



BERMUDA

POLICE (PERFORMANCE) ORDERS 2016

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SCHEDULE
APPLICATION OF THESE ORDERS TO SUPERINTENDENTS AND ASSISTANT
COMMISSIONERS

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

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PART 1 PRELIMINARY

Citation

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

Application

- 2 (1) These Orders do not apply in relation to the performance of—
- (a) a member of the of the Service of the rank of Deputy Commissioner or Commissioner; or
 - (b) a police officer who has not completed his initial period of probation.
- (2) These Orders apply to all police officers of the rank of Assistant Commissioner of Police and below, subject to the modifications set out in the Schedule to these Orders.

Interpretation and delegation

- 3 (1) In these Orders—
- “Act ” means the Police Complaints Authority Act 1998;
- “appeals orders” means the Public Service Commission Regulations 2001;
- “appropriate authority” means the Commissioner;
- “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;
- “complaint” has the meaning given to it by section 2 of the PCA;
- “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;
- “document” means anything in which information of any description is recorded and includes any recording of a visual image or images;
- “first stage appeal meeting” has the meaning assigned to it by order 19(8);
- “first stage meeting” has the meaning assigned to it by order 15;
- “gross incompetence” and cognate expressions mean a serious inability or serious failure of a police officer to perform the duties of his rank or the role he is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified, except that no account must be taken of the

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attendance of a police officer when considering whether he has been grossly incompetent;

“harm test” has the meaning assigned to it by paragraph (3);

“human resources professional” means a police officer or civil servant who has specific responsibility for personnel matters relating to members of the Service;

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Orders;

“interested person” has the meaning assigned to it by order 4;

“investigator” means a person appointed under order 5;

“nominated person” means a person appointed by the senior manager in accordance with order 10;

“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 respect of whom proceedings under these Orders are, or are proposed to be, taken;

“proposed witness” means a witness whose attendance at a third stage meeting the police officer concerned or the appropriate authority (as the case may be) wishes to request of the panel;

“relevant terms of the final written improvement notice” has the meaning assigned to it by order 26;

“second stage appeal meeting” has the meaning assigned to it by order 26(8);

“second stage meeting” has the meaning assigned to it by order 22(2);

“senior manager” means—

- (a) the police officer who is for the time being the supervisor of the person who is, in relation to the police officer concerned, the second line manager; or
- (b) in the absence of such supervisor, a police officer who is appointed by the appropriate authority to carry out any of the functions of such supervisor under these Orders, being of at least the same rank (or equivalent) as the person who is, in relation to the police officer concerned, the second line manager;

“senior officer” means a member of the Service who is of the rank, substantive or otherwise, of assistant commissioner or above;

“Service” shall have the same meaning as in section 1(1) of the Police Act 1974;

“specified period” means a reasonable period for improvement specified by the line manager, or second line manager, that is not greater than 12 months in duration;

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“staff association” means, in relation to a member of the police service of the rank of chief inspector or below, the Bermuda Police Association;

“the PCA” means the Police Complaints Authority established under section 4 of Police Complaints Authority Act 1998;

“third stage meeting” has the meaning assigned to it by orders 29 and 31(3);

“unsatisfactory performance procedures” means the procedures set out in these Orders; and

“validity period” has the meaning assigned to it by orders 18(4), 25(4), 44(7)(d) and (8)(c).

(2) In these Orders—

(a) references to—

(i) unsatisfactory performance or attendance;

(ii) the performance or attendance of a police officer being unsatisfactory,

mean an inability or failure of a police officer to perform the duties of the role or rank he is currently undertaking to a satisfactory standard or level;

(b) “unsatisfactory performance or attendance” may be construed as a reference to unsatisfactory performance and attendance; and

(c) “performance or attendance” may be construed as a reference to performance and attendance.

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

(a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, criminal proceedings;

(b) necessary in the interests of national security;

(c) necessary for the purposes 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 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 unsatisfactory performance or attendance in question;

(f) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or

(g) otherwise in the public interest.

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(4) The appropriate authority may, subject to paragraph (5), delegate any of its functions under these Orders to a member of the Service of a similar level of seniority to the rank of inspector or above.

