008] EWHC 365 (Admin); *Davey v General Dental Council* [2015] EWHC 3594 (Admin).

<sup>15</sup>*Davey v General Dental Council* [2015] EWHC 3594 (Admin) at [18].

<sup>16</sup>HOG at [2.10].



## 3 Available outcomes

- 3.1 Misconduct is generally defined as unacceptable or improper behaviour<sup>17</sup> and for police officers will involve a breach of the Standards of Professional Behaviour set out in Schedule 2 to the Conduct Regulations.
- 3.2 Regulation 33(13) of the Conduct Regulations provides that the person(s) conducting the misconduct proceedings shall:
- ‘...review the facts of the case and decide whether the conduct of the officer concerned amounts—
- (a) in the case of a misconduct meeting, to misconduct or not; or
- (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.’<sup>18</sup>
- 3.3 Similarly, Regulation 53(13) provides that the person(s) conducting a special case hearing shall review the facts of the case and decide whether or not the officer’s conduct amounts to gross misconduct.
- 3.4 Under Regulation 3(1):
- **misconduct** means a breach of the Standards of Professional Behaviour
  - **gross misconduct** means a breach of the Standards of Professional Behaviour which is so serious that dismissal would be justified.
- 3.5 Thus the power to determine outcome arises after the person(s) conducting the proceedings have:
- reviewed and determined the facts
  - established which, if any, Standards of Professional Behaviour have been breached
  - determined whether the conduct found proven against the officer amounts to misconduct or gross misconduct.

<sup>17</sup>*Roylance v General Medical Council (No 2)* [2000] 1 AC 311 at p. 331B: ‘Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.’

<sup>18</sup>Regulation 33(14) adds that they shall not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless— (a) they are satisfied on the balance of probabilities that this is the case; or (b) the officer concerned admits it is the case. Regulation 53(14) contains the same provision for special case hearings (in respect of gross misconduct).

- 3.6 The HOG allows persons considering more than one allegation against the same officer at a misconduct hearing<sup>19</sup> to take the allegations together. They can treat them as a single allegation for the purposes of making an assessment, finding, determination or decision in connection with the conduct in issue.<sup>20</sup>

## Part 4 proceedings

- 3.7 Where the person(s) conducting the misconduct proceedings find that the conduct amounts to misconduct but not gross misconduct following a misconduct meeting or hearing, they may record a finding of misconduct but take no further action. This might be because the fact of the misconduct finding is sufficient in itself to satisfy the purpose of the proceedings (including any public declaratory purpose) without the need for any sanction.
- 3.8 The power to impose disciplinary action at the end of misconduct proceedings is contained in Regulations 35(1)(a) and 35(3)(a) and (b).<sup>22</sup>
- 3.9 The available outcomes at a misconduct meeting are:<sup>23</sup>
- management advice
  - written warning
  - final written warning.
- 3.10 The available outcomes at a misconduct hearing are:<sup>24</sup>
- management advice
  - written warning
  - final written warning
  - dismissal with notice
  - dismissal without notice.

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<sup>19</sup>Which must include those conducting misconduct meetings and special case hearings.

<sup>20</sup>HOG at [2.289].

<sup>21</sup>Regulation 35(1)(b) in the case of an officer other than a senior officer. The corresponding provision for proceedings involving senior officers is found in Regulation 35(2)(b).

<sup>22</sup>The corresponding provision for proceedings involving senior officers is found in Regulation 35(2)(a).

<sup>23</sup>Regulation 35(3)(a).

<sup>24</sup>Regulation 35(3)(b).

- 3.11 The disciplinary action at a misconduct meeting or hearing shall have effect from the date on which it is notified to the officer concerned. In the case of dismissal with notice, the person(s) imposing the disciplinary action shall decide the period of notice to be given, subject to a minimum period of 28 days.<sup>25</sup>
- 3.12 If the officer's conduct amounts to misconduct but not gross misconduct, they may not be dismissed unless a final written warning was in force on the date of the assessment<sup>26</sup> of the conduct.<sup>27</sup>
- 3.13 If the officer had a written warning in force on the date of the conduct assessment, a written warning shall not be given.<sup>28</sup>
- 3.14 If the officer had a final written warning in force on the date of the conduct assessment, neither a written warning nor a final written warning shall be given. In exceptional circumstances, the final written warning may be extended.<sup>29</sup>
- 3.15 The HOG indicates that exceptional circumstances may include:<sup>30</sup>
- ‘...where the misconduct which is subject of the latest hearing pre-dates the misconduct for which the police officer received his or her original final written warning or the misconduct in the latest case is significantly less serious than the conduct that led to the current final written warning being given.’
- 3.16 Where a final written warning is extended in such circumstances, it shall remain in force for 18 months from the date on which it would otherwise expire.<sup>31</sup> A final written warning may be extended on one occasion only.<sup>32</sup>
- 3.17 Where there is a finding of gross misconduct and the person(s) considering the question of disciplinary action decide that the officer concerned shall be dismissed, the dismissal must be without notice.<sup>33</sup>

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<sup>25</sup>Regulation 35(4).

