



Police Disciplinary Proceedings – 2020, A Time of Real Change?

Submitted by Jessica Armfelt on Fri, 07/24/2020 - 09:12

On 1 February 2020 a new raft of Police Misconduct Measures came into being. They are extensive and have created a multitude of changes to the regime. The complexion of the misconduct regime has changed dramatically. There is a greater emphasis on stricter time limits and the chair taking much more of a 'case management' role pre hearing.

This article can do no more than highlight just some of the main alterations, to act as a sign-post, as it were.

To assist the reader, at the foot of this e-bulletin, a list of Regulations and Guidance is provided.

The Police (Conduct) Regulations 2020

These regulations govern the procedures for complaints, investigations, disciplinary hearings or meetings and outcomes for allegations of officer misconduct. For our purposes and our focus as advocates, the latter aspect of those regulations are our primary focus.

What's the Key Date, What's Covered?

The 2020 Regulations come into play for any relevant matter made the subject of a complaint on or after 1 February 2020, or which comes to the attention of the Appropriate Authority (even if it relates to events prior to) on or after 1 February 2020.

In short, irrespective of when the alleged 'misconduct' took place, so long as the complaint was made after 1 February, or indeed, the AA became aware after 1 February, that allegation will be captured by the 2020 regulations.

Changes to the Investigative Process

Focussing in on [Part 3](#) of the 2020 Regulations:

(a) There is now a requirement to complete an investigation within a 12-month period from the trigger date. Otherwise a report has to be made to the local policing board (OPCC) setting out (inter alia) the progress of the investigation, why the time limit has been breached and explaining when the

investigation is likely to be completed.

Six-monthly extensions or review periods occur thereafter.

Importantly, there are exceptions to the provision of the above information if to do so might prejudice the investigation or any other investigation (Reg 19).

(b) Investigators are required to set out their terms of reference which are to be included in a 'Written Notice' to the officer under investigation, again with the usual exceptions, see Reg 17.

This should assist an officer under investigation to understand the subject matter and scope of the investigation. As a point of commentary, previously, officers were often left in the dark, wondering where the investigation is going or, for that matter, why?

Changes to Procedures

In Part 4 'Misconduct Proceedings' some of the main changes are as follows:

(a) Reg 28(4)(a) - Requires that the chair is appointed on a fair and transparent basis from the list of LQCs along with a person of at least the rank of a Superintendent and an independent panel member, again selected on a fair and transparent basis.

Whether the requirement for transparency will give officers, or their legal teams, any leverage for disclosure about this 'transparent' process is, as yet, opaque.

(b) Reg 29 - The chair is required to "*ensure the efficient and effective bringing of the proceedings and that they are conducted in a timely, fair and transparent manner*".

(c) Reg 29 - is likely to be a key regulation; it sets out time limits for various stages in the proceedings. Though abuse arguments are very difficult to sustain in police misconduct proceedings, it is likely that breaches of various time limits will add grist to the wheel of an abuse argument, rather than providing stand-alone grounds.

A further change is that now the expectation is that the chair of the panel will be involved more closely at the prehearing stages, to make decisions ensuring a fair and transparent hearing, within an appropriate time period. All too often, in the past, the AA or the force solicitor, acted as a gatekeeper to the chair, filtering what was provided. That is now a thing of the past. As an example, Reg 29(3) makes provision for a misconduct pre-hearing to agree directions and fix a date for the final hearing. A very sensible change.

Findings

- 'Misconduct' is now defined (Reg 2) as meaning a breach of the Standards of Professional behaviour that is so serious as to justify disciplinary action. Now it is defined in two parts: first, has the standard been breached and, secondly, is it a serious enough breach to require disciplinary action?
- 'Gross misconduct', the definition remains as a breach of the standards of professional behaviour that is so serious as to justify dismissal.

Outcomes

- The disciplinary action available to a panel where the officer's conduct amounts to misconduct now includes 'reduction in rank'.
- There is no change in the available outcomes where gross misconduct has been found.

Readings List - Relevant Regulations and Guidance

The Police (Performance) Regulations 2020

The Police (Complaints and Misconduct) Regulations 2020

New Home Office Guidance

New IOPC Guidance on the Police Complaints System

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