



BERMUDA

POLICE (CONDUCT) ORDERS 2016

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SCHEDULE STANDARDS OF PROFESSIONAL BEHAVIOUR

The Governor, in exercise of the power conferred by section 32 of the Police Act 1974, gives the following Orders:

PART 1 PRELIMINARY

Citation

- 1 These Orders may be cited as the Police (Conduct) Orders 2016.

Interpretation and delegation

- 2 (1) In these Orders—

“Act” means the Police Complaints Authority Act 1998;

“adviser” means any person who, in the view of the person chairing any disciplinary proceedings or appeal proceedings, is suitable to provide advice on a matter of fact or on the procedures applicable to the misconduct proceeding;

“allegation” means an allegation relating to a complaint or conduct matter;

“appeal hearing” means an appeal hearing held in accordance with the appeals rules;

“appeal proceedings” means a meeting held in accordance with orders 37 and 38 following misconduct proceedings;

“appropriate authority” means—

- (a) where the police officer concerned is the Commissioner or Deputy Commissioners, the Governor;
- (b) where the police officer concerned is the Commanding Officer of the Royal Bermuda Regiment coast guard unit, the Governor;
- (c) in any case involving the Bermuda Police Service, the Commissioner; or
- (d) in any case involving the Royal Bermuda Regiment coast guard unit, the Commanding Officer;

“barrister” shall have the same meaning as in section 1 of the Bermuda Bar Act 1974;

“business day” has the meaning given to it by section 1 of the Public Holidays Act 1947;

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- “Commanding Officer” means the commanding officer of the Royal Bermuda Regiment coast guard;
- “complainant” means the person making a complaint in accordance with the Act;
- “complaint” has the meaning given to it in the Act;
- “conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);
- “conduct matter” means any matter where there is an indication (whether from the circumstances or otherwise) that the police officer concerned may have—
- (a) committed a criminal offence; or
 - (b) behaved in a manner which would justify the bringing of disciplinary proceedings;
- “criminal proceedings” means—
- (a) any prospective criminal proceedings; or
 - (b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal;
- “disciplinary action” means, in order of seriousness starting with the least serious action—
- (a) written warning;
 - (b) final written warning;
 - (c) an extension to a final written warning as described in order 34(7)(b);
 - (d) dismissal without notice;
- “disciplinary proceedings” means any proceedings under these Orders and any appeal from misconduct proceedings or a special case hearing dealt with under the appeals rules;
- “document” means anything in which information of any description is recorded and includes any recording of a visual image or images;
- “gross misconduct” means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified;
- “harm test” has the meaning given to it in order 4;
- “human resources professional” means a police officer or civil servant who has specific responsibility for personnel matters relating to members of the Service;
- “informant” means a person who provides information to an investigation on the basis that his identity is not disclosed during the course of the disciplinary proceedings;
- “interested party” means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Orders;

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- “interested person” has the meaning given to it in order 3;
- “investigator” means a person appointed under order 12;
- “management action” means action or advice intended to improve the conduct of the police officer concerned;
- “misconduct” means a breach of the Standards of Professional Behaviour;
- “misconduct hearing” means a hearing to which the police officer concerned is referred under order 18 and at which he may be dealt with by disciplinary action up to and including dismissal;
- “misconduct meeting” means a meeting to which the police officer concerned is referred under order 18 and at which he may be dealt with by disciplinary action up to and including a final written warning;
- “misconduct proceedings” means a misconduct meeting or misconduct hearing;
- “PCA” means the Police Complaints Authority established under section 4 of the Act;
- “performance orders” means the Police (Performance) Orders 2016;
- “police friend” means a person chosen by the police officer concerned in accordance with order 6;
- “police officer” means a member of the Service;
- “police officer concerned” means the police officer in relation to whose conduct there has been an allegation;
- “police orders” means the orders in paragraph 5(2) of the Schedule to these Orders (Standards of Professional Behaviour);
- “proposed witness” means a witness whose attendance at the misconduct proceedings the police officer concerned or the appropriate authority (as the case may be) wishes to request of the person conducting or chairing those proceedings;
- “senior officer” means a member of the Service who is of the rank, substantive or otherwise, of Superintendent or above;
- “Service” shall have the same meaning as in section 1(1) of the Police Act 1974;
- “special case hearing” means a hearing to which the police officer concerned is referred under order 40 after the case has been certified as a special case;
- “special case proceedings” means the referral of a case to a special case hearing and any proceedings at or in connection with such a hearing;
- “staff association” means in relation to a member of the Service of the rank of chief inspector or below, the Bermuda Police Association;
- “Standards of Professional Behaviour” means the standards of professional behaviour contained in the Schedule;

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“suspension conditions” has the meaning given to it in order 10(4).

(2) In these Orders—

- (a) a reference to a copy of a statement must, where it was not made in writing, be construed as a reference to a copy of an account of that statement;
- (b) the “special conditions” are that—
 - (i) there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the police officer concerned constitutes gross misconduct; and
 - (ii) it is in the public interest for the police officer concerned to cease to be a police officer without delay.

(3) For the purposes of these Orders—

- (a) a written warning must remain in force for a period of 12 months from the date on which it takes effect; and
- (b) subject to orders 34(7)(b) and 53(3)(b), a final written warning must remain in force for a period of 18 months from the date on which it takes effect.

(4) The reference to the period of—

- (a) 12 months in paragraph (3)(a); and
- (b) 18 months in paragraph (3)(b) and orders 34(8) and 53(4),

must not include any time when the police officer concerned is taking a sabbatical.

(5) Where the appropriate authority is the Commissioner, he may, subject to paragraph (6), delegate any of his functions under these Orders to a—

- (a) member of the Service of at least the rank of chief inspector; or
- (b) human resources professional who, in the opinion of the Commissioner, is of at least a similar level of seniority to a chief inspector.

(5A) Where the appropriate authority is the Commanding Officer of the Royal Bermuda Regiment coast guard unit, he may, subject to paragraph (6A), delegate any of his functions under these Orders to—

- (a) a member of the Service of at least the rank of major; or
- (b) a human resources professional who, in the opinion of the Commanding Officer of the Royal Bermuda Regiment coast guard unit, is of at least a similar level of seniority to a major.

(6) Where the Commissioner delegates his functions under order 10 or 40, the decisions must be authorised by a senior officer.

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(6A) Where the Commanding Officer of the Royal Bermuda Regiment coast guard unit delegates his functions under order 10 or 40, the decisions must be authorised by a senior officer.

(7) Any proceedings under these Orders are disciplinary proceedings to consider disciplinary charges.

[Order 2 paragraph (1) definition "Commanding Officer" inserted, and definition "appropriate authority" revoked and replaced by 2018 : 57 s.7 effective 1 February 2021; Order 2 paragraphs (5A) and (6A) inserted by 2018 : 57 s.7 effective 1 February 2021]

Interested person

- 3 (1) For the purpose of these Orders, a person is an "interested person" if—
- (a) that person has an interest in being kept properly informed about the handling of a complaint or conduct matter;
 - (b) it appears to the PCA or to an appropriate authority that he is a person falling within paragraph (2) or (3); and
 - (c) that person has indicated that he consents to the provision of information to him in accordance with this order and that consent has not been withdrawn.
- (2) A person falls within this paragraph in the case of a complaint or conduct matter if—
- (a) that person is a relative of a person whose death is the alleged result of the conduct complained of or to which the recordable conduct matter relates;
 - (b) that person is a relative of a person whose serious injury is the alleged result of that conduct and that other person is incapable of making a complaint;
 - (c) that person has suffered serious injury as the alleged result of that conduct.
- (3) A person who does not fall within paragraph (2), and has an interest in being kept properly informed about the handling of a complaint or conduct matter, falls within this paragraph if—
- (a) the appropriate authority considers that the person has an interest in the handling of the complaint or conduct matter which is sufficient to make it appropriate for information to be provided to that person in accordance with this order; and
 - (b) that person has indicated that he consents to the provision of information to him in accordance with this order.
- (4) In any case in which there is an investigation of a conduct matter—
- (a) by the appropriate authority on its own behalf; or
 - (b) under the supervision of the PCA,

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the appropriate authority must provide the interested person with all such information as to keep him properly informed, subject to the harm test, while the investigation is being carried out and subsequently of all the matters mentioned in paragraph (6).

- (5) In any case in which there is an investigation of a complaint—
 - (a) by the appropriate authority on its own behalf; or
 - (b) under the supervision of the PCA,

the appropriate authority must provide the interested person with all such information as to keep him properly informed, subject to the harm test, while the investigation is being carried out and subsequently of all the matters mentioned in paragraph (6).