<sup>26</sup>Under Regulation 12(1) or paragraph 19B(2) or (3) of Schedule 3 to the Police Reform Act 2002.

<sup>27</sup>Regulation 35(5). In other words, where misconduct justifying a sanction more severe than management advice is proven against an officer who is already subject to a current final written warning, the officer should be dismissed unless there are ‘*exceptional circumstances*’. In this situation the dismissal may be with notice.

<sup>28</sup>Regulation 35(6).

<sup>29</sup>Regulation 35(7)(a) and (b).

<sup>30</sup>HOG at [2.295].

<sup>31</sup>Regulation 35(8).

<sup>32</sup>Regulation 35(9).

<sup>33</sup>Regulation 35(10).

- 3.18 Regulation 35(11) provides that, when considering the question of disciplinary action, before any such question is determined, the person(s) considering it:
- must have regard to the officer's record of police service
  - may receive evidence from any witness whose evidence would, in their opinion, assist in determining the question
  - must give the officer concerned, his police friend or relevant lawyer and the appropriate authority<sup>34</sup> an opportunity to make oral or written representations.
- 3.19 Where a final written warning is given or extended at a meeting or hearing held under Regulation 34 (in relation to senior officers), the appropriate authority may make an order in relation to the compensation payable to the officer in the event that the officer's fixed term of appointment is not extended, or the officer is required to resign before the expiry of the fixed term.<sup>35</sup>

## Part 5 proceedings

- 3.20 Where the person(s) conducting a special case hearing find that the officer's conduct does not amount to gross misconduct, they may:<sup>36</sup>
- dismiss the case
  - return the case to the appropriate authority to deal with in accordance with Part 4 at a misconduct meeting or, if the officer concerned had a final written warning in force at the date of the assessment of conduct,<sup>37</sup> at a misconduct hearing.
- 3.21 The outcomes available at the conclusion of a special case hearing are:<sup>38</sup>
- a final written warning
  - an extension of a final written warning
  - dismissal without notice.

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<sup>34</sup>In the case of an officer other than a senior officer: Regulation 35(11)(c)(ii).

<sup>35</sup>Regulation 35(12).

<sup>36</sup>Regulation 55(6) in the case of an officer other than a senior officer. The corresponding provision for proceedings involving senior officers is found in Regulation 55(7).

<sup>37</sup>Under Regulation 12(1) or paragraph 19B(2) or (3) of Schedule 3 to the Police Reform Act 2002.

<sup>38</sup>Regulation 55(1) in the case of an officer other than a senior officer. The corresponding provision for proceedings involving senior officers is found in Regulation 55(2)

- 3.22 If the officer concerned had a final written warning in force on the date of the conduct assessment<sup>39</sup>, a final written warning shall not be given but, in exceptional circumstances, the final written warning may be extended.<sup>40</sup> A final written warning extended in such circumstances remains in force for of 18 months from the date on which it would otherwise expire.<sup>41</sup> A final written warning may be extended on one occasion only.<sup>42</sup>
- 3.23 Under Regulation 55(10), when considering the question of disciplinary action, the person(s) considering it:
- must have regard to the record of police service of the officer concerned
  - may consider such documentary evidence as would, in their opinion, assist in determining the question
  - must give the officer concerned, and his police friend or relevant lawyer, an opportunity to make oral or written representations.
- 3.24 Where a final written warning is given or extended at a meeting or hearing held under Regulation 54 (in relation to senior officers), the appropriate authority may make an order in relation to the compensation payable to the officer in the event that the officer's fixed term of appointment is not extended, or the officer is required to resign before the expiry of the fixed term.<sup>43</sup>

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<sup>39</sup>Under Regulation 12(1) or paragraph 19B(2) or (3) of Schedule 3 to the Police Reform Act 2002.

<sup>40</sup>Regulation 55(3)(a) and (b).

<sup>41</sup>Regulation 55(4).

<sup>42</sup>Regulation 55(5).

<sup>43</sup>Regulation 55(11).

## 4 Assessing seriousness

- 4.1 Assessing the seriousness of the conduct lies at the heart of the decision on outcome under Parts 4 and 5 of the Conduct Regulations. Whether conduct would, if proved, amount to misconduct or gross misconduct for the purposes of Regulation 12 of the Conduct Regulations is also a question of degree, ie, seriousness.
- 4.2 As Mr Justice Popplewell explained, there are three stages to determining the appropriate sanction:<sup>44</sup>
- assess the seriousness of the misconduct
  - keep in mind the purpose of imposing sanctions
  - choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.
- 4.3 Assessing the seriousness of the misconduct is the first of these three stages.
- 4.4 Assess the seriousness of the proven conduct by reference to:<sup>45</sup>
- the officer's culpability for the misconduct
  - the harm caused by the misconduct
  - the existence of any aggravating factors
  - the existence of any mitigating factors.
- 4.5 When considering outcome, first assess the seriousness of the misconduct, taking account of any aggravating or mitigating factors and the officer's record of service. The most important purpose of imposing disciplinary sanctions is to maintain public confidence in and the reputation of the policing profession as a whole. This dual objective must take precedence over the specific impact that the sanction has on the individual whose misconduct is being sanctioned.<sup>46</sup>

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<sup>44</sup>Fuglers LLP v Solicitors Regulation Authority [2014] EWHC 179 (Admin) at [28].

