
WILTSHIRE POLICE & POLICE AND CRIME COMMISSIONER



Police Staff/OPCC Disciplinary Procedure

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PROCEDURE OVERVIEW

The procedure does not apply in respect of employment terminating when employees are dismissed on the basis of unsuitability for confirmation of employment at the end of the probationary period (Police Staff Probationary Procedure refers).

This procedure is to be used in matters which relate to an employee's **conduct** and applies to formal disciplinary action. If the matter in question relates to an individual's **capability and/or performance**, then this procedure should not be used. You should refer to the separate '**Managing Performance and Capability Procedure**'.

In some cases, managers will consider counselling and/or training and development measures which may be more appropriate as a means of addressing performance which is below standard or for minor matters of unsatisfactory conduct. In this respect, the Performance Development Review (PDR) should be utilised should these informal measures not resolve the problem it may be necessary for more formal action to be invoked.

Managers should ensure that expected standards of work and behaviour are clearly communicated to staff.

Records will be kept detailing the nature of any breach of disciplinary rules, the employee's mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records will be retained on the employee's personal file in accordance with The Procedure and subject to any statutory requirements as detailed within the Data Protection Regulation (GDPR) or the Data Protection Act 2018 and/or the Police Reform Act 2002.

GLOSSARY OF TERMS

Term	Meaning
WP	Wiltshire Police
OPCC	Office of the Police Crime Commissioner
ACAS	Advisory, Conciliation and Arbitration Service
HR	Human Resources Department
PSD	Professional Standards Department
SLA	Service Level Agreement
IO	Investigating Officer
Centurion	PSD Monitoring Database

RELATED POLICIES, PROCEDURES and OTHER DOCUMENTS

[Issue Resolution and Dignity at Work Policy and Procedure](#)

[Probationary Policy and Procedure for Police Staff](#)

[Managing Performance and Capability Procedure](#)

[Redundancy and Redeployment \(Staff\) Procedure](#)

[Code of Ethics](#)

[ACAS Code of Practice on Disciplinary Procedures](#)

AUTHORISED PROFESSIONAL PRACTICE

[Professional Standards](#)

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GENERAL DATA PROTECTION REGULATIONS 2018

Any information relating to identifiable individuals recorded as a consequence of this procedure is to be processed in accordance with the General Data Protection Regulations (GDPR) 2018, Data Protection Act 2018 and/or the Police Reform Act 2002.

FREEDOM OF INFORMATION ACT 2000

This document has been assessed as suitable for public release.

MONITORING and REVIEW

This procedure will be reviewed every three years in the light of any national policy or procedural change or due to changes to law or Organisation strategy or at such other times as may become necessary.

WHO TO CONTACT ABOUT THIS PROCEDURE

The Head of Human Resources, Operations is responsible for this procedure. All queries relating to this procedure should be directed to the HR Advisory team or the People Services Centre.

1. PURPOSE, PRINCIPLES & SCOPE OF THE DISCIPLINE PROCEDURE

1.1 Purpose & Scope

Standards of conduct and performance are required in any organisation to ensure order, the effective operation of the business and a safe and healthy working environment. In the Police Service expectations of conduct and performance standards are high, and reasonably so as a consequence of the type of work we do, the access we have to privileged and often sensitive information, and the issues that we can be required to deal with, within our day to day business. Public confidence in all members of the Police Service is vital. Conduct that may damage this is a risk to the organisation.

This discipline procedure is the means by which the standards of reasonable behaviour for police staff within the Organisation are communicated and maintained. The National Police Code of Ethics has been adopted by the Organisation to establish clear standards and expectations (see [Appendix 2](#)).

Action under this procedure should not be seen solely as a means of applying sanctions but also as a means of encouraging learning and improvement in unacceptable behaviour and conduct.

1.2 Legislative Compliance

This document has been drafted to comply with the principles of the Human Rights Act. Proportionality has been identified as the key to Human Rights compliance, this means striking a fair balance between the rights of the individual and those of the rest of the community. There must be a reasonable relationship between the aim to be achieved and the means used.

Equality and Diversity issues have also been considered to ensure compliance with the Equality Act 2010 and meet the Organisation's legal obligation in relation to the equality duty. In addition, Data Protection, Freedom of Information and Health and Safety Issues have been considered. Adherence to this procedure will therefore ensure compliance with all relevant legislation and internal policies.

This procedure is published on the Human Resources Intranet site (on firstpoint) and it is the responsibility of all police staff and line managers to make themselves aware of its content and to ensure it is applied consistently.

Where a matter arises that may require consideration under this procedure, further advice is available via the HR Intranet site, from the HR Helpdesk, the local HR Officer and HR Manager and from Unison should you be a member. Managers must seek such support before embarking upon any formal action under this procedure.

This procedure applies to all police staff in the employment of Wiltshire Police and the OPCS, with the following exceptions, where termination of employment is:

- as the result of redundancy. A separate procedure is followed as set out in the Redundancy and Redeployment (Staff) Procedure.
- the natural termination of a temporary employee's fixed term contract of employment.
- due to poor performance, capability, competence or attendance A separate procedure is followed as set out in the Police Staff Capability Procedure.
- where an employee is still within their probationary period. A separate procedure is followed as set out in the Probationary Policy and Procedure for Police Staff.

In addition, Point 12 “Failure to comply with social distancing or hygiene measures at work”, apply to all members of Wiltshire Police, including all Officers.