- (6) The matters of which the interested person must be kept properly informed are—
 - (a) whether the investigation was or was not conducted to the appropriate authority's or PCA's satisfaction;
 - (b) specifying any respect in which it was not so conducted and as to which the appropriate authority or the PCA considers that his dissatisfaction ought to be recorded; and
 - (c) dealing with such other matters relating to the investigation or the supervision of it as the appropriate authority or PCA considers should be—
 - (i) brought to the attention of the Commissioner, the complainant or the police officer under investigation;
 - (ia) brought to the attention of the Commanding Officer of the Royal Bermuda Regiment coast guard unit, the complainant or the police officer under investigation; or
 - (ii) dealt with in the public interest.

[Order 3 paragraph (6)(c)(ia) inserted by 2018 : 57 s.7 effective 1 February 2021]

The harm test

4 Information in documents which are stated to be subject to the harm test under these Orders must not be supplied to the person concerned in so far as the appropriate authority considers that preventing disclosure to that person is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;

- (d) necessary for the purpose of the prevention or detection of misconduct by other police officers or their apprehension for such matters;
- (e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the police officer concerned;
- (f) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (g) otherwise in the public interest.

PART 2
GENERAL

Application

5 (1) These Orders apply where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct.

(2) Where an appropriate authority is considering more than one allegation in relation to the same police officer, the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Orders which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.

Police friend

6 (1) The police officer concerned may choose—

- (a) a police officer;
- (b) a person nominated by the police officer's staff association,

who is not otherwise involved in the matter, to act as the police officer's police friend.

(2) A police friend, not being a barrister, may—

- (a) advise the police officer concerned throughout the proceedings under these Orders;
- (b) unless the police officer concerned has the right to be legally represented and chooses to be so represented, represent the police officer concerned at the misconduct proceedings or special case hearing or appeal proceedings; or
- (c) make representations to the appropriate authority concerning any aspect of the proceedings under these Orders; and
- (d) accompany the police officer concerned to any interview, meeting or hearing which forms part of any proceedings under these Orders.

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(3) Where a police friend is a police officer, the Commissioner, where it appears necessary, shall permit him to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

(4) Where a police friend is a police officer, in the case of the Royal Bermuda Regiment coast guard unit, the Commanding Officer, where it appears necessary, shall permit him to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

[Order 6 paragraph (4) inserted by 2018 : 57 s.7 effective 1 February 2021]

Legal and other representation

7 (1) The police officer concerned has the right to be legally represented, by a barrister of the police officer's choice, at a misconduct hearing or a special case hearing.

(2) If the police officer concerned chooses not to be legally represented at such a hearing, the police officer may be dismissed or receive any other outcome under order 34 or 54 without the police officer being so represented.

(3) Except in a case where the police officer concerned has the right to be legally represented and chooses to be so represented, the police officer may be represented at misconduct proceedings or a special case hearing or appeal proceedings only by a police friend.

(4) The appropriate authority may be represented at misconduct proceedings or a special case hearing or appeal proceedings—

- (a) by a police officer or police staff member of the Service concerned; or
- (b) at a misconduct hearing or a special case hearing only, by a barrister (whether or not the police officer concerned chooses to be legally represented).

(5) Subject to paragraph (6), the appropriate authority may appoint a person to advise the person or persons conducting the misconduct proceedings or special case hearing or appeal proceedings.

(6) At a misconduct meeting or at appeal proceedings arising from a misconduct meeting, the person appointed under paragraph (5) must not be a barrister.

Provision of notices or documents

8 Where any written notice or document is to be given or supplied to the police officer concerned under these Orders, it must be—

- (a) given to the police officer concerned in person;
- (b) left with some person at, or sent by registered mail to, the police officer's last known address; or
- (c) in respect of a written notice under order 14(1), given to the police officer concerned in person by the police officer's police friend where the police friend has agreed with the appropriate authority to deliver the notice.

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Outstanding or possible criminal proceedings

9 (1) Subject to the provisions of this order, proceedings under these Orders must proceed without delay.

(2) Before referring a case to misconduct proceedings or a special case hearing, the appropriate authority must decide whether misconduct proceedings or special case proceedings would prejudice any criminal proceedings.

(3) Misconduct proceedings or special case proceedings must not take place during any period which the appropriate authority considers would prejudice any criminal proceedings.

(4) Where a witness who is or may be a witness in any criminal proceedings is to be or may be asked to attend misconduct proceedings, the appropriate authority must consult the relevant prosecutor (and when doing so must inform the police officer concerned of the names and addresses of all such witnesses) before making its decision under paragraph (2).

(5) For the purposes of this order, “relevant prosecutor” means the Director of Public Prosecutions or any other person who has or is likely to have responsibility for the criminal proceedings.

Suspension

10 (1) The appropriate authority may, subject to the provisions of this order, suspend the police officer concerned from his office as a police officer and from membership of the Service.

(2) A police officer concerned who is suspended under this order remains a police officer for the purposes of these Orders.

(3) A suspension under this order must be with pay.

(4) The appropriate authority must not suspend a police officer under this order unless the following conditions (“the suspension conditions”) are satisfied—

(a) having considered temporary redeployment to alternative duties or an alternative location in Bermuda as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case; and

(b) it appears to the appropriate authority that either—

(i) the effective investigation of the case may be prejudiced, unless the police officer concerned is so suspended; or

(ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the police officer should be so suspended.

(5) The appropriate authority may exercise the power to suspend the police officer concerned under this order at any time from the date on which these Orders first apply to the police officer concerned in accordance with order 5 until—

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- (a) it is decided that the conduct of the police officer concerned must not be referred to misconduct proceedings or a special case hearing; or
 - (b) such proceedings have concluded.
- (6) The appropriate authority may suspend the police officer concerned with effect from the date and time of notification, which must be given either—
- (a) in writing with a summary of the reasons; or
 - (b) orally, in which case the appropriate authority must confirm the suspension in writing with a summary of the reasons before the end of 3 business days beginning with the first business day after the suspension.
- (7) The police officer concerned (or the police officer's police friend) may make representations against the police officer's suspension to the appropriate authority—
- (a) before the end of 7 business days beginning with the first business day after the police officer concerned being suspended;
 - (b) at any time during the suspension if the police officer reasonably believes that circumstances relevant to the suspension conditions have changed.
- (8) The appropriate authority must review the suspension conditions on receipt of any representations under paragraph (7).
- (9) Where, following a review under paragraph (8), the suspension conditions remain satisfied and the appropriate authority decides that the suspension should continue, it must, before the end of 3 business days beginning with the day after the review, so notify the police officer concerned in writing with a summary of the reasons.
- (10) Where the police officer concerned is suspended under this order, the officer remains so suspended until whichever of the following occurs first—
- (a) the suspension conditions are no longer satisfied; or
 - (b) either of the events mentioned in paragraph (5)(a) or, subject to paragraph (5)(b) have occurred.

PART 3

INVESTIGATIONS

Assessment of conduct

11 (1) Subject to paragraph (6), the appropriate authority must assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither.

(2) Where the appropriate authority assesses that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it may—

- (a) take no action;

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- (b) take management action against the police officer concerned; or
- (c) refer the matter to be dealt with under the performance orders.

(3) Where the appropriate authority assesses that the conduct, if proved, would amount to misconduct, it must determine whether or not it is necessary for the matter to be investigated and—

- (a) if so, the matter must be investigated and the appropriate authority must further determine whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing;
- (b) if not, the appropriate authority may—
 - (i) take no action; or
 - (ii) take management action against the police officer concerned.

(4) Where the appropriate authority determines that the conduct, if proved, would amount to gross misconduct, the matter must be investigated.

(5) At any time before the start of misconduct proceedings, the appropriate authority may revise its assessment of the conduct under paragraph (1) if it considers it appropriate to do so.

(6) Where the appropriate authority decides under this order to take no action, take management action or to refer the matter to be dealt with under the performance orders, it must so notify the police officer concerned in writing as soon as practicable.

Appointment of investigator

12 (1) This order applies where the matter is to be investigated in accordance with order 11.

(2) The appropriate authority must, subject to paragraph (3), appoint a person to investigate the matter.

- (3) A person must not be appointed to investigate the matter under this order—
 - (a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
 - (b) if he is an interested party; or
 - (c) if he works, directly or indirectly, under the management of the police officer concerned.