(5) Where the appropriate authority delegates its functions under order 31, the decisions must be authorised by a senior officer.

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

Interested person

- 4 (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 the 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 from the conduct complained of or to which the 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; or
 - (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 PCA or 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 PCA,

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the appropriate authority must provide the interested person with all such information as will 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 PCA, the complainant or the police officer under investigation; or
 - (ii) dealt with in the public interest.

(7) For the purposes of this order, "relative", in relation to an interested person, means—

- (a) a spouse who is not separated from the interested person;
- (b) a person living with the interested person as if he were the interested person's spouse; or
- (c) a parent, son, daughter, brother or sister of the interested person,

who is included in the interested person's family.

Appointment of investigator

5 (1) This order applies where any complaint or conduct matter is to be investigated for the purposes of these Orders.

(2) The appropriate authority must, subject to paragraph (3), appoint a person to investigate the matter in accordance with—

- (a) section 10 of the Act when a complaint is to be investigated;

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- (b) Part 3 of the Police (Conduct) Orders 2016 when a conduct matter is to be investigated,

as appropriate.

(3) A person must not be appointed to investigate any complaint or conduct 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.

PART 2

GENERAL

Police friend

6 (1) The police officer concerned may choose—

- (a) a police officer; or
- (b) a person nominated by his staff association who is not a barrister,

who is not otherwise involved in the matter, to act as his police friend.

(2) A police friend 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 under order 7 and chooses to be so represented, represent the police officer concerned at a meeting under these Orders;
- (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 meeting which the police officer concerned is required to attend under these Orders.

(3) Where a police friend is a police officer, the Commissioner must permit the police officer to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

Legal representation

7 (1) Where a police officer is required to attend a third stage meeting under order 30 or 31, the officer has the right to be legally represented at such meeting by a barrister of the police officer's choice.

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- (2) If such a police officer chooses not to be legally represented—
- (a) such meeting may take place and the police officer may be dismissed or receive any other outcome under order 43(2) or (6) without the officer being legally represented; and
 - (b) the panel conducting such meeting may nevertheless be advised by a barrister at the meeting in accordance with order 39(3).

(3) Except in a case where the police officer concerned has the right to be legally represented and chooses to be so represented, the officer may be represented at a meeting under these Orders only by a police friend.

(4) A third stage meeting under order 30 or 31 must not take place unless the police officer concerned has been notified in writing of the effect of this order.

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; or
- (b) left with some person at, or sent by registered mail to, the last known address of the police officer concerned.

Procedure at meetings under these Orders

9 (1) Where the police officer concerned does not attend a meeting under these Orders or where the police officer concerned participates in a third stage meeting by video link or other means under order 36(9), the officer may nonetheless be represented at that meeting by the officer's—

- (a) police friend; or
- (b) where the police officer is required to attend the third stage meeting under order 31, the police officer's barrister.

(2) Where the police officer concerned does not attend a meeting under these Orders or participate in a third stage meeting by video link or other means under order 36(9), the meeting may be proceeded with and concluded in the absence of the police officer concerned whether or not the police officer concerned is so represented.

(3) During any meeting under these Orders, the person representing the police officer concerned may—

- (a) address the meeting 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 meeting;

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- (iv) make representations concerning any aspect of proceedings under these Orders;
 - (v) in the case of a third stage meeting only, subject to paragraph (7), ask questions of any witnesses; or
- (b) confer with the police officer concerned.
- (4) 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.
- (5) Where the police officer concerned is participating in a third stage meeting by video link or other means in accordance with order 36(9), the person representing the police officer or (if different) the police officer's police friend (or both) may also participate in the third stage meeting by such means together with the police officer concerned.
- (6) The police friend or barrister of the police officer concerned may not answer any questions asked of the police officer concerned during a meeting.
- (7) Whether any question should or should not be put to a witness at a third stage meeting must be determined by the panel.
- (8) At any meeting under these Orders, the panel conducting the meeting must not make a finding of unsatisfactory performance or attendance or, gross incompetence, unless—
- (a) they are satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance, or gross incompetence; or
 - (b) the police officer concerned consents to such a finding.
- (9) The panel conducting a meeting under these Orders may allow any document to be considered at that meeting notwithstanding that a copy of it has not been—
- (a) supplied to them by the police officer concerned in accordance with order 16(8), 19(6)(b), 23(8), 26(6)(b) or 35(3);
 - (b) supplied to the police officer concerned in accordance with order 16(2), 23(2), 30(2) or 32(2); or
 - (c) made available to them or given to the police officer concerned under order 33(4).