1.3 Principles

The following are the principles upon which this procedure is based. Further details of how they apply in practice follow within the main body of the document:

- The Police Staff Code of Conduct is incorporated within the procedure and sets the expected standards (see [Appendix 1](#)).
- Informal action will be considered initially to resolve a problem wherever appropriate.
- No disciplinary action will be taken against an employee until the case has been investigated.
- If formal action is invoked, the employee will be advised of the nature of the allegation against them and will be given the opportunity to state their case before any decision is made at a disciplinary hearing.
- Employees will be provided with written evidence, relevant witness statements and any investigating officer's report in advance of a disciplinary hearing.
- At all stages of the procedure, the employee will have the right to be accompanied by a Unison representative or a colleague. This person must be employed by Wiltshire Police. However, it would not normally be reasonable for an employee to insist on being accompanied by a colleague whose presence would prejudice the hearing nor would it be reasonable for an employee to ask to be accompanied by a colleague from a remote geographical location if someone suitable and willing was available on site. In exceptional circumstances a Unison regional representative may be allowed.
- No employee will be dismissed for a first breach of the Police Staff Code of Conduct, except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
- An employee has the right of appeal against any disciplinary action.
- Procedural timescales as laid down within these procedures may be varied by mutual consent.
- This procedure may be implemented at any stage if the employee's alleged misconduct warrants this.
- There may be occasions where consideration of a matter through this procedure may result in a decision where it is deemed more appropriate to consider the matter under the Capability Procedure. Unsatisfactory sickness absence or work performance not attributed to discipline will be dealt with under a separate Capability Procedure
- In cases where medical advice is required the Occupational Health Department will be consulted.
- Amendments to this procedure except those which arise consequentially from legislation or case law shall be the subject of consultation with Unison.
- This procedure works in conjunction with other Organisation policies and procedures i.e. Substance and Alcohol Misuse Policy & Procedure, Acceptable Use of Email, the Internet and Fixed and Mobile Telephones Policy.

1.4 Conduct of Trade Union officials

Although normal disciplinary standards apply to their conduct as employees and such matters will be dealt with under this procedure, no disciplinary action will be taken against a Unison Executive Officer until the circumstances have been discussed with a full time official of Unison and the Head of People Services and Development.

No disciplinary action will be taken against any employee in respect of alleged discipline which arises from undertaking Unison duties or activities until the matter has been fully discussed with the Head of Human Resources.

Any complaints made against a Unison representative as a result of Unison duties will be investigated by a Unison regional officer in line with their existing procedures.

1.5 Involvement of the Professional Standards Department

PSD are involved with investigating conduct for police staff, police officers, members of the Special Constabulary, criminal investigations and public complaints for all staff groups. PSD Investigating Officers and the HR Advisors work closely together in conjunction with OHU to ensure appropriate information sharing, considerations and welfare have been considered and put in place throughout the process.

The Organisation Anti Corruption Unit (ACU) will monitor the use of email and other IT systems on behalf of the whole Organisation and so will pick up any potential issues for individuals via those processes and these will be passed onto PSD for investigation consideration.

1.6 Health & Safety

There are no apparent risks to the health and safety of any individuals associated with the correct implementation of this procedure. However it is recognised that staff may experience heightened anxiety as a normal response to the situation. Confidential welfare support is available to any individual subject to these procedures and HR will work with the individual alongside OHU to ensure the appropriate welfare is put in place.

2. INFORMAL ACTION

2.1 When to use Informal Action

The day to day supervision of staff is part of the normal management process. Part of that responsibility is to highlight to an individual at the earliest possible stage, any shortcomings in their performance or conduct.

Unless a matter is serious or there are multiple or repeated incidents, informal action is a more appropriate response to minor offences rather than formal disciplinary action.

2.2 Resolving Issues Informally

Informal action is outside of the formal disciplinary procedure but, should there be a need to, may be referred to at a later date. An informal meeting should not turn into a formal investigatory interview as this would deny the employee certain rights. If during the meeting, the matter appears more serious than originally thought, then the informal interview should be terminated and the employee informed that the matter will be handled under the formal discipline procedure with rationale for this decision.

Whilst there is no procedural necessity for Unison representatives to be in attendance at an informal meeting, should the individual member feel it would be helpful to them of having them in attendance, the organisation is happy for them to do so. An informal meeting however, would not necessarily be delayed as a result of the representative not being available.

Informal action has the potential to cover a wide range of issues, and will vary according to the case. However, there are some basic points that should always be considered:

- Clear advice about the area for improvement should be given as part of a constructive, two way discussion.
- Clear standards and expectations should be outlined, discussed and an informal support plan mutually agreed.
- Review periods should be set and followed up.
- Further training or coaching may be of value and if this need is identified, this should be provided with minimum delay.
- The discussion should cover any concerns the individual has, both inside and outside of work which may be affecting their performance or conduct. Where appropriate, other adjustments may be of value on a temporary or permanent basis (e.g. review of working patterns or hours, workload review etc.).
- If there are health concerns, then Occupational Health advice should be sought via a management referral at an early stage.
- Line managers are expected to discuss these with the individual at the earliest opportunity and agreements should be reached as to the necessity of any support plan, targets; timescales set and follow up action required. This should be clearly documented and added to the ePDR system.
- Where improvements are forthcoming, this should be recognised, acknowledged to the individual and the matter closed.
- These discussions should always take place privately.

2.3 Relationship with the Issue Resolution Procedure

- (i) There may be occasions where an issue that initially appears to be suitable for the Issue Resolution Procedure, leads to an emergence of potential disciplinary issues. In such cases, the Manager will consult the HR department.
- (ii) Except in cases of gross misconduct, which will be dealt with immediately under this disciplinary procedure, any misconduct activity may not necessarily commence until the issue resolution process has been resolved. Following conclusion of this process, a decision will be made as to the appropriateness of a misconduct assessment being undertaken and as a result, any disciplinary action taken.
- (iii) It is acknowledged that an aggrieved member of staff instigating the issue resolution process may not wish to make misconduct allegations against another member of staff. However, whilst their views will be taken into consideration, there may be circumstances where the disciplinary process may need to be instigated such as where the allegation is deemed too serious, or there are compelling issues of public or organisational interest.

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2.4 Escalating to the Formal Procedure

If subsequent informal action fails to achieve the desired improvements, then the individual should be notified that any continued lack of improvement will mean that the matter will be escalated to be considered under the formal discipline procedure.

If no improvement is then forthcoming, the supervisor or line manager should refer the matter on to their immediate line manager for consideration under the formal procedure.

3. PROBATIONARY PERIOD

Individuals, who are subject to the disciplinary process during their probationary period, should refer to the Probationary Policy and Procedure for Police Staff.

4. FORMAL PROCEDURE

4.1 Initiating the Formal Procedure

The formal discipline procedure should be used where informal action has failed to achieve the desired improvement in conduct OR where a matter is more serious such that informal action would be inappropriate.

In **ALL** cases the line manager must consult with HR to consider if a formal investigation is necessary. No formal action should be taken until this process is completed. This will ensure consistency of approach and application of this procedure.