Investigation

13 The purpose of the investigation is to—

- (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct; and

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- (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.

Written notices

14 (1) The investigator must as soon as is reasonably practicable after being appointed, and subject to paragraph (3), cause the police officer concerned to be given written notice—

- (a) describing the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) of the appropriate authority's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (c) that there is to be an investigation into the matter and the identity of the investigator;
- (d) of whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this;
- (e) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) must be given;
- (f) informing the police officer that he has the right to seek advice from the police officer's staff association or any other body and of the effect of order 6(1) and (2);
- (g) of the effect of orders 7(1) to (3) and 15; and
- (h) informing the police officer that whilst he does not have to say anything, it may harm the police officer's case if he does not mention when interviewed or when providing any information under orders 15(1) or 21(2) or (3) something which he later relies on in any misconduct proceedings or special case hearing or at appeal proceedings or an appeal hearing.

(2) If, following service of the notice under paragraph (1), the appropriate authority revises its assessment of the conduct in accordance with order 11(5) or its determination of the likely form of any misconduct proceedings to be taken, the appropriate authority must, as soon as practicable, give the police officer concerned further written notice of—

- (a) the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct, as the case may be, and the reason for that assessment; and
- (b) whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this.

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(3) The requirement to give a written notice to the police officer concerned under paragraph (1) does not apply for so long as the investigator considers that giving such a notice might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).

(4) Once a written notice has been given in accordance with paragraph (1), the investigator must notify the officer concerned of the progress of the investigation—

- (a) if there has been no previous notification following the supply of the written notice under paragraph (1), before the end of 4 weeks beginning with the first business day after the start of the investigation; and
- (b) in any other case, before the end of 4 weeks beginning with the first business day after the previous notification.

(5) For the avoidance of doubt nothing in paragraph (1)(h) shall be construed so as to affect, by way of the criminal law, a police officers right to remain silent in accord with section 5(5) of Schedule 2 to the Bermuda Constitution Order 1968.

Representations to the investigator

15 (1) Before the end of 10 business days starting with the first business day after which the notice is given under order 14(1) (unless this period is extended by the investigator)—

- (a) the police officer concerned may provide a written or oral statement relating to any matter under investigation to the investigator; and
- (b) the police officer concerned or the police officer's police friend may provide any relevant documents to the investigator.

(2) The investigator must, as part of his investigation, consider any such statement or document and must make a record of having received it.

(3) In this order—

“relevant document”—

- (a) means a document relating to any matter under investigation; and
- (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed.

Interviews during investigation

16 (1) Where an investigator wishes to interview the police officer concerned as part of his investigation, he must, if reasonably practicable, agree a date and time for the interview with the police officer concerned.

(2) Where no date and time are agreed under paragraph (1), the investigator must specify a date and time for the interview.

(3) Where a date and time are specified under paragraph (2) and—

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- (a) the police officer concerned or the police officer's police friend is not available at that time; and
- (b) the police officer concerned proposes an alternative time which satisfies paragraph (4),

the interview must be postponed to the time proposed by the police officer concerned.

(4) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of the period of 5 business days beginning with the first business day after the day specified by the investigator.

(5) The police officer concerned must be given written notice of the date, time and place of the interview.

(6) The investigator must, in advance of the interview, provide the police officer concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the police officer concerned to prepare for the interview.

(7) The police officer concerned must attend the interview.

(8) A police friend may not answer any questions asked of the police officer concerned during the interview.

Report of investigation

17 (1) On completion of his investigation, the investigator must as soon as practicable submit a written report on the investigation to the appropriate authority.

(2) The written report must—

- (a) provide an accurate summary of the evidence;
- (b) attach or refer to any relevant documents; and
- (c) indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) If at any time during the investigation the investigator believes that the appropriate authority would, on consideration of the matter, be likely to determine that the special conditions are satisfied, he must, whether or not the investigation is complete, submit to the appropriate authority—

- (a) a statement of the investigator's belief and the grounds for it; and
- (b) a written report on his investigation to that point.

PART 4
MISCONDUCT PROCEEDINGS

Referral of case to misconduct proceedings

- 18 (1) Subject to order 40 and paragraph (6)—
- (a) on receipt of the investigator's written report; and
 - (b) in the case of such a report submitted by the investigator, in making a determination as to what action to take in respect of matters dealt with in that report,

the appropriate authority must, as soon as practicable, determine whether the police officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) Subject to paragraph (6), in a case where the disciplinary proceedings have been delayed by virtue of order 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, it must, subject to order 40(3), make a further determination as to whether the police officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) Where the appropriate authority determines there is no case to answer, it may—

- (a) take no further disciplinary action against the police officer concerned;
- (b) take management action against the police officer concerned; or
- (c) refer the matter to be dealt with under the performance orders.

(4) Where the appropriate authority determines that there is a case to answer in respect of gross misconduct, it must, subject to order 9(3) and paragraph (2), refer the case to a misconduct hearing.

(5) Where the appropriate authority determines that there is a case to answer in respect of misconduct, it may—

- (a) subject to order 9(3) and paragraph (2), refer the case to misconduct proceedings; or
- (b) take management action against the police officer concerned.

(6) Where the appropriate authority—

- (a) accepts a recommendation under section 20(2) of the Act; or
- (b) has a duty under section 20(3)(b) of the Act to comply with a direction to give effect to such a recommendation,

it must, subject to order 9(3), refer the case to such misconduct proceedings.

(7) Where the appropriate authority fails to—

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- (a) make the determination referred to in paragraph (1); and
- (b) where appropriate, decide what action to take under paragraph (5),

before the end of 15 business days beginning with the first business day after receipt of the investigator's written report, it must notify the police officer concerned of the reason for this.

(8) Where under paragraph (5) the appropriate authority determines to take management action, it must give the police officer concerned written notice of this as soon as practicable.

(9) Where the appropriate authority determines under paragraph (5) to refer the case to misconduct proceedings—

- (a) where the police officer concerned had a final written warning in force at the date of the assessment of conduct under order 11(1) of these Orders, those proceedings must be a misconduct hearing;
- (b) where the police officer concerned has been reduced in rank under the discipline orders less than 18 months prior to the assessment of conduct under order 11(1) of these Orders, those proceedings must be a misconduct hearing; and
- (c) in all other cases those proceedings must be a misconduct meeting.

Withdrawal of case

19 (1) At any time before the beginning of the misconduct proceedings, the appropriate authority may direct that the case be withdrawn.

(2) Where a direction is given under paragraph (1)—

- (a) the appropriate authority may—
 - (i) take no further action against the police officer concerned;
 - (ii) take management action against the police officer concerned; or
 - (iii) refer the matter to be dealt with under the performance orders; and
- (b) the appropriate authority must as soon as practicable give the police officer concerned—
 - (i) written notice of the direction, indicating whether any action must be taken under paragraph (2)(a); and
 - (ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator's report or such parts of that report as relate to the police officer concerned.

Notice of referral to misconduct proceedings and panel membership

20 (1) Where a case is referred to misconduct proceedings, the appropriate authority must as soon as practicable give the police officer concerned—

- (a) written notice of the—

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- (i) referral;
- (ii) conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as the case may be;
- (iii) name of the person appointed to (in the case of a misconduct meeting for a police officer other than a senior officer) conduct, or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6) of this order; and
- (iv) effect of order 7(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred;
- (b) a copy of any statement he may have made to the investigator during the course of the investigation; and
- (c) subject to the harm test, a copy of—
 - (i) the investigator's report or such parts of that report as relate to him (together with any document attached to or referred to in that report which relates to him); and
 - (ii) any other relevant document gathered during the course of the investigation.
- (2) As soon as practicable after—
 - (a) any person has been appointed under order 7(5) to advise the person or persons conducting the misconduct proceedings; and
 - (b) where the misconduct proceedings are to be conducted by a panel, the person or persons comprising that panel (other than the chair) have been determined,

the appropriate authority must give the police officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this order.

(3) The police officer concerned may object to any person whom he is notified under the preceding provisions of this order is to—

- (a) conduct (including chair) his misconduct proceedings; or
- (b) advise the person or persons conducting those proceedings.

(4) Any such objection must be made in writing to the appropriate authority before the end of 3 business days beginning with the first business day after the police officer concerned is given notice of the person's name and must set out the grounds of objection of the police officer concerned.

(5) The appropriate authority must notify the police officer concerned in writing whether it upholds or rejects an objection to any panel member or to any person appointed under order 7(5) to advise the person or persons conducting the misconduct proceedings.

