



## Former Officer Misconduct Policy and Procedure

### Policy

#### 1. Introduction

- 1.1 This procedure sets out the internal policy and formal process for managing conduct investigations into Former Police Officers.
- 1.2 This procedure applies to all officers who are subject to investigation following the introduction of the new Police Conduct and Complaints Regulations and Police Barred List and Police Advisory List Regulations that give effect to Section 29 and 30 of the Policing and Crime Act 2017 enabling disciplinary proceedings to be taken against former police officers and establishing procedures for a police barred list and police advisory list.

#### 2. Scope

- 2.1 A public perception that some police officers who have committed serious wrongdoing have avoided accountability through resignation or retirement has caused damage to public confidence in the integrity of policing. At the same time, not allowing officers accused of misconduct to resign or retire while investigations are ongoing creates an unsatisfactory situation for the police force and the officer concerned.
- 2.2 The Policing and Crime Act 2017 therefore extended disciplinary procedures to former officers and allows officers under investigation to resign or retire but ensures that misconduct proceedings will be taken to a conclusion. The Act also introduced a barred list for those officers who are dismissed from the force for misconduct, or who would have been dismissed but for their resignation/retirement.

#### 3. Policy Statement

- 3.1 The Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017 establishes how the disciplinary proceedings will work for former police officers and former special constables and allows for the initiating and continuing of disciplinary proceedings following an allegation or complaint made against a police officer following their departure from a police force or where they choose to leave whilst proceedings are ongoing.

3.2 This change will apply to all officers serving on or after 15 December 2017. They will not apply retrospectively to officers who have left the force prior to 15 December 2017.

## Procedure

### 1. Introduction

1.1 The procedure for former officers is defined in the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017 as well as Annex G in the Home Office Guidance (which can be found on Page 127).

1.2 Former officers will only be investigated when the allegations are assessed as Gross Misconduct (as assessed by the Appropriate Authority (AA) or IOPC) and where one of three conditions are met:

- 1) Condition A – where an officer has resigned/retired or made clear their intention to resign/retire after an allegation first comes to the attention of the AA under the Conduct Regulations and an investigation into these allegations may begin or continue to a conclusion and lead to a hearing if appropriate
- 2) Condition B – where an allegation comes to the attention of an AA, the allegation is assessed as Gross Misconduct, and the officer concerned had ceased to be a member of a police force for a period not exceeding 12 months.
- 3) Condition C – Where an allegation of misconduct comes to the attention of an AA and the period since the person left the police force exceeds 12 months – these cases are intended to cover only the most serious and exceptional cases of misconduct likely to do damage to public confidence in policing.

1.3 The below, in the main, applies to Former Officers where condition B and C apply – as depending on at which point in the investigation an officer resigns/retires (condition A) some of the considerations below will already be in existence, such as a Wellbeing and Support Officer and Occupational Health referrals may already have been undertaken.

1.4 However, there are some elements which are not detailed in the Regulations or Home Office Guidance and therefore are subject to force Policy and Procedure; these are as follows:

#### 1) Welfare Support

- a. As the officer no longer works for the organisation the working relationship between the employer (Surrey Police) and the employee (the officer) has ceased therefore no Wellbeing Officer will be assigned. However, the officer will be provided a contact point (the Officer in Charge of the Investigation) within PSD in order to explain the process. The Former Officer can also be signposted to support services which are available to members of the public – such as GP, Mental Health Services, etc.
- b. It is worth noting that the Former Officer is also entitled to choose a person to represent them for the purpose of the proceedings. That person may be:
  - A police officer

- A police staff member
- A person nominated by the staff association
- Any other person from outside of the force (\*\*it is worth noting that where the former officer selects someone outside of the police force but who has not been involved in the case, as for civilian staff, the former officer must seek the approval for that person to represent them from the chief officer of the police force where he or she was serving at the time the alleged misconduct took place.)

- **Legal advice**

The Regulations allow for officers to be legally represented in matters of Gross Misconduct.

- **Federation/Superintendents Association/Chief Police Officers Staff Association**

The Former Officer will need to make contact directly with their staff association if they believe that they are entitled to be represented during proceedings (due to membership fees being paid whilst serving).