Other Considerations

4.2 Inability to Participate in the Formal Procedure due to Ill-Health

In circumstances where an individual is unable to participate within the formal procedure due to ill-health, wherever possible, the Organisation will make the necessary reasonable adjustments in order for the process to continue. Wherever reasonably practicable, the individual will be given the opportunity to physically attend and be accompanied at the disciplinary investigation/hearing in order to respond to the allegations made against them. Should an individual be unable to physically attend, other options will be considered and put forward as options to enable the progression of the process.

In accordance with the Attendance Management Procedure, individuals who are off sick for more than 7 days are required to provide a Fit Note from a GP. The Occupational Health Department may be consulted for advice via a management referral in cases of persistent non-attendance.

In the event of the employee not attending a disciplinary hearing as arranged, the hearing may be reconvened to a later date at the discretion of the Chair, who will take into consideration the reasons for non-attendance due to ill health in making their decision.

Persistent failures to attend due to medical grounds will lead to the Head of HR taking advice from the Occupational Health Department in addition to discussion with the Unison representative as to whether the hearing should take place in the absence of the individual against whom the allegations have been made.

4.3 Other Non-Attendance

If an employee persistently refuses to take part in the disciplinary procedure (including the appeals process), they will be advised that it will be in their best interest to provide some justification or written account for their actions.

However, if they still refuse, having attempted to convince them of the benefits of participating in the investigation, appearing and presenting their case at any disciplinary hearing that may be convened, they will then be written to formally explaining that a disciplinary decision will be taken based on the information the Organisation has to hand and that a decision may then be taken in their absence.

5. FORMAL DISCIPLINARY INVESTIGATIONS

The purpose of the investigation is to identify facts and gather evidence that enables a decision to be made as to whether or not there is a case to answer. No disciplinary action will be taken against an employee until the case has been investigated and assessed.

An appropriate Manager or Investigating Officer from Professional Standards will be appointed to investigate the allegation.

The investigation stage will vary according to the route through which the misconduct has been identified and the nature of the alleged misconduct. Advice should be taken from the HR Team in the first instance.

Discipline matters in relation to police staff may come to light in different ways. Examples of the common routes of identification are as follows:

- via a line manager where informal action has failed to produce the desired sustained improvement.
- via a line manager where the matter is more serious and so informal action would not be appropriate.
- via PSD where an external complaint has been received about the conduct of a member of police staff e.g. member of the public or external stakeholder.
- via PSD where its normal monitoring processes have identified a case of potential inappropriate use of email/IT systems/Social Media.
- via PSD regarding a matter involving both a police staff member and an officer.
- via the PSD anonymous contact system
- Whistleblowing.

In **ALL** cases, the matter must be referred to HR prior to any formal action being taken. This will ensure consistency of approach and application of this procedure.

HR will advise and/or liaise with PSD regarding the most appropriate way in which a matter is to be investigated where appropriate.

5.1 Conduct Assessments

Once a potential conduct matter has come to light, this will be forwarded to the Organisation Assessment Officer (AO) who will determine as to whether or not further fact finding is necessary and as to whether or not the matter is considered to be "Below or Above Threshold".

If considered below threshold, the matter will be passed back to an appropriate manager locally to deal with.

If above, it will be passed to the organisation's Authorised Authority (AA) who will determine as to whether or not further fact finding is necessary and once in possession of all appropriate detail, will determine as to whether or not:

- a. The matter is considered to be Misconduct or Gross Misconduct, or,
- b. The misconduct is so serious that either suspension from post or suspension from Organisation is appropriate.

This investigation will then be passed onto a PSD Investigating Officer (IO) who will be responsible for conducting the formal investigation.

5.2 Conducting an Investigation

The purpose of the investigation is to identify facts and gather evidence that enables a decision to be made as to whether or not there is a case to answer. No disciplinary action will be taken against an employee until the case has been fully investigated.

An individual under investigation will be informed as soon as practicably possible in writing of the:

- nature of the allegation and standards breached
- name of the Investigating Officer
- right to be accompanied throughout the process by a Unison representative or a colleague.

During the course of the investigation, if evidence comes to light which in the opinion of the IO warrants the amendment of the allegations, the IO may resubmit their rationale to the AA for reassessment. The employee must be informed of any changes in the nature of the allegations.

Care must be taken to deal with the employee in a **fair and reasonable** manner. The nature and extent of misconduct investigations will depend upon the seriousness and complexity of the matter in question. It should be **proportionate** to the allegation made in terms of the time spent, the depth and detail.

IO's are mindful that their role is to gather evidence surrounding the allegation and to look for **evidence that supports the employee's case as well as evidence against.**

Any investigation conducted by the PSD IO's are done so in line with the PSD Charter (See [Appendix 4](#))

5.3 Investigations as a result of public complaints

An appropriate manager or PSD Investigator, if appropriate, will be assigned to investigate an allegation of misconduct arising from a public complaint. The purpose of the investigation is to establish the facts surrounding the complaint and allegations.

The investigation may be required to be conducted in accordance with The Police Reform Act 2002 (The Act) should the investigation arise as a result of a public complaint.

The Act sets out a framework governing how complaints by members of the public against employees or conduct matters arising out of civil proceedings should be dealt with.

The Act created the Independent Office for Police Conduct (IOPC). Certain complaints or conduct matters, if of a serious nature, may be investigated by the IOPC or supervised by them. Matters of a less serious nature will be investigated internally by PSD.

At the end of an investigation pursuant to the Act, the Investigating Officer is required to inform the member of the public making the complaint of the conclusions from the investigation. The member of the public may be informed that: -

- (a) There is not enough evidence to uphold their complaint. In such circumstances no formal disciplinary action would be taken against the employee subject of the complaint.
- (b) The Organisation has decided to improve or amend its procedures in response to the complaint. In such circumstances no formal disciplinary action would be taken against the employee subject of the complaint.
- (c) The Organisation intends to take formal disciplinary or other management action against the member of staff. In such circumstances either disciplinary action in accordance with procedure would be taken against the employee subject of the complaint, or advice may be given including the development of an action plan in accordance with the ePDR process.
- (d) The complaint may be referred to the Crown Prosecution Service for advice on criminal prosecution. However, in such circumstances, disciplinary action in accordance with this procedure may still be taken against the employee without waiting for the outcome of any criminal investigation.