Nominated persons

- 10 (1) A senior manager may appoint another person (a "nominated person") to carry out any of the functions of the line manager or the second line manager in these Orders.
- (2) Where a person is appointed to carry out any of the functions of the line manager under paragraph (1), he may not also be appointed to carry out any of the functions of the second line manager under that paragraph.
- (3) Where a person is appointed to carry out any of the functions of the second line manager under paragraph (1), he may not also be appointed to carry out any of the functions of the line manager under that paragraph.

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(4) A nominated person must be a member of the Service and must be, in the opinion of the senior manager or the appropriate authority, of at least the same or equivalent rank or grade as the person whose functions he is carrying out.

(5) Where a nominated person is appointed by the senior manager, references in these Orders to a line manager or a second line manager, as the case may be, must be construed as references to the nominated person, in relation to the functions which the nominated person has been appointed to carry out.

References to certain periods

11 (1) The appropriate authority may, on the application of the police officer concerned or otherwise, extend the period specified in accordance with any of the orders mentioned in paragraph (2) if it is satisfied that it is appropriate to do so.

(2) The orders mentioned in this paragraph are—

- (a) order 17(6)(c);
- (b) order 24(6)(c); and
- (c) order 43(7)(c) and (8)(a).

(3) Unless the appropriate authority is satisfied that there are exceptional circumstances making it appropriate, any such period may not be extended if the extension would result in the total length of that period exceeding 12 months.

(4) Where an extension is granted under paragraph (1) to a period specified under an order mentioned in paragraph (2), any reference in these Orders to such period must be construed as a reference to that period as so extended.

Suspension of certain periods

12 (1) Any reference in these Orders to a period mentioned in paragraph (2) must not include any time the police officer concerned is taking a sabbatical.

(2) The periods mentioned in this paragraph are—

- (a) a period specified in accordance with order 17(6)(c);
- (b) the validity period of a written improvement notice;
- (c) a period specified in accordance with order 24(6)(c);
- (d) the validity period of a final written improvement notice;
- (e) a period specified under order 43(7)(c) or (8)(a);
- (f) the validity period of a final written improvement notice extended under order 43.

Meeting following the receipt of a report submitted by the investigating officer regarding a complaint

13 (1) Subject to order 32, if—

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- (a) after receiving a report of a conduct matter or a complaint from the investigator; and
- (b) after undertaking the steps specified in section 21 or 22 of the PCA where appropriate,

the appropriate authority considers that the performance of a police officer is unsatisfactory then the appropriate authority must direct the line manager for the police officer concerned to take the action specified in paragraph (2), (3) or (4), as the case may be.

(2) In a case where—

- (a) the police officer concerned has received a final written improvement notice under order 25 or 43 in relation to unsatisfactory performance; and
- (b) the validity period of the final written improvement notice, within the meaning of order 25(4) or 43(7)(d) or (8)(c), has not expired,

the specified action is that the line manager must require the officer to attend a third stage meeting.

(3) In a case where—

- (a) the police officer concerned has received a written improvement notice under order 18 or 43 in relation to unsatisfactory performance; and
- (b) the validity period of the written improvement notice, within the meaning of order 18(4) or 43(7)(d), has not expired,

the specified action is that the line manager must require the police officer concerned to attend a second stage meeting.

(4) In any other case, the specified action is that the line manager must require the police officer concerned to attend a first stage meeting.

(5) The line manager must comply with a direction given by the appropriate authority under paragraph (1).