Federation: Details can be found [www.polfed.org](http://www.polfed.org) or by calling 01483 630289

Superintendents' association: <http://www.policiesupers.com/>

CPOSA: <https://cposa.uk/>

- **Fitness to engage in the Misconduct Process**

If the individual states they are unfit to engage in the misconduct process, the regulations for Former Officers make it clear that the AA needs to be satisfied, based on the evidence provided by the individual that they are unfit to engage in the process by reason of disability or ill health; it makes it clear that this is not unfit for duty, but unfit to engage in the actual misconduct process/disciplinary proceedings.

No occupational health referral can be submitted for former officers (as would normally be done for a serving officer subject to misconduct proceedings) as Occupational Health are unable to see anyone who has left the force.

Therefore, if the former officer raises as an issue that they are unfit to proceed and engage in the misconduct process/disciplinary proceedings, they need to provide sufficient evidence to the AA to satisfy the requirements with reference to the ill health or disability asserted. The Former officer should be asked to engage with their GP and/or an appropriate medical professional and provide in written form from that medical professional(s) on headed paper relevant information with reference to the issue around fitness to engage raised by the Former officer for the AA's consideration. The information provided by the medical professional must include answers to the questions listed below in relation to the process:

- Does the individual have the ability to understand the allegations made against them?
- Does the individual have the ability to distinguish right from wrong?
- Is the individual able to instruct a friend/ representative or lawyer to represent their interests?

- Does the individual have the ability to understand and follow the proceedings, if necessary, with adjustments such as extra time and written explanations?

If the Former Officer is unable to provide suitable evidence to support an assertion that they are unfit to engage in the misconduct process/disciplinary proceedings a discussion should occur between Former Officer and the PSD OIC to clarify any relevant circumstances not already referenced by the Former officer to ensure the AA has all relevant information for consideration of the issue.

Should the AA not be satisfied that the former officer is unfit, PSD will continue with the investigation and any subsequent disciplinary proceedings that may arise from the investigation.

If the officer is deemed to be unfit for disciplinary proceedings, the Former Officer will remain on the advisory list indefinitely if the AA are unable to proceed with the process and bring it to a conclusion. Former Officers can view the Barred and Advisory List Regulations to ascertain appeal periods to request removal from the lists.

## **2) The process**

The conduct regulations make clear that the process closely follows that for a serving officer. The Former Officer will receive their regulation notices (Regulation 17 of the Conduct Regulations or Regulation 17 of the Complaint Regulations) by them being served in person or being posted. The officer is invited to respond to the service of notices in accordance with the Regulations (10 working days).

The Former Officer will be placed on to the Advisory List managed by the College of Policing (CoP) within 5 days of the allegation being assessed as Gross Misconduct.

The Former officer will be invited to an interview to provide an opportunity for the evidence to be put to them and offer any response. If the investigator decides, a Written Notice of Enquiry (in essence a written list of questions) can be sent to the Former officer as a proportionate method to enable them to respond to the allegations this will be done instead of or, to supplement an interview.

PSD can make adjustments where appropriate to accommodate representations made by the Former officer to the PSD OIC to assist them manage, they're being the subject of the misconduct process. For example, having more breaks during interview can be arranged, the timing of the interview can accommodate medication regimes, the sending of a Written Notice of Enquiry to substitute for an interview may be considered.

Following the investigation, the AA will review the investigation and make a decision if the matter is concluded no further action or if there a case to answer for Gross Misconduct. A case to answer should proceed to a hearing.

At a hearing, adjustments can also be requested. For example, the Former officer can request they are represented by a friend/legal representative in their absence if for medical reasons they are unable attend or, additional breaks can be scheduled if that would assist. The making of adjustments where appropriate can facilitate the Former officer's engagement in the misconduct process/discipline proceedings and bring about a more timely conclusion of the matter.

In the event if the former officer does not meaningfully engage with the misconduct process such as failing to attend interview (or provide a response to a Written Notice of Enquiry) then an inference can be drawn from non-attendance/failure to respond. A failure to meaningfully engage with proceedings such as failing to attend a hearing will result in the hearing panel considering if the Former officer was made aware of the hearing and has chosen not to take part. Proceedings may continue without adjournment and be concluded in the Former officer's absence in those circumstances.

The hearing process is conducted as for Serving Officers.