<sup>45</sup>Fuglers, op. cit. at [29]: 'In assessing seriousness the most important factors will be (1) the culpability for the misconduct in question and (2) the harm caused by the misconduct. Such harm is not measured wholly, or even primarily, by financial loss caused to any individual or entity. A factor of the greatest importance is the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover the seriousness of the misconduct may lie in the risk of harm to which the misconduct gives rise, whether or not as things turn out the risk eventuates. The assessment of seriousness will also be informed by (3) aggravating factors (eg previous disciplinary matters) and (4) mitigating factors (eg admissions at an early stage or making good any loss).'

<sup>46</sup>Fuglers, op. cit. at [30].

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- 4.6 Consider personal mitigation such as testimonials and references after assessing the seriousness of the conduct by the four categories above.
  - 4.7 There may be overlap between these four categories and/or imbalances between them. Low-level culpability on the part of a police officer, such as a failure to respond in good time to an incident, can result in significant harm. Equally, an officer may commit serious misconduct which causes minimal harm to individuals or the wider public but may still damage the reputation of the police service.
  - 4.8 Carefully assess the officer's decisions and actions in the context in which they were taken. Where the misconduct has taken place on duty, consider the policing context and whether the officer followed the College of Policing's National Decision Model. Many police officers are required to take decisions rapidly and/or in highly charged or dangerous situations, for example, in a public order or other critical incident. Such decisions may carry significant consequences. Take care not to confuse these consequences with what the officer knew or could reasonably have known at the time of their decision.
  - 4.9 Weigh all relevant factors and determine the appropriate outcome based on evidence, independently of any views expressed by the media.

## Culpability

- 4.10 Culpability denotes the officer's blameworthiness or responsibility for their actions. The more culpable or blameworthy the behaviour in question, the more serious the misconduct and the more severe the likely outcome.
- 4.11 Conduct which is intentional, deliberate, targeted or planned will generally be more culpable than conduct which has unintended consequences, although the consequences of an officer's actions will be relevant to the harm caused.
- 4.12 Where harm is unintentional, culpability will be greater if officer could reasonably have foreseen the risk of harm.
- 4.13 Culpability will also be increased if the officer was holding a position of trust or responsibility at the relevant time. All police officers are in a position of trust, but an officer's level of responsibility may be affected by specific circumstantial factors such as rank, their particular role and their relationship with any persons affected by the misconduct.

- 4.14 It is not possible to categorise all types of case where dismissal will be appropriate because the circumstances of the individual case must be considered. Many acts have the potential to damage public confidence in the police service.
- 4.15 The following types of misconduct, however, should be considered especially serious.

#### **Conviction or caution for a criminal offence**

- 4.16 It is entirely unacceptable for police officers, who are responsible for enforcing the law, to break the law themselves.
- 4.17 The level of culpability depends on the seriousness of the offence. The sentence imposed by the criminal court is not necessarily a reliable guide to seriousness in misconduct proceedings, which are principally directed towards maintaining public confidence in the profession. A relatively minor criminal offence may be of the utmost gravity in the professional context.<sup>47</sup>
- 4.18 The conviction or caution may relate to on or off-duty conduct. While the person(s) conducting the proceedings cannot question the conviction or the sentence imposed, they can consider the circumstances of the offending and form their own view of the gravity of the case.<sup>48</sup>
- 4.19 Offences of dishonesty, sexual offences (including possession of child pornography<sup>49</sup>) and violent crime are particularly serious and likely to terminate an officer's career. Such offending involves such a fundamental breach of the public's trust in police officers and inevitably brings the profession into disrepute.
- 4.20 Any criminal conviction will be serious, however, and likely to have an adverse impact on public confidence in policing. An officer's conviction or caution may be disclosed to the prosecution and defence during the course of a criminal trial, with the potential for undermining the investigation and prosecution.
- 4.21 In some cases, the officer will already have sustained a conviction for the conduct which is the subject of the misconduct proceedings. In other cases, there may be no conviction, either because there was no prosecution or there has been an unsuccessful prosecution.

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<sup>47</sup>R (Low) v General Osteopathic Council [2007] EWHC 2839 (Admin) at [20].

<sup>48</sup>Royal College of Veterinary Surgeons v Samuel [2014] UKPC 13 at [32].