If a member of the public is not satisfied with the manner in which their complaint has been dealt with they may appeal to the relevant appeal body (Chief Constable) or the IOPC. The complainant cannot appeal where there has been a finding of case to answer and action has been taken as a result of this finding. Should there be a finding of no case to answer following an investigation and they are not happy with this finding, they may appeal this decision and have a period of 28 days to do this on notification of the decision.

The IOPC can direct the organisation to take further action, including disciplinary action, against an employee. This is however a direction (recommendation), and therefore any such action will be taken in accordance with this procedure.

When arranging disciplinary hearings and providing notice of such, special arrangements may have to be made where employees work in isolated locations or on shifts extending beyond the normal office hours. The welfare of the employee will always be given primary consideration.

Whilst the presumption will be that any warning or dismissal issued in accordance with this procedure will be confidential, disclosure may be necessary in accordance with the policies of the organisation, statutory or court requirements.

Investigations against police staff and management intervention can be carried out simultaneously.

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6 INVESTIGATION PRINCIPLES

No disciplinary action will be taken against an employee until the case has been investigated and all relevant facts have been considered.

An appropriate Manager or Investigating Officer from Professional Standards will be appointed to investigate the allegation.

Suspension from duty on full pay, or transfer to another role or department may be considered as a precautionary measure during the investigation (see section 11).

The investigation should aim to be completed at the earliest opportunity. The investigation into a public complaint should if reasonably practicable, be completed within 90 days and be subject to regular reviews within that time frame in accordance with IOPC guidelines.

In the event of a perceived breach of the Standards of Professional Behaviour, it may be necessary to seek specialist advice which should be sought at the earliest opportunity. This is to ensure that appropriate advice is provided regarding the nature and seriousness of the breach, and to consider if any criminal investigation is necessary.

The investigator will give the member of staff a 'written notice' informing them of the investigation. This will be supplied at the earliest opportunity and no later than 4 weeks except in exceptional circumstances, such as where disclosure may prejudice an on-going criminal investigation.

Within 10 working days of receipt of the 'written notice' (unless the period is extended by mutual agreement), the staff member (or representative) may provide an explanation or a written report and or any relevant documents. This will be supplied to the investigator.

At all stages of disciplinary hearings and interviews, the employee will have the right to be accompanied by a recognised UNISON representative or work colleague employed by the Organisation (not acting in a legal capacity)

- (a) the employee and their representative will be updated every 4 weeks as to the progress of the investigation.
- (b) When an investigator wishes to interview the staff member, they will mutually agree a time and date for the interview. However, the staff member may suggest alternative times and dates, within 5 working days of the original date specified and the Investigator will give this due consideration.

7 ON COMPLETION OF THE INVESTIGATION

When the investigation is complete the report and all supporting material should be passed to the Head of HR/Head of PSD. It will be for the Head of HR/PSD to determine how the case will be progressed. The period given for the review and determination of the IO report is 10-15 working days. If there is however a delay in this being achieved, the individual will be given a full update within this timescale and will provide a realistic expectation in regards to when this will be completed along with a reason for the delay.

In either case, in consultation with HR, consideration should be given as to whether there is a case to answer. Three options are available at this stage:

1. If there is **no case to answer** i.e. insufficient evidence to support or substantiate the allegation, the employee will be informed of this in writing by the senior manager and advised that no further action will be taken. All references to this matter will be

expunged from the individual's personal file for disciplinary purposes and the record will be clearly marked 'Case Unfounded' by the Professional Standards Administration Team.

2. The senior manager may decide that **no formal action is necessary** but that the matter is better **dealt with informally** by giving advice to the member of staff, setting support plans etc. Any subsequent monitoring will be their responsibility. This will be recorded on ePDR.
3. If the senior manager considers **formal conduct action is necessary**, they should request that HR set up a formal disciplinary hearing so that the case may be heard in full.
4. The Head of HR/PSD may consider the matter in question relates more to an individual's **capability and/or performance in which case, the 'Unsatisfactory Performance and Capability Procedure'** should be referred to. A record of this will be kept on Centurion, the database maintained by People Services and PSD.

No sanction will be issued until a hearing is completed.

It should be noted that interviews carried out under the Police Staff Disciplinary Procedures are not conducted under caution. Where staff are invited for meetings or interviews particularly as part of a large scale complex investigation, these meetings or interviews may be tape recorded with mutual and prior agreement of both parties. Individuals are permitted to be accompanied by a Unison representative or colleague at these interviews which are carried out by the IO. This is inclusive of PSD interviews.

8 FORMAL DISCIPLINE MEETINGS/HEARINGS

8.1 Organisation of a Formal Meeting/Hearing

8.1.1 Purpose

Following an investigation the purpose of the meeting/hearing is to formally determine whether or not the employee is in breach of the Police Staff Code of Conduct, the Code of Ethics, or Standards of Professional Behaviour by considering all available information, including admissions, fairly and impartially to decide what, if any, disciplinary action should be taken.

If the conduct has been assessed as Misconduct, this will result in a Misconduct MEETING which will be chaired by an appropriate Manager at grade W10/Inspector rank or above, and will be supported by an HR Advisor.

If the conduct has been assessed as Gross Misconduct, this will result in a Misconduct HEARING which will be chaired by an appropriate Manager at grade W13/Superintendent or above, and will be supported by a Senior HR Manager, grade W10 or above.

8.1.2 Timescales

The timescales outlined in this section are designed to reflect the ACAS Code of Practice that states that a conduct meeting should be held without unreasonable delay whilst allowing an employee reasonable time to prepare their case.

However, it is recognised that some cases may be more complex, involving many witnesses or large amounts of written material for example. In these circumstances, following discussions from either side, HR will seek mutual agreement to vary these timescales, whilst always seeking to complete the process in a timely manner.

8.1.3 Setting Up the Discipline Meeting/Hearing

This is normally undertaken by HR in liaison with the Chair and the PSD Investigating Officer.

An employee will be given a minimum of 10 working days notice, in writing, of the date, time and location of the Discipline Meeting/Hearing, unless an earlier date is mutually agreed.