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(6) If the appropriate authority upholds the objection, the person to whom the police officer concerned objects must be replaced (in accordance with orders 7(5) and (6) or 24 and 25 as appropriate).

(7) As soon as reasonably practicable after any such appointment, the appropriate authority must notify in writing the police officer concerned of the name of the new panel member, or the adviser to the person or persons conducting the misconduct proceedings, as the case may be.

(8) The police officer concerned may object to the appointment of a person appointed under paragraph (6).

(9) Any such objection must be made in accordance with paragraph (4), provided that it must be made before the end of 3 business days beginning with the first business day after receipt of the notification referred to in paragraph (7); and the appropriate authority must comply with paragraphs (5) to (7) in relation to that objection, but paragraph (8) must not apply.

(10) In this order, “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case that the police officer concerned has to answer.

Procedure on receipt of notice

21 (1) Before the end of—

- (a) 14 business days beginning with the first business day after the documents have been supplied to the police officer concerned under order 20(1); or
- (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,

the police officer concerned must comply with paragraphs (2) and (3).

(2) The police officer concerned must provide to the appropriate authority—

- (a) written notice of whether or not the police officer accepts that the police officer’s conduct amounts to misconduct or gross misconduct, as the case may be;
- (b) where the police officer accepts that the police officer’s conduct amounts to misconduct or gross misconduct, as the case may be, any written submission the police officer wishes to make in mitigation; and
- (c) where the police officer does not accept that the police officer’s conduct amounts to misconduct or gross misconduct as the case may be, or the police officer disputes part of the case against the police officer, written notice of—
 - (i) the allegations the police officer disputes and the police officer’s account of the relevant events; and

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- (ii) any arguments on points of law the police officer wishes to be considered by the person or persons conducting the misconduct proceedings; and
 - (d) written notice that the police officer intends to be legally represented.
- (3) The police officer concerned must provide the appropriate authority with a copy of any document he intends to rely on at the misconduct proceedings.
- (4) Before the end of 3 business days beginning with the first business day after the date on which the police officer concerned has complied with paragraph (2), the appropriate authority and the police officer concerned must each supply to the other with a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses must include brief details of the evidence that each witness is able to adduce.
- (5) Where there are proposed witnesses, the police officer concerned must, if reasonably practicable, agree a list of proposed witnesses with the appropriate authority.

Witnesses

- 22
- (1) As soon as practicable after any list of proposed witnesses has been—
 - (a) agreed under order 21(5); or
 - (b) where there is no agreement under order 21(5), supplied under order 21(4),the appropriate authority must supply that list to the person conducting or chairing the misconduct proceedings.
 - (2) The person conducting or chairing the misconduct proceedings must—
 - (a) consider the list or lists of proposed witnesses; and
 - (b) subject to paragraph (3), determine which, if any, witnesses should attend the misconduct proceedings.
 - (3) A witness must not give evidence at misconduct proceedings unless the person conducting or chairing those proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case he must—
 - (a) where the witness is a police officer, cause that person to be ordered to attend the misconduct proceedings; and
 - (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the proceedings.

Timing and notice of misconduct proceedings

- 23
- (1) Subject to paragraphs (2) and (6), the misconduct proceedings must commence—
 - (a) in the case of a misconduct meeting, before the end of 20 business days; or

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(b) in the case of a misconduct hearing, before the end of 30 business days, beginning with the first business day after the documents have been supplied to the police officer concerned under order 20(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period specified in paragraph (1) where he considers that it would be in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct proceedings decides to extend the period under paragraph (2), or decides not to do so following representations from the police officer concerned or the appropriate authority, he must provide written notification of his reasons for that decision to the appropriate authority and the police officer concerned.

(4) The person conducting or chairing the misconduct proceedings must, if reasonably practicable, agree a date and time for the misconduct proceedings with the police officer concerned.

(5) Where no date and time are agreed under paragraph (4), the person conducting or chairing the misconduct proceedings must specify a date and time for those proceedings.

(6) Where a date and time are specified under paragraph (5) and—

(a) either—

(i) the police officer concerned; or

(ii) police friend of the police officer concerned,

is not available at that time; and

(b) the police officer concerned proposes an alternative time which satisfies paragraph (7),

the misconduct proceedings must be postponed to the time proposed by the police officer concerned.

(7) An alternative time must—

(a) be reasonable; and

(b) fall before the end of 5 business days beginning with the first business day after the day specified by the person conducting or chairing the misconduct proceedings.

(8) The police officer concerned must be given written notice of the date, time and place of the misconduct proceedings.

(9) Where the Commissioner is entitled to attend the misconduct proceedings to make representations under order 28(1), or to nominate a person to attend the proceedings as an observer under order 30(2), the Commissioner must be given written notice of the date, time and place of the proceedings.

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Persons conducting misconduct proceedings: police officers other than senior officers

24 (1) This order applies where the police officer concerned is a police officer other than a senior officer.

(2) The misconduct meeting must be conducted by a person appointed by the appropriate authority who is not an interested party or the Commissioner and who satisfies paragraph (3).

(3) The person must not be the same person as the appropriate authority and must be another member of the Service, of at least one rank higher than the officer concerned.

(4) Where the case is referred to a misconduct hearing, the misconduct proceedings must be conducted by a panel of persons specified in paragraph (5), appointed by the appropriate authority.

(5) Those persons are—

- (a) a chair who has qualified as a barrister;
- (b) a lay person; and
- (c) a police officer of a higher rank than the police officer concerned selected by the appropriate authority who is not an interested party.

Persons conducting misconduct proceedings: senior officers or the Commissioner

25 (1) Where the police officer concerned is a senior officer or the Commissioner, the misconduct proceedings must be conducted by a panel of persons specified in paragraph (2), appointed by the appropriate authority.

(2) Those persons are—

- (a) a chair who has qualified as a barrister;
- (b) a lay person; and
- (c) a person selected by the Governor who is not an interested party.

Documents to be supplied

26 (1) Prior to the misconduct proceedings, the appropriate authority must supply the person or persons conducting the misconduct proceedings with a copy of—

- (a) the documents given to the police officer concerned under order 20(1);
- (b) the documents provided by the police officer concerned under—
 - (i) order 21(2) and (3); and
 - (ii) where paragraph (2) applies, order 44; and
- (c) where the police officer concerned does not accept that the police officer's conduct amounts to misconduct or gross misconduct, as the case may be, or where the police officer disputes any part of the case against him, any

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other documents that, in the opinion of the appropriate authority, should be considered at the misconduct proceedings.

(2) This paragraph applies where the appropriate authority has directed, in accordance with order 41(1), that the case be dealt with under this Part.

(3) Prior to the misconduct proceedings, the police officer concerned must be supplied with a list of the documents supplied under paragraph (1) and a copy of any such document of which he has not already been supplied with a copy.

Attendance of police officer concerned at misconduct proceedings

27 (1) Subject to paragraph (2), the police officer concerned must attend the misconduct proceedings.

(2) Where the police officer concerned informs the person conducting or chairing the misconduct proceedings in advance that the police officer is unable to attend on grounds which the person conducting or chairing those proceedings considers reasonable, that person may allow the police officer concerned to participate in the proceedings by video link or other means.

(3) Where the police officer concerned is allowed to and does so participate in the misconduct proceedings, or where the police officer concerned does not attend the misconduct proceedings—

- (a) the police officer may nonetheless be represented at those proceedings by the police officer's—
 - (i) police friend; or
 - (ii) in the case of a misconduct hearing, the police officer's barrister (in which case the police friend may also attend); and
- (b) the proceedings may be proceeded with and concluded in the absence of the police officer concerned whether or not the police officer is so represented.

(4) Where the police officer concerned is represented in accordance with paragraph (3), the person representing the police officer concerned or the police officer's police friend (if different), or both, may participate using the video link or other means where such means are also used by the police officer concerned.

Participation of PCA and investigator at misconduct proceedings

28 (1) In any misconduct proceedings arising from a complaint, the PCA may—

- (a) make written representations to the person conducting or chairing the misconduct proceedings;
- (b) attend the misconduct proceedings and make representations at those misconduct proceedings.

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(2) The investigator or a nominated person must attend the misconduct proceedings on the request of the person conducting or chairing those proceedings to answer questions.

(3) For the purposes of this order, a “nominated person” is a person who, in the opinion of the appropriate authority has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the misconduct proceedings.

(4) Where more than one allegation is considered in the same misconduct proceedings in accordance with order 5(2), this order applies to the whole of the proceedings and accordingly the PCA may make written representations in respect of any allegation.