<sup>49</sup>Council for the Regulation of Healthcare Professionals v the General Dental Council and another (Alexander Fleischmann) [2005] EWHC 87 (QB), in which the sanction of 12 months' suspension following the practitioner's conviction for possession of a large collection of indecent images of children was held to be unduly lenient.



- 4.22 If the conduct found proven in the misconduct proceedings is criminal in nature, take this into account when considering the culpability of the officer, notwithstanding the absence of a criminal conviction. For example, a finding that an officer has used unreasonable force may amount to the equivalent of a finding of assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861. By comparison, a finding that an officer watched adult pornography while on duty would not amount to a crime. Although the purpose of misconduct proceedings is not to punish the individual, the outcome imposed may reflect the criminal nature of the misconduct.
- 4.23 For these purposes a criminal conviction is any finding by a criminal court in the United Kingdom, Channel Islands or Isle of Man, or by an overseas court if the conduct found proven would constitute a criminal offence if committed in England and Wales.<sup>50</sup> Cautions refer to offences committed in the British Isles or elsewhere, where no court proceedings took place because the individual admitted the offence and criminal proceedings were considered unnecessary. The offence need not be a recordable offence to be considered serious,<sup>51</sup> since some serious offences are non-recordable.<sup>52</sup> The fact that an offence is non-recordable, however, may be a relevant consideration in less serious cases involving, for example, some motoring offences.
- 4.24 When considering any finding by an overseas court, take care to establish that the officer has been afforded a fair trial and equivalent protections to those which operate in England and Wales.

### **Operational dishonesty, impropriety or corruption**

- 4.25 Honesty and integrity are fundamental requirements for any police officer. Treat any evidence that an officer is dishonest or lacks integrity seriously. In the words of Lord Justice Maurice Kay in *Salter v Chief Constable of Dorset*,<sup>53</sup> police officers:

‘...carry out vital public functions in which it is imperative that the public have confidence in them. It is also obvious that the operational dishonesty or impropriety of a single officer tarnishes the reputation of his Force and undermines public confidence in it.’

<sup>50</sup>Where an officer is issued a penalty notice for disorder or crime which is undisputed, this should be treated as a conviction for the purposes of this guidance.

<sup>51</sup>A recordable offence is any offence where the police are required to keep a record of the conviction on the Police National Computer. Under the National Police Records (Recordable Offences) Regulations 2000 recordable offences include all convictions, cautions, reprimands and warnings given in respect of any offence punishable with imprisonment, and any offence specified in the Schedule to these regulations.

<sup>52</sup>For example, breach of the Data Protection Act 1998 (section 55) and driving without insurance (section 143 Road Traffic Act 1988).

<sup>53</sup>[2012] EWCA Civ 1047 at [21].

- 4.26 Operational dishonesty is dishonesty in connection with a police operation. In *Salter*, the misconduct concerned an instruction to destroy evidence retrieved at the scene of a road traffic accident.
- 4.27 Impropriety involving corruption, deliberately misleading or compromising an investigation<sup>54</sup> or wilfully failing to give proper disclosure in a criminal prosecution, is likely to be comparably serious to and/or to involve operational dishonesty.<sup>55</sup> Other examples of operational dishonesty might involve tampering with evidence, interfering with witnesses or disclosing information held by police for financial reward.
- 4.28 Consider cases where an officer has exercised their police powers in bad faith, for personal gain or at the behest of a friend or relative in this category of very serious misconduct.
- 4.29 There may be cases where an officer has behaved dishonestly but the dishonesty is unconnected to a police operation or investigation and could be regarded as minor or trivial in nature. Examine the circumstances of the case with care by reference to the four categories for assessing seriousness outlined above. Cases involving any form of dishonesty on duty will always be serious because of the importance of maintaining public trust and confidence in the police service.
- 4.30 Police officers and staff should not, of course, be dishonest off-duty but some off-duty dishonesty may be of limited relevance to the profession as a whole when viewed in its context.
- 4.31 Some off-duty dishonesty may be very serious, however, particularly where it carries implications for the officer's ability to carry out their professional duties or has the potential to bring the police service into disrepute. A dishonest statement made by a police officer in the public sphere or in an official or otherwise solemn document (such as an application for a mortgage or loan, or a tax declaration) will be at the more serious end of the spectrum of off-duty dishonesty. Other serious cases might involve an officer using their status as a police officer to act dishonestly or otherwise exert improper influence. As ever, consider whether the proven dishonesty has the propensity to affect the reputation of or the public's confidence in the police service.
- 4.32 Specific case law has developed regarding the approach to outcomes in cases where operational dishonesty is found proven, which is considered further below.<sup>56</sup>

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<sup>54</sup>Whether an investigation by a police force, the Independent Police Complaints Commission, or any law enforcement agency.

<sup>55</sup>This is apparent from the remarks of Lord Justice Maurice Kay in *Neil Salter v Chief Constable of Dorset* [2012] EWCA Civ 1047 at [22].

<sup>56</sup>See **5 Operational dishonesty**.