This written notification will also include:

- Name of Chair conducting the meeting and notification of any other attendees including that of the HR representative
- Details of the allegation(s) made
- Whether or not the allegations have been assessed as Misconduct or Gross Misconduct
- Their right to be accompanied by a Unison representative or a colleague
- Their right to call witnesses and submit written statements or representations
- Copies of any written material that will be referred to at the meeting (at minimum this will always include the investigation report)

8.1.4 Prior to the Discipline Meeting/Hearing

Not later than **5 working days** before the date of the hearing, the employee shall supply to HR:

- any written statements or representations they wish to be considered at the meeting/hearing (failure to do so will result in such papers not being considered at the hearing)
- details of any witnesses they wish to call including their rationale for the request
- if not already known, details of their representative (if any)

Not later than **3 working days** before the date of the meeting/hearing, the HR Department will ensure that papers are circulated to all parties and confirm the attendance of witnesses for both sides.

8.1.5 Witnesses

Providing advance notice is given relevant witnesses may be called by either party where this is considered necessary, having consulted with the relevant parties beforehand. Where witnesses are called in addition to witness statements being provided beforehand, the number of witnesses called will be limited to that deemed necessary for a fair hearing of the case. The employee and/or their representative have a right to raise points about the testimony of a witness.

The Chair will make the decision based on the information provided as to whether or not the witness's attendance is mandatory or optional.

8.1.6 Cancellation/Delay of the Disciplinary Meeting/Hearing

If a scheduled discipline meeting/hearing is cancelled by the Organisation, an explanation will be provided and a rescheduled meeting will normally take place within 5 working days or as soon as practicably possible. This would be on the assumption that the details of any representative and submission of written statements had already been complied with.

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In the event of the employee making a request for an alternative date or not attending the meeting/hearing as arranged, the employee should also provide an explanation for the request and a rescheduled meeting/hearing may be reconvened to a later date at the discretion of the Chair. The Chair will take into consideration the reason for the request or non-attendance in making their decision. Multiple requests for an alternative date or failure to attend without good cause on more than one occasion is likely to result in the case being heard in the employee's absence and consideration being given to the evidence made available to Chair at that time only.

8.1.7 Overview of Meeting/Hearing Structure

Present at a formal Discipline Meeting/Hearing will normally be:

- Chair
- Investigating Officer
- Member of HR as technical support for the Chair
- Note Taker (in the event of a Meeting. A Hearing will be recorded)
- Employee under investigation
- Employee's representative/fellow worker (if employee chooses to have one)
- Agreed witnesses (who will be called in to give their evidence and then asked to leave)

However, the Chair reserves the right to reduce the number of individuals present where a case is straightforward and is not being contested by the individual. In such circumstances, a note taker and Investigating Officer may not be necessary to attend the Meeting/Hearing. Any such changes will be agreed with the individual prior to the Meeting/Hearing. A Unison representative or colleague will always be present if requested.

8.2 Outcome of the Disciplinary Meetings/Hearings

After hearing all the evidence presented, the Chair will normally adjourn to consider the matter and to take advice as appropriate. They will then reconvene the meeting/hearing to notify the employee of their findings.

If it is not possible to provide a decision on the same day, the Chair will recall the parties no later than 3 working days after the initial meeting/hearing to give their decision.

In either event, the decision will be **confirmed in writing** to the employee within **5 working days of the Chair's decision** being given. This letter will confirm any rights of appeal.

9. DISCIPLINARY OUTCOMES

9.1 No Case to Answer

Having heard the evidence, if the Chair of the hearing considers that the case against the employee is unfounded, the employee and their representative will be informed of this at the Meeting/Hearing (following an adjournment) and it will be confirmed in writing within 5 working days of the actual Meeting/Hearing. All references to this matter will be expunged from the individual's personal file for disciplinary purposes and the record will be clearly marked 'Case Unfounded' by the Professional Standards Administration Team.

9.2 Written Warning

If the offence is of a serious nature, a first written warning should be given. This warning will set out the nature of the issue and outline the possibility of dismissal if no improvement takes place. This will require an improvement in the employee's conduct within a timescale deemed appropriate by the chair, failing which, further disciplinary action will be taken. An appropriate formal support plan should be put in place to set out the required improvements, how these will be measured and achieved.

Whilst 12 months is the normal time period for a written warning to remain live on an employee's personal file, the Chair of the Meeting/Hearing has the discretion to vary this time period dependent on the circumstances of the case. Therefore the warning may remain live on the employee's personal file for a period of between 6 to 18 months but subject to satisfactory conduct this warning will be treated as spent once the time period has elapsed.

9.3 Final Written Warning

In the event of further misconduct following a written warning, or if the offence is very serious but does not amount to gross misconduct, or the conduct of an employee is so serious that it cannot be tolerated a second time, a final written warning should be issued. This warning will outline the reason for this level of warning and that immediate improvement is required in their conduct.

An appropriate formal support plan should be put in place to set out the required improvements, how these will be measured and achieved and over what timeframe.

In determining the disciplinary sanction, account should be taken of the extent to which standards have been breached, the employee's general employment record and any mitigating factors which may make it appropriate to adjust the severity of the penalty.

Having been issued with a final written warning, should the employee's conduct cause concern to the Organisation in the future for a similar or related issue, this may result in further escalation of the disciplinary process resulting in their dismissal. Any failure on behalf of the employee to accept the requirements for improvements in their conduct may also result in dismissal at this stage.

This warning will remain live on the employee's personal file for a period of 24 months but, subject to satisfactory conduct, will be treated as spent once this time period has elapsed.

9.4 Dismissal (with notice)

If the conduct of the employee is so serious, or where previous warnings have failed to achieve the desired improvement such that the Chair of the Hearing decides to dismiss, then the employee shall be informed of this decision (following an adjournment) at the end of the Hearing. They will receive confirmation of this decision in writing within 5 working days of the decision.

- a. Where appropriate the employee may be given the appropriate pay in lieu of notice and will be asked to leave the premises following the decision.
- b. The employee is required to sign a copy of the dismissal to confirm his/her understanding.
- c. Whilst the presumption will be that the dismissal will be confidential, disclosure may be necessary in accordance with policy, statutory or court requirements (such as the Barred and Advisory legislative requirements).