Attendance of complainant or interested person at misconduct proceedings

29 (1) This order must apply in the case of misconduct proceedings arising from a conduct matter or a complaint.

(2) The appropriate authority must notify the complainant or any interested person of the date, time and place of the misconduct proceedings.

(3) Subject to the provisions of this order, order 31 and any conditions imposed under order 30(7), the complainant or any interested person may attend the misconduct proceedings as an observer.

(4) Subject to paragraph (5), order 31 and any conditions imposed under order 30(7), a complainant or interested person may be accompanied by one other person and, if the complainant or interested person has a special need, by one further person to accommodate that need.

(5) Where a complainant or interested person, or any person accompanying him, is to give evidence as a witness at the misconduct proceedings, he and any person allowed to accompany him must not be allowed to attend the proceedings before he gives his evidence.

(6) Where the police officer concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the police officer’s behalf, the person conducting or chairing the misconduct proceedings may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made.

(7) The person conducting or chairing the misconduct proceedings may, at his or her discretion, put any questions to the police officer concerned that the complainant or interested person may request be put to him.

(8) For the purposes of this order, a person has a special need if, in the opinion of the person conducting or chairing the misconduct proceedings, he has a disability or learning difficulty, or does not have sufficient knowledge of English, so that he is unable to fully participate in or understand the misconduct proceedings.

Attendance of others at misconduct proceedings

30 (1) Subject to order 28 and 29 and the provisions of this order, the misconduct proceedings must be in private.

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(2) A person nominated by the PCA may, as an observer, attend misconduct proceedings arising from a complaint.

(3) Subject to any contrary decision by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the police officer concerned, may only attend the misconduct proceedings for the purpose of giving his evidence.

(4) The person conducting or chairing the misconduct proceedings may, at his discretion, permit a witness in the misconduct proceedings to be accompanied at those proceedings by one other person.

(5) Where a misconduct hearing arises from a complaint and the PCA considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest to do so, the person conducting or chairing the misconduct proceedings may, after receiving a request from the PCA that the misconduct proceedings be held in public and, having consulted with—

- (a) the appropriate authority;
- (b) the police officer concerned;
- (c) the complainant or interested person; and
- (d) any witnesses,

direct that the whole or part of the misconduct hearing be held in public.

(6) A direction under paragraph (5), together with the reasons for it, must be notified as soon as practicable, and in any event before the end of 5 business days beginning with the first business day after the decision was taken, to the persons consulted under that paragraph.

(7) The persons conducting or chairing the misconduct proceedings may impose such conditions as he sees fit relating to the attendance under order 29 or this order of persons at the misconduct proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the proceedings.

Exclusion from misconduct proceedings

31 Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information which, under the harm test, ought not to be disclosed to any person attending the proceedings, he must require such attendees to withdraw while the evidence is given.

Procedure at misconduct proceedings

32 (1) Subject to these Orders, the person conducting or chairing the misconduct proceedings must determine the procedure at those proceedings.

(2) The misconduct proceedings must not proceed unless the police officer concerned has been notified of the effect of order 7(1) to (3) in relation to the form of misconduct proceedings taking place.

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(3) Subject to paragraph (4), the person conducting or chairing the misconduct proceedings may from time to time adjourn the proceedings if it appears to him to be necessary or expedient to do so.

(4) The misconduct proceedings must not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

(5) The person representing the police officer concerned may—

(a) address the proceedings in order to do any or all of the following—

(i) put the case of the police officer concerned;

(ii) sum up that case;

(iii) respond on behalf of the police officer concerned to any view expressed at the proceedings;

(iv) make representations concerning any aspect of proceedings under these Orders; and

(v) subject to paragraph (8), ask questions of any witnesses; and

(b) confer with the police officer concerned.

(6) Where (at a misconduct hearing) the person representing the police officer concerned is a barrister, the police friend of the police officer concerned may also confer with the police officer concerned.

(7) The barrister or police friend of the police officer concerned may not answer any questions asked of the police officer concerned during the misconduct proceedings.

(8) Whether any question should or should not be put to a witness must be determined by the person conducting or chairing the misconduct proceedings.

(9) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings, notwithstanding that a copy of it has not been supplied—

(a) by the police officer concerned to the appropriate authority in accordance with order 21(3); or

(b) to the police officer concerned in accordance with order 20(1).

(10) Where evidence is given or considered at the misconduct proceedings that the police officer concerned—

(a) on being questioned by an investigator at any time after he was given written notice under order 14(1) of these Orders; or

(b) in submitting any information or by not submitting any information at all under order 15(1) or 21(2) or (3) (or, where paragraph (11) applies, order 44),

failed to mention any fact relied on in his case at the misconduct proceedings, being a fact which in the circumstances existing at the time the police officer concerned could

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reasonably have been expected to mention when so questioned or when providing such information, paragraph (12) applies.

(11) This paragraph applies where the appropriate authority has directed, in accordance with order 41(1), that the case be dealt with under this Part.

(12) Where this paragraph applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(13) The person or persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the police 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.

(14) The person or persons conducting the misconduct proceedings must not find that the conduct of the police officer concerned amounts to misconduct or gross misconduct unless—

- (a) he is or they are satisfied on the balance of probabilities that this is the case; or
- (b) the police officer concerned admits that it is the case.

(15) At misconduct proceedings conducted by a panel, any decision must be based on a majority but must not indicate whether it was taken unanimously or by a majority.

(16) Where the police officer concerned is a senior officer, the persons conducting the misconduct proceedings must, as soon as practicable after the meeting or hearing, submit a report to the appropriate authority, together with a copy to the senior officer concerned, setting out—

- (a) the finding of the persons conducting the proceedings under paragraph (13);
- (b) the reasons for that finding;
- (c) if that finding was that the conduct of the police officer concerned amounted to misconduct or gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (d) any other matter arising out of the proceedings which they desire to bring to the notice of the appropriate authority.

(17) In any case in which the PCA was entitled to attend to make representations under order 28(1), the persons conducting the misconduct proceedings must send a copy of any report under paragraph (16) to the Commissioner.

Senior officers: further meeting or hearing

33 (1) On receiving a report under order 32(16), the appropriate authority must—

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- (a) in a case where the report was submitted following a misconduct meeting, hold a further meeting; and
- (b) in a case where the report was submitted following a misconduct hearing, hold a further hearing,

for the purpose of considering what disciplinary action (if any) should be imposed.

(2) The provisions of these Orders specified in paragraph (3) must apply, with the modifications specified in paragraph (4), to a meeting held under paragraph (1)(a) as if it were a misconduct meeting, and to a hearing under paragraph (1)(b) as if it were a misconduct hearing.

(3) The provisions are—

- (a) order 6;
- (b) order 7;
- (c) order 8;
- (d) order 9;
- (e) order 21(4) and (5);
- (f) order 22;
- (g) order 23;
- (h) order 27;
- (i) order 28;
- (j) order 29;
- (k) order 30;
- (l) order 31;
- (m) order 32(1) to (12); and
- (n) order 36.

(4) The modifications are that—

- (a) each reference to the person conducting or chairing the misconduct proceedings has effect as a reference to the appropriate authority;
- (b) in order 21(4), the reference to the date on which the police officer concerned has complied with paragraph (2) has effect as a reference to the date on which the report is submitted under order 32(16); and
- (c) in order 23—
 - (i) the reference in paragraph (1) to the first business day after the documents have been supplied to the police officer concerned has effect as a reference to the first business day after the report is submitted under order 32(16); and

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- (ii) the references in paragraph (3) to the appropriate authority are omitted.

Outcome of misconduct proceedings

34 (1) Subject to the provisions of this order, the person or persons conducting misconduct proceedings in the case of a police officer other than a senior officer or the Commissioner may—

- (a) impose any of the disciplinary action in paragraph (3)(a) or (b) or (7)(b) as appropriate; or
- (b) where he or they find that the conduct amounts to misconduct but not gross misconduct following a misconduct meeting or hearing, record a finding of misconduct but take no further action.

(2) Subject to the provisions of this order, at a meeting or hearing held under order 33 the appropriate authority may—

- (a) impose any of the disciplinary action in paragraph (3)(a) or (b) or (7)(b), as appropriate; or
- (b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(3) The disciplinary action is—

- (a) at a misconduct meeting or a further meeting held under order 33(1)(a)—
 - (i) written warning; or
 - (ii) final written warning;
- (b) at a misconduct hearing or a further hearing held under order 35(3)(1)(b)—
 - (i) written warning;
 - (ii) final written warning; or
 - (iii) dismissal without notice.