### **Data protection and misuse**

- 4.33 The misuse of police computer systems or confidential police information more generally is a particular concern for the police service. Police computer and manual systems hold a significant amount of information about members of the public. Most of this is sensitive and it is both a public expectation and a legal requirement that information obtained during the course of policing duties should be treated in strictest confidence, properly protected and only used for legitimate policing purposes.
- 4.34 Under no circumstances should anyone access or use police information for personal benefit. Personal reasons for accessing confidential police information, such as general curiosity or a desire to check on criminal activity near an officer's home, are not acceptable. If an officer is accessing police information not available to the general public, there should always be a specific and proper policing purpose for doing so.
- 4.35 Accessing confidential police information without a legitimate policing purpose is an abuse of an officer's position and may merit dismissal in serious cases. Accidental access to information without a legitimate policing purpose will not attract such an outcome.
- 4.36 Factors that support a more serious outcome include:
- the information accessed is of a secret nature or high classification
  - onward disclosure of the information
  - malicious motive for accessing or disclosing the information
  - personal gain
  - actual or potential compromise to a police investigation
  - breaches of personal privacy where the data is very sensitive
  - attempts to cover up improper accessing of data
  - altering information held by the police.

- 4.37 When considering any misuse of confidential police information, be aware of the data protection principles under the Data Protection Act 1998 and the offence of unlawfully obtaining personal data under section 55 of that Act.
- 4.38 Officers regularly need to access and process confidential information and errors can occur. Officers who have acted in good faith or on instructions from a supervisor are less culpable and may be more appropriately addressed under the performance regime.

#### **Violence, intimidation or sexual impropriety**

- 4.39 Misconduct involving violence, intimidation or sexual impropriety undermines public trust in the profession and is therefore serious.
- 4.40 This includes cases involving bullying or harassment, either in the police service or towards members of the public. Give attention to the degree of persistence, the vulnerability of the other party, the number of people subjected to the behaviour and whether the officer was in a specific position of authority or trust.<sup>57</sup> More serious action is likely to be appropriate where the officer has demonstrated predatory behaviour motivated by a desire to establish a sexual or inappropriate emotional relationship with a colleague or member of the public.
- 4.41 The presence of any of these factors is likely to increase the seriousness of the misconduct, although the treatment of a single individual can be sufficiently serious to amount to gross misconduct.

#### **Breach of position of trust or authority**

- 4.42 The nature of the Office of Constable means that all police officers are in a position of trust and authority in relation to members of the public. An officer's misconduct will be more culpable where it involves an abuse of this position. Where an officer has used their position to pursue a sexual or improper emotional relationship with a member of the public, this should be regarded as an abuse of authority for sexual gain. Such conduct can cause substantial damage to public trust and confidence in the police and is particularly serious where the subject of the officer's behaviour is a vulnerable person.<sup>58</sup>

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<sup>57</sup>See paragraphs 4.13 and 4.42-4.45.

<sup>58</sup>On vulnerability, see **Misconduct involving a vulnerable person**.

- 4.43 In addition to the Office of Constable, an officer may hold a position of trust or responsibility. Within the police service, positions of responsibility may be defined in relation to rank.<sup>59</sup> There may, however, be other circumstances giving rise to an imbalance of power or authority, for example, a senior constable on a shift or a tutor constable in relation to their tutee.
- 4.44 An officer may also assume a specific responsibility to a person by performing a particular role, for example, as a family liaison officer or personal protection officer. In situations of express responsibility towards a particular person or group of people, the need for scrupulous professionalism is greater.
- 4.45 The misconduct may involve members of the public, victims of crime, offenders or witnesses during the course of an officer's duties or as part of an investigation.

#### **Misconduct involving a vulnerable person**

- 4.46 Many people come into contact with the police when they are at a particularly difficult or distressing point in their lives, and they are entitled to be treated professionally.
- 4.47 Officers must not, under any circumstances, use their professional position to initiate or pursue a sexual or improper emotional relationship with a vulnerable person.
- 4.48 Where an officer has a specific responsibility to a person (eg, as family liaison officer or personal protection officer) there is likely to be a high level of reliance by that person on the officer, which may make that person vulnerable. Developing an intimate personal relationship in such a situation undermines the professional relationship between the person and the officer and can harm the vulnerable person. Such relationships, while the professional context or duty prevails, are matters of serious concern. Personal relationships with members of the public formerly involved with the police may also be inappropriate, depending on the circumstances, such as the length of time since the professional relationship ended, the nature of the previous (and any ongoing) professional relationship and whether the member of the public was or remains vulnerable.

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<sup>59</sup>*Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin) at [71]: 'High rank and long service carry with them responsibilities, which the panel clearly expressed; and the maintenance of public confidence and respect in the police service may mean that a high-ranking officer must suffer a harder fall than would a junior officer in similar circumstances.'