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Dismissal may also take place if, following a final written warning there is no satisfactory improvement in conduct. This will be measured as per the requirements of the subsequent formal support plan. In this scenario, the individual would be invited to attend a further misconduct hearing where the evidence would be put to them for their response.

In these instances when the appropriate Chair determines that an employee should be dismissed, the individual will receive notification of this decision in writing within 5 working days from the Chair.

Dismissal is not suspended pending the outcome of any appeal.

9.5 Summary Dismissal (dismissal without notice)

An employee may be summarily dismissed for serious matters of discipline but not normally for a first offence, except where that offence is deemed to be gross misconduct. In such cases, summary dismissal without notice or pay in lieu of notice may be appropriate. This may occur where as a result of an initial investigation, the circumstances indicate to the appropriate Chair that gross misconduct has taken place, in which the fundamental trust and confidence of an employee is seriously undermined.

In these instances when an appropriate Chair determines that an employee should be dismissed, in exceptional circumstances this may occur without a formal hearing although wherever possible, the Chair should allow the opportunity for the individual to state their position/version of events prior to making such a decision.

The individual will receive notification of this decision in writing from the Chair within 5 working days.

The employee may still appeal this decision but dismissal is not suspended pending the outcome of any appeal. (See [Section 10](#)).

9.6 Personal File Records

Records will be kept detailing the nature of any breach of disciplinary rules, the employee's mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records will be retained on the employee's personal file in accordance with The Procedure and subject to any statutory requirements as detailed within the Data Protection Regulation (GDPR) or the Data Protection Act 2018 and/or the Police Reform Act 2002.

If there is further misconduct during the life of the warning then there may be a further disciplinary investigation which will consider if further disciplinary action may be required in accordance with this procedure.

10. APPEALS

An employee has the right of appeal against any level of disciplinary sanction including dismissal. Appeals against disciplinary warnings up to and including written warnings will be heard by a Senior Manager who is of a higher grade and rank than the Chair who gave the sanction and who has had no previous involvement in the case.

Any employee wishing to register an appeal must submit their specific grounds for appeal in writing within 10 working days of receipt of the written confirmation of the level of disciplinary warning, to the Chair of the original meeting/hearing. The appeal will normally be heard and considered within 15 working days of receipt of the paperwork by the relevant Senior Manager.

The employee's written notice of appeal should include full and specific details of the grounds for appeal and whether the appeal is against the finding and/or the level of action taken.

The Human Resources Department will arrange the Appeal Hearing ensuring that a minimum of 10 working days notice of the date, time, Chair and location of the Appeal Hearing is given to the employee.

At least 5 working days before the appeal hearing, the Human Resources Department will circulate/confirm the documents to be considered at the Appeal hearing. This will include the employee's written notice of appeal, a statement from the Chair of the original hearing outlining the circumstances of the case, the action taken to date and any other relevant correspondence during the intervening period. It will also include witness statements, as witnesses will not normally be asked to attend appeals unless the Chair of the appeal considers it to be absolutely necessary.

Any employee pursuing their right of appeal has the right to be represented by a colleague or a Unison representative.

The Chair of the Appeal Hearing will make a decision having due regard to the following:

- Whether the disciplinary action was fair and reasonable in light of the information known to management at the time of the original hearing.
- Whether the prescribed procedures were correctly and fairly implemented.
- The Chair of the Appeal Hearing can make the following decisions based on the above:
 - To dismiss the appeal and endorse the disciplinary action taken at the original hearing.
 - To uphold the appeal and have the disciplinary record removed from the employee's personal file and re-instate the employee if the employee has been dismissed.
 - To dismiss the appeal as to the finding but allow as to sanction and substitute a less serious disciplinary penalty.

If, in exceptional circumstances, evidence is introduced during an appeal that is considered to be new and significant, the Chair of the original hearing may be called to hear that evidence and consider whether it would have altered their original judgement. If subsequently the employee still wishes to appeal, the appeal hearing will continue.

There is no further right of appeal. The Chair's decision is final.

The employee will normally be informed of the Chair's decision at the end of the actual appeal hearing (following an adjournment). In some circumstances the Chair may decide to adjourn to obtain further legal advice and recall the parties no later than 3 working days after the appeal hearing to give their decision. Either way, the decision will be confirmed in writing to the employee within 5 working days of the Chair's decision being given.

11. SUSPENSION

Every manager has the authority and responsibility to send an employee home if they believe the employee to be a risk to themselves and/or others because of their behaviour or mental/physical state. This would normally be for a period of 24 hours cooling off period. Such action is NOT regarded as suspension and it should be made clear to the employee that this is a formal request to leave the workplace. In such cases the manager should approach an authorised senior manager to consider whether formal suspension is appropriate.

If the employee is not to be suspended then they should be allowed to return to duty as normal as soon as they are able/fit to do so.

Before any individual is suspended, a suspension rationale must be completed in order to carefully consider if this is the appropriate action. The rationale will be completed in consultation with the HR department. It will then be forwarded to the Head of HR for sign off.

Where practicable, if the employee is to be formally suspended they will be informed of this decision by the appropriate line management in the presence of an HR representative with due consideration given to an appropriate location. Following notification of this suspension, the employee will be asked if they wish contact to be made with either a colleague or a representative from Unison. Confirmation of the reasons for suspension will be provided in writing as soon as is reasonably practicable. A decision to formally suspend an employee may only be taken by a police officer of Superintendent rank or above, or a member of Police Staff of Grade W12 or above. If suspended, an employee's contract of employment will be deemed to continue together with all their rights, including full contractual pay.

Dependent on the circumstances, the employee may be transferred to other employment within the Organisation on normal contractual pay as an alternative to suspension and will be expected to comply with this action. Such a decision will be taken by the relevant Departmental Head (Superintendent / W12 or above) in consultation with the Head of HR.

Suspension is NOT a disciplinary sanction and should not be regarded as in any way pre-judging the outcome of the disciplinary investigation.

Suspension will normally be effective immediately prior to any investigation. However, where a disciplinary investigation has commenced and the IO becomes aware of additional information that leads them to the conclusion that the employee should now be suspended; this will be actioned at that time by an authorised senior manager.

Where criminal investigations take place, timescales are often extended due to the nature of the process and involvement of other stakeholders such as the Crown Prosecution Service.

The suspension will be reviewed regularly by the Head of HR and PSD who will ensure that matters are dealt with without undue delay to the process.