(4) The disciplinary action referred to in paragraph (3) must have effect from the date on which it is notified to the police officer concerned.

(5) Where there is a finding that the conduct of the police officer concerned amounts to misconduct but not gross misconduct, the police officer may not be dismissed (whether with or without notice) unless a final written warning was in force on the date of the assessment of the conduct under order 11(1).

(6) Where, on the date of the assessment of the conduct under order 11(1) the police officer concerned had a written warning in force, a written warning must not be given.

(7) Where, on the date of the assessment of the conduct under order 11(1), the police officer concerned had a final written warning in force—

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- (a) neither a written warning nor a final written warning must be given; but
 - (b) subject to paragraph (9), in exceptional circumstances, the final written warning may be extended.
- (8) Where a final written warning is extended under paragraph (7)(b), that warning must remain in force for a period of 18 months from the date on which it would otherwise expire.
- (9) A final written warning may be extended on one occasion only.
- (10) Where the question of disciplinary action is being considered, the person or persons considering it—
- (a) must have regard to the record of Service of the police officer concerned as shown on his personal record;
 - (b) may receive evidence from any witness whose evidence would, in his or their opinion, assist him or them in determining the question; and
 - (c) must give—
 - (i) the police officer concerned, his police friend or, at a misconduct hearing, his barrister; and
 - (ii) in the case of a police officer other than a senior officer, the appropriate authority or person appointed to represent the appropriate authority in accordance with order 7(4),
an opportunity to make oral or written representations before any such question is determined.

Notification of outcome

- 35 (1) The police officer concerned must be informed of—
- (a) the finding of the person or persons conducting the misconduct proceedings; and
 - (b) in a case other than one to which order 33 (senior officers: further meeting or hearing) applies, any disciplinary action imposed,

as soon as practicable and in any event must be provided with written notice of the relevant matter or matters and the reasons before the end of 5 business days beginning with the first business day after the conclusion of the misconduct proceedings.

(2) In a case to which order 33 applies, the police officer concerned must be informed of any disciplinary action imposed as soon as practicable, and in any event must be provided with written notice of the action (if any) and the appropriate authority's reasons before the end of 5 business days beginning with the first business day after the conclusion of the meeting or hearing held under order 33.

(3) Where there was a finding of misconduct or gross misconduct, a written notice under this order must include—

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- (a) where the police officer concerned is a police officer other than a senior officer or the Commissioner, if the case was decided—
 - (i) at a misconduct meeting, notice of his right of appeal under order 37; or
 - (ii) at a misconduct hearing, notice of his right of appeal under order 37;
 - (b) where the police officer concerned is a senior officer or the Commissioner, notice of his right of appeal to the Public Service Commission.
- (4) In all cases referred to in paragraph (3), a written notice under this order must include the name of the person to whom an appeal should be sent.
- (5) The appropriate authority must send a copy of any written notice under this order to—
- (a) the PCA, in any case in which the PCA was entitled to attend to make representations under order 28(1); and
 - (b) to the complainant and any interested person, in any case to which order 29 applies.
- (6) At any time after the actions taken under paragraphs (1) to (5) above the appropriate authority may, subject to the harm test, publish some or all of the information provided in paragraph (1) in the Official Gazette.

Record of misconduct proceedings

- 36 (1) A record of the misconduct proceedings must be taken and in the case of a misconduct hearing that record must be verbatim.
- (2) The police officer concerned must, on request, be supplied with a copy of the record of the proceedings at the misconduct proceedings.

Appeal from misconduct proceedings: police officers other than senior officers or the Commissioner

- 37 (1) Where the police officer concerned is a police officer other than a senior officer or the Commissioner, whose case was decided at a misconduct meeting or a misconduct hearing, he may, subject to the provisions of this order, appeal—
- (a) if he admitted that his conduct amounted to misconduct or gross misconduct (as the case may be), against any disciplinary action imposed under order 34; or
 - (b) if (after he denied misconduct or gross misconduct) the person conducting the misconduct proceedings found that his conduct amounted to misconduct or gross misconduct, against that finding or any disciplinary action imposed under order 34.
- (2) The only grounds of appeal under this order are that—
- (a) the finding or disciplinary action imposed was unreasonable;

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- (b) there is evidence that could not reasonably have been considered at the misconduct proceeding which could have materially affected the finding or decision on disciplinary action; or
 - (c) there was a serious breach of the procedures set out in these Orders or other unfairness which could have materially affected the finding or decision on disciplinary action.
- (3) An appeal under this order must be commenced by the police officer concerned giving written notice of appeal to the appropriate authority—
- (a) before the end of 7 business days beginning with the first business day after the written notice and summary of reasons is given under order 35 (unless this period is extended by the appropriate authority for exceptional circumstances); and
 - (b) stating the grounds of appeal and whether a meeting is requested.
- (4) An appeal under this order must be determined by either—
- (a) the Commissioner or Deputy Commissioner; or
 - (b) in the case of an appeal arising from a misconduct hearing, the Public Service Commission.
- (5) An appeal by a senior officer or the Commissioner must be made in accordance with the Public Service Commission Regulations 2001.

Appeal proceedings

- 38 (1) This order applies where the police officer concerned requests a meeting in his written notice of appeal under order 37(3).
- (2) The person determining the appeal must determine whether the notice of appeal sets out arguable grounds of appeal and—
- (a) if he determines that it does, he must hold an appeal proceedings with the police officer concerned, subject to paragraphs (3) and (5), before the end of 5 business days beginning with the first business day after that determination; and
 - (b) if he determines that it does not, he must dismiss the appeal.
- (3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where he considers that it would be in the interests of justice to do so.
- (4) The person determining the appeal must specify a date and time for the appeal proceedings.
- (5) Where—
- (a) the police officer concerned or his police friend is not available at that time; and

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- (b) the police officer concerned proposes an alternative time which satisfies paragraph (6),
- the appeal proceedings must be postponed to the time proposed by the police officer concerned.
- (6) An alternative time must—
- (a) be reasonable; and
 - (b) fall before the end of 5 business days beginning with the first business day after the day specified by the person determining the appeal.
- (7) Written notice of the date, time and place of the appeal proceedings must be given to—
- (a) the police officer concerned;
 - (b) where the PCA was entitled to attend the misconduct proceedings to make representations under order 28(1), or to nominate a person to attend the proceedings as an observer under order 30(2), the PCA;
 - (c) where the misconduct proceedings arose from a complaint, the complainant; and
 - (d) where the misconduct proceedings arose from a conduct matter, any interested person.
- (8) Prior to the appeal proceedings, the appropriate authority must supply the person determining the appeal with a copy of—
- (a) the documents given to the person who held the misconduct proceedings as specified in order 26(1);
 - (b) the notice of appeal given by the police officer concerned under order 37(3);
 - (c) the record of the misconduct proceedings taken under order 36(1); and
 - (d) any evidence of a kind referred to in order 37(2)(b) that the police officer concerned wishes to submit in support of his appeal.

Procedure and finding of the appeal proceedings

- 39 (1) Subject to the provisions of this order, the person determining the appeal must determine the procedure at the appeal proceedings.
- (2) Subject to the provisions of this order, any interested person or complainant entitled to be given notice of the appeal proceedings under order 38(7) may attend the appeal proceedings as an observer.
- (3) Where the police officer concerned objects to the complainant or interested person being present while a submission is made in mitigation on the police officer's behalf, the person determining the appeal may require the complainant or interested person to withdraw while the submission is made.

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(4) The person determining the appeal may impose such conditions as he sees fit relating to the attendance of persons under paragraph (2) at the appeal proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal proceedings.

(5) The person determining the appeal may—

- (a) confirm or reverse the decision appealed against; or
- (b) deal with the police officer concerned in any manner in which the person conducting the misconduct proceedings could have dealt with the police officer under order 34.

(6) Before the end of 3 business days beginning with the first business day after the determination of the appeal, the police officer concerned must be given written notice of that determination with a summary of the reasons.

(7) The decision of the person determining the appeal must take effect by way of substitution for the decision of the person conducting the misconduct meeting and as from the date of the written notice of the outcome of that meeting.

(8) The appropriate authority must give the PCA written notice of the determination of the appeal with a summary of the reasons.

(9) Where the finding of the appeal is to confirm or impose a decision for dismissal, the person determining the appeal must notify the police officer of his right to submit an appeal to the Public Service Commission.