4.49 Factors which may give rise to vulnerability include:

- age, and any other protected characteristic<sup>60</sup>
- physical disability
- mental ill health or learning disability
- substance misuse
- social circumstances such as homelessness or bereavement
- cultural differences and the person's ability to communicate in English
- experience of crime, including harassment or domestic abuse
- the person's status relative to the officer<sup>61</sup>.

4.50 Decide whether a person could be considered vulnerable in a given situation and whether the officer recognised or should have recognised this, taking account of all the circumstances.

### **Discrimination**

4.51 Persons affected by discrimination are those with protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.<sup>62</sup>

Discrimination towards persons on the basis of any of these characteristics is never acceptable and always serious.

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<sup>60</sup>See further paragraph 4.51.

<sup>61</sup>See paragraphs 4.42-4.45.

<sup>62</sup>Section 4 of the Equality Act 2010.

- 4.52 Discrimination may involve language or behaviour. It may be directed towards members of the public or colleagues. It may be conscious or unconscious.
- 4.53 Cases where discrimination is conscious or deliberate will be particularly serious. In these circumstances, the public cannot have confidence that the officer will discharge their duties in accordance with the Code of Ethics.
- 4.54 Unconscious discrimination can, however, also be serious and can also have a significant impact on public confidence in policing.
- 4.55 There is inevitably a degree of overlap between the particular types of misconduct highlighted above. Take care to avoid 'double counting' factors which have been identified as being relevant to the assessment of seriousness.
- 4.56 Equally, these considerations should not be considered an exhaustive list. There may be other factors specific to the behaviour in question, which render it more culpable and therefore more serious.

## Harm

- 4.57 The harm caused by an officer's actions can be considered in various ways including:

### Type of harm

The types of harm caused or risked by different types of police misconduct are diverse. Victims may suffer:

- physical injury
- sexual abuse
- financial loss
- damage to health
- psychological distress
- reputational harm
- loss of liberty (eg, if a person has been wrongfully arrested or detained)
- infringement of human rights.

### Persons affected

Misconduct may affect particular individuals, in which case the harm caused may depend on the victim's personal characteristics and circumstances. Misconduct can also harm the wider community. Such harm may involve economic loss, harm to public health or interference with the administration of justice.

### Effect on the police service and/or public confidence

Harm will likely undermine public confidence in policing. Harm does not need to be suffered by a defined individual or group to undermine public confidence. Where an officer commits an act which would harm public confidence if the circumstances were known to the public, take this into account. Always take seriously misconduct which undermines discipline and good order within the police service, even if it does not result in harm to individual victims.

- 4.58 Assess the impact of the officer's conduct, having regard to these factors and the victim's particular characteristics.
- 4.59 Where no actual harm has resulted, consider the risks attached to the officer's behaviour, including the likelihood of harm occurring and the gravity of harm that could have resulted.
- 4.60 How such behaviour would be or has been perceived by the public will be relevant, whether or not the behaviour was known about at the time.<sup>63</sup>
- 4.61 If applicable, consider the scale and depth of local or national concern about the behaviour in question. A case being reported in local or national media, however, does not necessarily mean that there is a significant level of local or national concern. Distinguish objective evidence of harm to the reputation of the police service from subjective media commentary.
- 4.62 Whether a matter is of local or national concern will be a matter for the person(s) conducting the proceedings based on their experience and the circumstances of the case.
- 4.63 Consideration of the harm caused will usually follow findings in relation to the facts, breaches of Standards of Professional Behaviour and whether the behaviour amounted to misconduct or gross misconduct.
- 4.64 Harm, including death or serious injury, can result where an officer has behaved appropriately and no misconduct has been established.

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<sup>63</sup>R (*Chief Constable of Wiltshire Police*) v *Police Appeals Tribunal & Woollard* [2012] EWHC 3288 (Admin) at [51].



4.65 Where gross misconduct has been found, however, and the behaviour caused or could have caused, serious harm to individuals, the community and/or public confidence in the police service, dismissal is likely to follow. A factor of the greatest importance is the impact of the misconduct on the standing and reputation of the profession as a whole.<sup>64</sup>

### Aggravating factors

4.66 Aggravating factors are those tending to worsen the circumstances of the case, either in relation to the officer's culpability or the harm caused.

4.67 Factors which indicate a higher level of culpability or harm include:

- premeditation, planning, targeting or taking deliberate or predatory steps
- malign intent, eg, sexual gratification, financial gain or personal advantage
- abuse of trust, position, powers or authority<sup>65</sup>
- deliberate or gratuitous violence or damage to property
- concealing wrongdoing in question and/or attempting to blame others
- regular, repeated or sustained behaviour over a period of time
- continuing the behaviour after the officer realised or should have realised that it was improper
- serious physical or psychological impact on the victim
- vulnerability of the victim
- multiple victims
- additional degradation, eg, taking photographs as part of a sexual offence
- any element of unlawful discrimination
- significant deviation from instructions, whether an order, force policy or national guidance
- failure to raise concerns or seek advice from a colleague or senior officer
- scale or depth of local or national concern about a particular issue
- multiple proven allegations and/or breaches of the Standards of Professional Behaviour.<sup>66</sup>

<sup>64</sup>*Fuglers*, op. cit. at [29].