12. FAILURE TO COMPLY WITH SOCIAL DISTANCING OR HYGIENE MEASURES AT WORK

NOTE: THIS ELEMENT APPLIES TO ALL OFFICERS AND STAFF OF WILTSHIRE POLICE AND THE OPCC.

Following stringent risk assessment, significant measures have been put in place across the organisation and estate to prevent the transmission of coronavirus (COVID-19) in the working environment. Supplies and appropriate PPE have been provided where necessary and clear guidance has been given to all members of Wiltshire Police. Each member has a personal responsibility to follow any guidance and instruction given in order to protect themselves, their colleagues and members of the public.

Failure to comply with these measures may lead to an investigation or fact finding being instigated. Depending on the severity of the situation and taking all considerations into account, a decision will be made as to whether it is deemed appropriate to submit a referral to PSD for assessment as a breach of professional standards of behaviour, or whether to deal with locally as a more minor issue.

If deemed appropriate for assessment, the outcome could result in any one of the following actions:

- No Action
- **for Officers**, Reflective Practice Review Process, **for police staff**, a recorded, but informal conversation/action with line manager
- Formal performance or misconduct proceedings, where deemed a serious breach

Each case will be investigated and considered on a case by case basis taking into account all circumstances and any mitigating factors

13 DEALING WITH SPECIAL CASES

13.1 Criminal Offences

Conviction for a criminal offence is itself a breach of Wiltshire Police's disciplinary rules, the Police Staff Code of Conduct and the Code of Ethics which are incorporated into the procedure. Police Staff are required to report any conviction or caution against them for a criminal offence to the Professional Standards Department.

Any internal investigation will not pass judgement on criminal investigations but will investigate the circumstances of any alleged breaches of disciplinary rules or conduct which affects the employment position of the employee.

An internal investigation will fully examine any possible failures to meet the Wiltshire Police's disciplinary rules, standards and Police Staff Code of Conduct or the Code of Ethics.

Wiltshire Police can only act on the information obtained during an internal disciplinary enquiry. Should an internal disciplinary hearing find that the employee should be dismissed, the dismissal will not necessarily be rendered unfair by information subsequently received or by acquittal in a criminal court. Discipline matters will be decided on the 'balance of probabilities' rather than 'beyond reasonable doubt'.

Where it is brought to the attention of the Organisation that an employee has been charged with, or is the subject of allegations in connection with a criminal or potentially criminal offence, a Departmental Head should notify the Head of Human Resources immediately so that disciplinary implications can be considered and the method of investigation agreed.

The nature of the alleged offence will be considered in relation to the following:

- The nature of the alleged offence and the employee's position
- The reaction of colleagues and breakdown in working relationships
- The effect upon public confidence in the ability of the Organisation to conduct its business (if the matter became public knowledge)
- The impact on the employee's ability to carry out their role or uphold public confidence and the Organisation's reputation and standards.

Where it is considered that one of the above will be adversely affected, an internal disciplinary investigation will be conducted in line with these procedures. Internal disciplinary action may be taken irrespective of criminal proceedings and need not await the outcome of criminal enquiries or any subsequent court appearance. If it appears that suspension should be considered, this should be done in accordance with Section 8.

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Where criminal enquiries are also being conducted, an employee must be made aware that details of the disciplinary investigation may be disclosable to the criminal investigation. Employees should be advised that material obtained in the course of a criminal investigation may be used in the discipline enquiry if the individual consents to this disclosure.

13.2 Monitoring

The Human Resources Department is responsible for monitoring the disciplinary procedure and promoting consistency in its application. This will ensure allegations of discipline are dealt with in the same manner, and if found to be substantiated, that similar and appropriate sanctions are applied.

14. POLICE BARRED AND ADVISORY LIST REGULATIONS 2017

The Police Barred List and Advisory List Regulations 2017 came into effect on 15th December 2017.

Where serving officers (including special constables) / staff are dismissed, or where officers / staff who have resigned or retired whilst under investigation and a subsequent hearing determines they would have been dismissed had they still been serving, the individual will be entered onto the barred list and prevented in law from gaining employment with most policing bodies in the future. There are a number of variations insofar as how long an individual will remain on the barred list dependant on whether they have been dismissed for conduct or performance. In summary, however, officers / staff dismissed for gross misconduct will remain on the list for life and in respect of officers (not staff) that information for the first 5 years, post dismissal, will be publically available.

Where an officer (including special constables) / staff member resigns or retires whilst under investigation for an allegation of gross misconduct, they will be entered onto the advisory list. There they will remain until such time as disciplinary proceedings have concluded. If a hearing then determines that the individual would have been dismissed from their role had they still been serving, then they will be transferred onto the barred list. If the determination is that the allegation is unproven or proven but a sanction short of dismissal would have been given, the individual will be removed from the advisory list. The advisory list is a private list that policing bodies are expected to consult when deciding whether to make an offer of employment, although it does not act as an absolute bar to policing.

14.1 Further advice and assistance

A copy of the Police Barred List and Police Advisory List Regulations 2017 can be found at: <http://www.legislation.gov.uk/ukxi/2017/1135/contents/made>.

Home Office Guidance to accompany the above regulations can be found at the following website address. Annex H and annex I give detailed guidance on the two lists:

<https://www.gov.uk/government/publications/circular-0122017-new-former-police-officer-and-barred-list-regulations-an-amended-determination-on-retirement-and-amended-home-office-guidance>.

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Appendix 1

Police Staff Code of Conduct

Below is an overview of the standards which are included within the code of conduct. A full version is available on the HR Intranet.

Honesty and Integrity

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

Authority, Respect and Courtesy

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

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

Equality and Diversity

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

Use of Restraint

Police staff only use restraint as part of their roles and responsibilities to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Instructions

Police staff only give and carry out reasonable instructions.

Police staff follow all reasonable instructions and abide by Organisation policies.

Work and Responsibilities

Police staff are diligent in the exercise of their work and responsibilities

Confidentiality

Police staff treat information with respect and access or disclose it only in the proper course of their work.

Fitness for Work

Police staff when at work are fit to carry out their duties.

Discreditable Conduct

Police staff behave in a manner which does not discredit the police service or undermine public confidence in the police service.