PART 5

FAST TRACK PROCEDURE FOR SPECIAL CASES

Referral of case to special case hearing

40 (1) On receipt of a statement submitted by the investigator under order 17(3), the appropriate authority must determine whether the special conditions are satisfied.

(2) In a case where special case proceedings have been delayed by virtue of order 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings it must make a further determination as to whether the special conditions are satisfied.

(3) In a case where disciplinary proceedings have been delayed by virtue of order 9(3), the appropriate authority may, as soon as practicable after it considers that such proceedings would no longer prejudice any criminal proceedings, determine whether the special conditions are satisfied.

(4) Where the appropriate authority determines that the special conditions are satisfied, unless it considers that the circumstances are such as to make it inappropriate to do so, it must certify the case as a special case and, subject to order 9(3) and paragraph (2), refer it to a special case hearing.

(5) Where the appropriate authority determines—

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- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make such certification inappropriate,

it must, if the investigation is incomplete, return the case to the investigator to complete the investigation or, in any other case, proceed in accordance with Part 4.

(6) Where the appropriate authority is to proceed in accordance with Part 4, order 18(1) must be read as if the following are omitted—

- (a) the words “order 40 and”; and
- (b) sub-paragraphs (a) and (b).

Remission of case

41 (1) Subject to paragraph (3), at any time after the case has been referred to a special case hearing but before the beginning of that hearing the appropriate authority may direct that the case be dealt with under Part 4 if it considers that the special conditions are no longer satisfied.

(2) Where a direction is made under paragraph (1), the police officer concerned must be notified before the end of 3 business days beginning with the first business day after that direction is made and the appropriate authority must proceed in accordance with Part 4.

(3) Where the appropriate authority is to proceed in accordance with Part 4, order 18(1) must be read as if the following are omitted—

- (a) the words “order 40 and”; and
- (b) sub-paragraphs (a) and (b).

Notice of referral to special case hearing

42 (1) Where a case is certified as a special case and referred to a special case hearing, the appropriate authority must as soon as practicable give the police officer concerned written notice of these matters and must supply him with a copy of—

- (a) the certificate issued under order 40(4);
- (b) any statement he may have made to the investigator during the course of the investigation; and
- (c) subject to the harm test—
 - (i) the investigator’s report or such parts of that report as relate to him (together with any document attached to or referred to in that report as relates to him); and
 - (ii) any other relevant document gathered during the course of the investigation.

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(2) The notice given under paragraph (1) must describe the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct.

(3) For the purposes of this order, “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case of the police officer concerned.

Notice of special case hearing

43 (1) The appropriate authority must specify a date for the special case hearing which must be not less than 10 and not more than 15 business days after the date on which notice is given under order 42(1) and must immediately notify the police officer concerned of—

- (a) the date, time and place of that hearing; and
- (b) the effect of order 7(1) to (3) in relation to a special case hearing.

(2) Where the PCA is entitled to attend the special case hearing to make representations under order 49(1), or to nominate a person to attend the hearing as an observer under order 51(2), the appropriate authority must notify the PCA of the date, time and place of the hearing.

Procedure on receipt of notice

44 (1) Before the end of 7 business days beginning with the first working day after the written notice is given to the police officer concerned under order 42(1), the police officer concerned must provide to the appropriate authority—

- (a) written notice of whether or not the police officer accepts that the police officer’s conduct amounts to gross misconduct;
- (b) where the police officer accepts that the police officer’s conduct amounts to gross misconduct, any written submission he wishes to make in mitigation;
- (c) where the police officer does not accept that the police officer’s conduct amounts to gross misconduct, written notice of—
 - (i) the allegations the police officer disputes and the police officer’s account of the relevant events; and
 - (ii) any arguments on points of law the police officer wishes to be considered by the person or persons conducting the special case hearing; and
- (d) written notice of the police officer’s wish to be legally represented.

(2) Within the same time period, the police officer concerned must provide the appropriate authority with a copy of any document the police officer intends to rely on at the hearing.

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Person conducting special case hearing: police officers other than senior officers or the Commissioner

45 (1) This order applies where the police officer concerned is an officer other than a senior officer or the Commissioner.

(2) The special case hearing must be conducted by a senior officer who is not an interested party.

Persons conducting special case hearing: senior officers or the Commissioner

46 Where the police officer concerned is a senior officer or the Commissioner, the special case hearing must be conducted by a panel of persons appointed by the Governor in the same manner as under order 25.

Documents to be supplied

47 (1) Prior to the special case hearing, the appropriate authority must supply the person or persons conducting the hearing with a copy of—

- (a) the notice given to the police officer concerned under order 42(1);
- (b) the other documents given to the police officer concerned under order 42(1);
- (c) the documents provided by the police officer concerned under—
 - (i) order 44; and
 - (ii) where paragraph (2) applies, order 21(2) and (3);
- (d) where the police officer concerned does not accept that the police officer's conduct amounts to gross misconduct, any other documents that, in the opinion of the appropriate authority, should be considered at the hearing.

(2) This paragraph applies where the case was certified as a special case following a determination made under order 40(4).

(3) Prior to the hearing, the police officer concerned must be supplied with a list of the documents supplied under paragraph (1) and a copy of any of such document of which the police officer has not already been supplied with a copy.

Attendance of officer concerned at special case hearing

48 (1) Subject to paragraph (2), the police officer concerned must attend the special case hearing.

(2) Where the police officer concerned informs the person conducting or chairing the special case hearing in advance that the police officer is unable to attend on grounds which the person conducting or chairing the hearing considers reasonable, that person may allow the police officer concerned to participate in the hearing by video link or other means.

(3) Where the police officer concerned is allowed to and does so participate in the special case hearing, or where the police officer concerned does not attend the special case hearing—

- (a) the police officer may nonetheless be represented at that hearing by the police officer's—
 - (i) police friend; or
 - (ii) barrister (in which case the police friend may also attend); and
 - (b) the hearing may be proceeded with and concluded in the absence of the police officer concerned whether or not the police officer is so represented.
- (4) Where the police officer concerned is represented in accordance with paragraph (3), the person representing the police officer concerned or the police officer's police friend (if different), or both, may participate using the video link or other means where such means are also used by the police officer concerned.

Participation of PCA and investigator at special case hearing

49 (1) In a case arising from a complaint, the PCA may attend a special case hearing and make written representations to the person conducting or chairing the special case hearing.

(2) The investigator or a nominated person must attend the special case hearing on the request of the person conducting or chairing the hearing to answer questions.

(3) For the purposes of this order, a "nominated person" is a person who, in the opinion of the appropriate authority has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the special case hearing.

Attendance of complainant and interested persons at special case hearing

50 (1) This order applies in the case of a special case hearing arising from—

- (a) a conduct matter; or
- (b) a complaint.

(2) The appropriate authority must notify the complainant or any interested person of the date, time and place of the special case hearing.

(3) Subject to the provisions of this order and any conditions imposed under order 51(3), the complainant or any interested person may—

- (a) attend the special case hearing as an observer; and
- (b) be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(4) Where the police officer concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the police officer's behalf, the person conducting or chairing the special case hearing may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made.

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(5) For the purposes of this order, a person has a special need if, in the opinion of the person conducting or chairing the special case hearing, he has a disability or learning difficulty, or does not have sufficient knowledge of English, so that he is unable to participate in or understand the special case hearing.

Attendance of others at special case hearing

51 (1) Subject to orders 49 and 50 and this order, the special case hearing must be in private.

(2) A person nominated by the PCA may attend a special case hearing which arises from a case in relation to which the PCA made a recommendation or direction which the appropriate authority accepted.

(3) The person conducting or chairing the special case hearing may impose such conditions as he sees fit relating to the attendance of persons under order 50 or this order at the special case hearing (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the hearing.

Procedure at special case hearing

52 (1) Subject to these Orders, the person conducting or chairing the special case hearing will determine the procedure.

(2) The special case hearing must not proceed unless the police officer concerned has been notified of the effect of order 7(1) to (3) in relation to a special case hearing.

(3) Subject to paragraph (4), the person conducting or chairing the special case hearing may from time to time adjourn the hearing if it appears to him to be necessary or expedient to do so.

(4) The special case hearing must not, except in exceptional circumstances, be adjourned solely to allow the complainant or any interested person to attend.

(5) No witnesses, other than the police officer concerned, must give evidence at the special case hearing.