<sup>65</sup>See paragraphs 4.42-4.45.

<sup>66</sup>See paragraph 3.6.

- 4.68 This list is not intended to be exhaustive and the aggravating factors are not listed in any particular order of priority.
- 4.69 On occasions, two or more of the factors listed will describe the same feature of the misconduct – take care to avoid ‘double counting’.

### Mitigating factors

- 4.70 Mitigating factors are those tending to reduce the seriousness of the misconduct. Some factors may indicate that an officer’s culpability is lower, or that the harm caused by the misconduct is less serious than it might otherwise have been.
- 4.71 Factors indicating a lower level of culpability or harm include:
- misconduct confined to a single episode or brief duration
  - extent of the officer’s involvement in the misconduct
  - any element of provocation, threat or disturbance which may have affected the officer’s judgement, eg, in relation to the use of force in the heat of the moment<sup>67</sup>
  - acting pursuant to a legitimate policing purpose or in good faith, ie, a genuine belief that there was a legitimate purpose but getting things wrong
  - mental ill health, disability, medical condition or stress which may have affected the officer’s ability to cope with the circumstances in question
  - whether the officer was required to act outside their level of experience and/or without appropriate training or supervision
  - open admissions at an early stage<sup>68</sup>
  - early actions taken to reduce the harm caused
  - evidence of genuine remorse, insight and/or accepting responsibility for one’s actions.
- 4.72 In cases where the misconduct occurred several years prior to the meeting or hearing, consider the outcome by reference to the standards of the time rather than current attitudes and standards. Give due account to the officer’s conduct in the intervening years, for example, whether they performed their duties to a high standard.

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<sup>67</sup>See for example per Lord Morris in *Palmer v. R* [1971] AC 814 at pp 831-832, now reflected in section 76 of the Criminal Justice and Immigration Act 2008.

<sup>68</sup>See also the HOG at [2.280].

## 5 Operational dishonesty

- 5.1 Following Lord Bingham’s judgment in *Bolton v Law Society*,<sup>69</sup> Lord Justice Jackson held in *Law Society v Salsbury* that for cases involving dishonesty by a solicitor, there would only be a ‘very small residual category where striking off was not appropriate.’<sup>70</sup>
- 5.2 In the High Court case of *Salter*,<sup>71</sup> a case involving operational dishonesty on the part of a police officer,<sup>72</sup> Mr Justice Burnett confirmed that:

‘The reasons which underpin the strict approach applied to solicitors and barristers apply with equal force to police officers. Honesty and integrity in the conduct of police officers in any investigation are fundamental to the proper workings of the criminal justice system. [...] The public should be able unquestioningly to accept the honesty and integrity of a police officer. The damage done by a lack of integrity in connection with the investigation of an alleged offence may be enormous. The guilty may go free. The innocent may be convicted. Large sums of public money may be wasted. Public confidence in the integrity of the criminal justice system may be undermined. The conduct of a few may have a corrosive effect upon the reputation of the police service in general.’

- 5.3 Notwithstanding Mr Salter’s unblemished service and the impressive character evidence called on his behalf, Mr Justice Burnett concluded:<sup>73</sup>

‘...the correct approach for a decision maker is to recognise that a sanction which results in the officer concerned leaving the force would be the almost inevitable outcome in cases involving operational dishonestly. That terminology itself recognises that there may be exceptions. In concluding that the case is exceptional, the decision maker must identify the features of the circumstances of the misconduct which support a different conclusion, recognising that the number of such cases would be very small. The decision maker would take account of personal mitigation, but must recognise its limited impact in this area.’ The proper approach to cases involving operational dishonesty, derived from the case of *Salter*,<sup>74</sup> can be summarised as follows:

<sup>69</sup>See paragraph 2.4 in relation to the purpose of disciplinary proceedings and paragraph 6.1 regarding personal mitigation.

<sup>70</sup>[2009] 1 WLR 1286 at [37].

<sup>71</sup>*R (Chief Constable of Dorset) v Police Appeals Tribunal* [2011] EWHC 3366 (Admin) at [22].

<sup>72</sup>Neil Salter had attempted to procure the deliberate destruction of evidence.

<sup>73</sup>Op.cit. at [30].

<sup>74</sup>Burnett J’s dictum at [30] of the High Court decision was upheld by the Court of Appeal in *Neil Salter v Chief Constable of Dorset* [2012] EWCA Civ 1047 at [19] and [21].

- dismissal will be almost inevitable in cases where operational dishonesty has been found proven
  - there may be exceptions but the number of such cases will be very small
  - where the person(s) conducting the proceedings conclude that a case involving operational dishonesty falls into this very small residual category, they must identify the features of the case which render it exceptional.
- 5.4 Personal mitigation can be taken into account, however, its impact will be limited. This applies to all types of police misconduct.<sup>75</sup>

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<sup>75</sup>*Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin). See further paragraph 6.4.