Police staff report any conviction or caution against them for a criminal offence.

Challenging and Reporting Improper Conduct

Police staff whilst at work report, challenge or take action against the conduct of colleagues which have fallen below the standards of professional behaviour expected.

Appendix 2

Police Code of Ethics - that normally result in disciplinary action may include:

- Absence from work without required authorisation or regard to the appropriate procedures
- Failure to attend punctually or regularly
- Failure to comply with a lawful and reasonable instruction of a supervisor
- Substantial complaints in respect of behaviour at work, rudeness or attitude towards other members of staff, visitors, members of the public
- Breaches of the Social Media, Acceptable use of Force Systems and/or the Acceptable use of email, the internet and fixed and mobile phones policies.
- Lack of application to duties
- Failure to comply with sickness reporting procedures
- Negligence in standards of work
- Failure to comply with Wiltshire Police's Financial Regulations e.g. expense claims
- Failure to comply with Standard of Dress Procedure and failure to wear uniforms where required
- Failure to comply with the Smoke Free Procedure
- Other failure to meet the Police Staff Code of Conduct

The level of disciplinary action will however, depend on the nature and extent of the offence. There may be occasions when the level of offence would constitute a serious offence/gross misconduct leading to dismissal. The repeated commission of single offences or commission of multiple offences may also lead to dismissal.

This list is not exclusive or exhaustive and does not indicate any limitation upon management's right to exercise discretion in individual cases.

Gross misconduct is regarded as misconduct of such a nature that it fundamentally breaches the contract between the employee and employer and justifies management no longer accepting the continued presence of the employee at work.

Examples of gross misconduct are:

- Unwelcome sexual contact
- Unfair discrimination or harassment of an employee, potential employee or person in respect of whom Wiltshire Police has responsibilities for on the grounds of gender, transgender, marital or civil partnership status, racial group, sexual orientation, religion or belief, disability or age.
- Serious breach of health & safety rules and procedures
- Serious breach of the Organisation's Social Media, Acceptable use of Force Systems and/or the Acceptable use of email, the internet and fixed and mobile phones policies.
- Fighting
- Physical assault, abusive behaviour
- Drug or alcohol related offences (including positive samples in relation to the Substance Misuse Policy & Procedure)
- Theft or fraud
- Deliberate misuse of information held by the Force and/or deliberate interference with computerised information

-
- Malicious and deliberate damage to the property of the Police Authority
 - Deliberate misuse of information held by the Organisation and/or deliberate interference with computerised information
 - Malicious and deliberate damage to the property of the Police Authority
 - Deliberate and serious breach of confidentiality
 - Wilful disregard of duties and failure to comply with lawful and reasonable instructions relating to the employment
 - Deliberate falsification of records e.g. timesheets, expense claims, self certification of sickness forms and other official organisational forms
 - Conviction for a criminal offence
 - Failure to disclose a conviction for a criminal offence
 - Falsification or misrepresentation of qualifications or experience which are a stated requirement of employment

It is stressed that this list is not exhaustive, and each case would reviewed individually; however, it is intended to give an indication of the type and level of conduct which would be regarded as gross misconduct and render an employee liable to dismissal.

In certain cases, what might be considered a less serious breach of discipline (e.g. under the influence of alcohol) may be regarded elsewhere as gross misconduct (e.g. where driving or endangering themselves or others is involved).

Wiltshire Police Charter for Officers and Staff Subject of Public Complaint or Conduct Investigation

If you become the subject of a public complaint or misconduct investigation the Professional Standards Department, will work to ensure that the minimum standards set out in this Charter are provided to you. We appreciate that being the subject of an investigation can be difficult and stressful, therefore the below detail is intended to assist with reducing the impact on your wellbeing by providing clear guidance to help manage expectations.

1. You should expect to be treated fairly and in line with Organisation values and behaviours throughout the complaints and conduct process by all individuals and organisations involved.

Everyone has the right to fair and unbiased treatment throughout the duration of their investigation, and I will do everything I can to ensure this is maintained.

2. You will receive an update at least every 28 days from the Investigation Officer; this will be either via a telephone call, email or letter and your preferred method of update will be discussed with you and agreed.

I recognise that being kept updated as to the progress of your investigation is of paramount importance. Agreeing with you the terms of ongoing contact will not only keep you updated on progress, but will help provide reassurance to you that something is happening, even if you cannot see it.

3. Where appropriate, you will be provided with the contact details of services so that you can access support when you need to, such as Occupational Health, staff associations and People Services.

You may not recognise a need for this until later in the process, and it is important that once this is realised, you can access the appropriate services which will assist you.

4. You may be assigned a welfare point of contact, depending on the nature and circumstances of the allegation.

5. Where appropriate, and with your consent, information about your case will be shared with partner organisations who have a supportive role, who may be able to provide additional support to you.

6. If any items of property are seized from you as evidence during the investigation, then we will ensure it is looked after and returned to you when no longer needed.

7. I will work with officers and staff who have been subject of investigation to monitor how well we have responded and dealt with your investigation.

In undertaking the Charter we will do our best to support you. I will also address any concerns you bring to my attention regarding the conduct of your investigation.



**Tim Corner
D/Superintendent
Head of Professional Standards
Wiltshire Police**

DOCUMENT ADMINISTRATION

Ownership:

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13.09.2018	3.0	Minor amendment to section 6 (page 12) bullet point (b).
30.09.2020	4.0	New section 12 added – compliance with Covid-19 requirements.

Approvals:

This document requires the following approvals:

Name & Title	Date of Approval	Version
Force Policy Officer	16.09.2020	4.0
JNCC (Not required for all procedures)	14.09.2020	4.0

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This document has been distributed via:

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E-Brief		
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Other: <i>(state method here)</i>		

Diversity Impact Assessment:

Has a DIA been completed? If no, please indicate the date by which it will be completed. If yes, please send a copy of the DIA with the procedure.	☐ Yes ☐ No Date:
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Consultation:

List below who you have consulted with on this procedure (incl. committees, groups, etc):

Name & Title	Date Consulted	Version
UNISON	September 2020	4.0
Police Federation	September 2020	4.0
OPCC	September 2020	4.0

Implications of the Procedure:

Training Requirements

No additional training requirements.

IT Infrastructure

No additional IT infrastructure required.

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