(6) The person representing the police officer concerned may—

(a) address the hearing in order to do any or all of the following—

(i) put the case of the police officer concerned;

(ii) sum up that case;

(iii) respond on behalf of the police officer concerned to any view expressed at the proceedings; and

(iv) make representations concerning any aspect of proceedings under these Orders; and

(b) if the police officer concerned is present at the proceedings or is participating in them by video link or other means in accordance with order 48(2), confer with the police officer concerned.

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(7) Where the person representing the police officer concerned is a barrister, the police friend of the police officer concerned may also confer with the police officer concerned in the circumstances mentioned at paragraph (6)(b).

(8) The police friend or barrister of the police officer concerned may not answer any questions asked of the police officer concerned during the special case hearing.

(9) The person conducting or chairing the special case hearing may allow any document to be considered at the hearing notwithstanding that a copy of it has not been supplied—

- (a) by the police officer concerned to the appropriate authority in accordance with order 44(2); or
- (b) to the police officer concerned in accordance with order 42(1).

(10) Where evidence is given or considered at the special case hearing that the police officer concerned—

- (a) on being questioned by an investigator, at any time after he was given written notice under order 14(1) of these Orders; or
- (b) in submitting any information or by not submitting any information at all under order 44 (or, where paragraph (12) applies, order 15(1) or 21(2) or (3)),

failed to mention any fact relied on in the police officer's case at the special case hearing, being a fact which in the circumstances existing at the time, the police officer concerned could reasonably have been expected to mention when so questioned or when providing such information, paragraph (11) applies.

(11) Where this paragraph applies, the person or persons conducting the special case hearing may draw such inferences from the failure as appear proper.

(12) This paragraph applies where the case was certified as a special case following a determination made under order 40(4).

(13) The person or persons conducting the special case hearing must review the facts of the case and decide whether or not the conduct of the police officer concerned amounts to gross misconduct.

(14) The person or persons conducting the special case hearing must not find that the conduct of the police officer concerned amounts to gross misconduct unless—

- (a) he is or they are satisfied on the balance of probabilities that this is the case; or
- (b) the police officer concerned admits that it is the case.

(15) At a special case hearing conducted by a panel, any decision must be based on a majority (with the chair having the casting vote if necessary), but must not indicate whether it was taken unanimously or by a majority.

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(16) Where the police officer concerned is a senior officer or the Commissioner, the persons conducting the special case hearing must, as soon as practicable after the hearing, submit a report to the appropriate authority, together with a copy to the senior officer concerned or Commissioner concerned, setting out—

- (a) the finding of the persons conducting the hearing under paragraph (13);
- (b) the reasons for that finding;
- (c) if the finding was that the conduct of the police officer concerned amounted to gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (d) any other matter arising out of the hearing which they desire to bring to the notice of the appropriate authority

(17) In any case in which the Commissioner was entitled to attend to make representations under order 49(1), the persons conducting the special case hearing must send a copy of any report to the Commissioner.

Outcome of special case hearing

53 (1) Where the person or persons conducting the special case hearing in the case of a police officer other than a senior officer find that the conduct of the police officer concerned amounts to gross misconduct, he or they must impose disciplinary action, which may be—

- (a) subject to paragraphs (3) and (4), a final written warning;
- (b) extension of a final written warning in accordance with paragraph (3); or
- (c) dismissal without notice.

(2) On receiving a report under order 52(16) containing a finding that the conduct of the police officer concerned amounts to gross misconduct, the appropriate authority must impose disciplinary action, which may be—

- (a) subject to paragraphs (3) and (4), a final written warning;
- (b) extension of a final written warning in accordance with paragraph (3); or
- (c) dismissal without notice.

(3) Where, on the date of the assessment of the conduct under order 11(1) of these Orders, the police officer concerned had a final written warning in force—

- (a) a final written warning must not be given; and
- (b) but subject to paragraph (5), in exceptional circumstances, the final written warning may be extended.

(4) Where a final written warning is extended under paragraph (3), that warning must remain in force for a period of 18 months from the date on which it would otherwise expire.

- (5) A final written warning may be extended on one occasion only.

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(6) Where the person or persons conducting the special case hearing in the case of a police officer other than a senior officer find that the conduct of the police officer concerned does not amount to gross misconduct, he or they may—

- (a) dismiss the case; or
- (b) return the case to the appropriate authority to deal with in accordance with Part 4 at a misconduct meeting or, if the police officer concerned had a final written warning in force at the date of the assessment of conduct under order 11(1), at a misconduct hearing.

(7) On receiving a report under order 52(16) containing a finding that the conduct of the police officer concerned does not amount to gross misconduct, the appropriate authority may—

- (a) dismiss the case; or
- (b) deal with the case in accordance with Part 4 at a misconduct meeting or, if the police officer concerned had a final written warning in force at the date of the assessment of conduct under order 11(1), at a misconduct hearing.

(8) Where the case is returned to the appropriate authority under paragraph (6)(b) or dealt with by the appropriate authority under paragraph (7)(b), the appropriate authority must proceed in accordance with Part 4, subject to order 18(1) being read as if the following are omitted—

- (a) the words “order 40 and”; and
- (b) sub-paragraphs (a) and (b).

(9) Except in the case of extending a final written warning, the disciplinary action must have effect from the date on which it is notified to the police officer concerned.

(10) Where the question of disciplinary action is being considered, the person or persons considering it—

- (a) must have regard to the record of Service of the police officer concerned as shown on his personal record;
- (b) may consider such documentary evidence as would, in his or their opinion, assist him or them in determining the question; and
- (c) must give—
 - (i) the police officer concerned; and
 - (ii) his police friend or his barrister, an opportunity to make oral or written representations.

Notification of outcome

54 (1) The police officer concerned must be informed of—

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- (a) the finding of the person or persons conducting the special case hearing; and
- (b) in a case other than one to which order 33 (senior officers: further hearing) applies, any disciplinary action imposed under order 34(1) or any action taken under order 34(6), as the case may be,

as soon as practicable and in any event must be provided with written notice of the relevant matters and the reasons before the end of 5 business days beginning with the first business day after the conclusion of the special case hearing.

(2) In a case to which order 33 applies, the police officer concerned must be informed of any disciplinary action imposed under order 34(2) or any action taken under order 34(7), as the case may be, as soon as practicable, and in any event must be provided with written notice of the action (if any) and the appropriate authority's reasons before the end of 5 business days beginning with the first business day after the conclusion of the hearing held under order 33.

- (3) A written notice under this order must include notice of the right of the—
 - (a) police officer concerned, who is not a senior officer or the Commissioner, to appeal proceedings under the process as set out in order 37; or
 - (b) senior officer concerned or the Commissioner to an appeal hearing.

(4) The appropriate authority must send a copy of any written notice under this order to—

- (a) the PCA, in any case in which the PCA was entitled to attend the special case hearing to make representations under order 49(1); and
- (b) the complainant and any interested person, in any case to which order 50 applies.

(5) At any time after the actions taken under paragraphs (1) to (4) above the appropriate authority may, subject to the harm test, any information relating to the matters detailed in paragraph (1), to be published in the Official Gazette.

Record of special case hearing

55 (1) A verbatim record of the proceedings at the special case hearing must be taken.

(2) The police officer concerned shall, on request, be supplied with a copy of the record of the proceedings at the special case hearing.

PART 6

RECORD KEEPING

Record of disciplinary proceedings

56 (1) Subject to paragraph (2), the Commissioner must cause a record to be kept of disciplinary proceedings and special case proceedings brought against every police officer

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concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the police officer concerned.

(2) Where the police officer concerned is a senior officer or the Commissioner, the Governor must cause such a record to be kept.

Revocation and transitional provisions

57 (1) Subject to paragraph (2), the Police (Discipline) Orders 1975 are revoked.

(2) Where an allegation in respect of conduct by a police officer comes to the attention of an appropriate authority before these Orders come into operation, the Orders referred to in paragraph (1) will continue to have effect.

SCHEDULE

(order 2)

STANDARDS OF PROFESSIONAL BEHAVIOUR

Honesty and integrity

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

Authority, respect and courtesy

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

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

Equality and diversity

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

Use of force

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

Orders and instructions

5 (1) Police officers only give and carry out lawful orders and instructions.

(2) Police officers abide by police orders, police codes of practice, Service policies and lawful orders.

Duties and responsibilities

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

Confidentiality

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

Fitness for duty

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

Discreditable conduct

9 (1) Police officers behave in a manner which does not discredit the Service or undermine public confidence in it, whether on or off duty.

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(2) 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

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

Made this 29th day of November 2016

Acting Governor

[Amended by:

2018 : 57]