## 6 Personal mitigation

- 6.1 As Lord Justice Maurice Kay confirmed in the Court of Appeal decision in *Salter*:<sup>76</sup>

‘As to personal mitigation, just as an unexpectedly errant solicitor can usually refer to an unblemished past and the esteem of his colleagues, so will a police officer often be able so to do. However, because of the importance of public confidence, the potential of such mitigation is necessarily limited.’

- 6.2 Purely personal mitigation is not relevant to the seriousness of the misconduct. Tributes and testimonials should not be confused with the mitigating factors relating to the misconduct itself, as outlined above.<sup>77</sup> Consider any personal mitigation after forming an assessment of the seriousness of the misconduct.

- 6.3 Consider any personal mitigation advanced by the officer when deciding on the appropriate outcome.<sup>78</sup> Such mitigation may include whether the officer has shown remorse, acted out of character or made a significant contribution to the police service.

- 6.4 Due to the nature and purpose of disciplinary proceedings, however, the weight of personal mitigation will necessarily be limited, particularly where serious misconduct has been proven. Per Holroyde J in *Williams v Police Appeals Tribunal*:<sup>79</sup>

‘...the importance of maintaining public confidence in and respect for the police service is constant, regardless of the nature of the gross misconduct under consideration. What may vary will be the extent to which the particular gross misconduct threatens the preservation of such confidence and respect. The more it does so, the less weight can be given to personal mitigation.’

- 6.5 As Lord Bingham stated in *Bolton v Law Society*, of disciplinary proceedings:<sup>80</sup>

‘Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say,

<sup>76</sup>In the Court of Appeal in *Salter*, op. cit. at [23].

<sup>77</sup>At paragraphs 4.70-4.72.

<sup>78</sup>Regulations 35(11) and 55(10) and HOG at [2.279] and Annex A at [20].

<sup>79</sup>[2016] EWHC 2708 (Admin) at [67].

<sup>80</sup>[1994] 1 WLR 512 at p. 519B-E.

convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to reestablish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.'

6.6 The primary consideration for the panel or chairperson is the seriousness of the misconduct found proven. If the misconduct is so serious that nothing less than dismissal would be sufficient to maintain public confidence, personal mitigation will not justify a lesser sanction.

6.7 There is also a public interest, however, in retaining officers who have demonstrated or developed particular skills and experience. In the words of Mr Justice Collins in *Giele v General Medical Council*:<sup>81</sup>

'It must be obvious that misconduct which is so serious that nothing less than erasure would be considered appropriate cannot attract a lesser sanction simply because the practitioner is particularly skilful. But if erasure is not necessarily required, the skills of the practitioner are a relevant factor.'

6.8 Although personal mitigation may carry more weight where lesser outcomes are being considered, the case law confirms that the interests of the profession, and the protection of the public, are more important than those of the individual officer.<sup>82</sup>

6.9 Nonetheless, personal mitigation is always relevant and should always be taken into account.<sup>83</sup>

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<sup>81</sup>[2005] EWHC 2143 (Admin) at [30].

<sup>82</sup>*Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin) at [67].

<sup>83</sup>*Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin) at [67].

# 7 Conclusion

- 7.1 This guidance should be used to inform the approach taken by panels and chairpersons to determining outcomes in police misconduct proceedings. It sets out an approach for assessing the seriousness of conduct, which can be applied to assessments of conduct under Regulation 12 of the Conduct Regulations or paragraph 19B of Schedule 3 to the Police Reform Act 2002.
- 7.2 There are three stages to determining outcome:
- assess the seriousness of the misconduct
  - keep in mind the threefold purpose for imposing outcomes in police misconduct proceedings<sup>84</sup>
  - choose the outcome which most appropriately fulfils that purpose, given the seriousness of the conduct in question.
- 7.3 Assessing the seriousness of the conduct is the first of these three stages. In assessing the seriousness of the conduct, have regard to the four categories outlined: culpability, harm, aggravating and mitigating factors.
- 7.4 Consider less severe outcomes before more severe outcomes.<sup>85</sup> The more serious the conduct found proven against an officer, the more likely it is that dismissal will be justified.
- 7.5 Always take personal mitigation into account. Due to the purpose of disciplinary proceedings, its impact will necessarily be limited. Less weight can be attached to personal mitigation where serious misconduct has been proven.
- 7.6 The reasons for imposing a particular outcome should be recorded and usually read out in public. Refer to this guidance and explain any departures from it.
- 7.7 Each case will depend on its particular facts. Have regard to all relevant circumstances when determining the appropriate and proportionate outcome to impose.

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<sup>84</sup>See paragraph 2.3.

<sup>85</sup>See paragraph 2.11.

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We're the professional body for everyone who works for the police service in England and Wales. Our purpose is to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust.

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