(6) Where the police officer concerned is required to attend a meeting under this order—

- (a) orders 16 to 21 apply, if the meeting is a first stage meeting;
- (b) orders 23 to 28 apply, if the meeting is a second stage meeting; and
- (c) orders 30, 33 to 37 and 39 to 46 apply, if the meeting is a third stage meeting,

but this is subject to paragraph (7).

(7) The duty to provide documents in order 16(2), 23(2) or 30(2) has effect as a duty to provide the police officer concerned with (subject to the harm test in order 3(3)) a copy of the investigator's written report.

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Provision of information to the PCA

- 14 (1) This order applies in a case where the PCA—
- (a) made a recommendation under section 20 or 21 of the Police Complaints Authority Act 1998 which the appropriate authority accepted; or
 - (b) gave a direction to the appropriate authority under section 10 of the Police Complaints Authority Act 1998.
- (2) Where this order applies, the appropriate authority must send the PCA a copy of—
- (a) any written record and written improvement notice given to the police officer concerned under order 18(5);
 - (b) any written notice and written summary given to the police officer concerned under order 21(9);
 - (c) any notification as to improvement in performance or attendance under order 22(1)(b);
 - (d) any written record and final written improvement notice given to the police officer concerned under order 25(5);
 - (e) any written notice and written summary given to the police officer concerned under order 28(9);
 - (f) any notification as to improvement in performance or attendance under order 29(1)(b);
 - (g) any written decision given to the police officer concerned under order 42(3);
 - (h) any final written improvement notice issued or extended under order 43(3);
 - (i) any written improvement notice issued under order 43(6); and
 - (j) any notification as to improvement in performance or attendance under order 45(2)(b).
- (3) Where this order applies, the appropriate authority must notify the PCA if it extends, under order 11(1), any period specified in accordance with order 17(6)(c), 24(6)(c) or 43(7)(c) or (8)(a).

PART 3

FIRST STAGE

Circumstances in which a first stage meeting may be required

- 15 Where the line manager for a police officer considers that the performance or attendance of that police officer is unsatisfactory, the line manager may require the police officer concerned to attend a meeting (in these Orders referred to as a “first stage meeting”) to discuss the performance or attendance of the police officer concerned.

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Arrangement of first stage meeting

16 (1) Where the line manager requires a police officer to attend a first stage meeting, the line manager must give a notice in writing to the police officer concerned—

- (a) requiring the police officer concerned to attend a first stage meeting of the unsatisfactory performance procedures with the line manager;
- (b) informing the police officer concerned of the procedures for determining the date and time of the meeting under paragraphs (3) to (6);
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (d) informing the police officer concerned of the possible outcomes of a first stage meeting, a second stage meeting and a third stage meeting;
- (e) informing the police officer concerned that a human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings;
- (f) informing the police officer concerned that, if he consents, any other person specified in the notice may attend the meeting;
- (g) informing the police officer concerned that he may seek advice from a representative of his staff association;
- (h) informing the police officer concerned that he may be accompanied and represented at the meeting by a police friend; and
- (i) informing the police officer concerned that he must provide to the line manager in advance of the meeting a copy of any document he intends to rely on at the meeting.

(2) Such notice must be accompanied by a copy of any document relied upon by the line manager when coming to his view mentioned in order 15 that the performance or attendance of the police officer concerned is unsatisfactory.

(3) The line manager must, if reasonably practicable, agree a date and time for the meeting with the police officer concerned.

(4) Where no date and time are agreed under paragraph (3), the line manager must specify a date and time for the meeting.

(5) Where a date and time are specified under paragraph (4) and—

- (a) the police officer concerned or his police friend will not be available at that time; and
- (b) the police officer concerned proposes an alternative time which satisfies paragraph (6),

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

(6) An alternative time must—

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- (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 line manager under paragraph (4).

(7) The line manager must give to the police officer concerned a notice in writing of the date and time of the first stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.

(8) In advance of the first stage meeting, the police officer concerned must provide the line manager with a copy of any document he intends to rely on at the meeting.

Procedure at first stage meeting

17 (1) The following provisions of this order apply to the procedure to be followed at the first stage meeting.

(2) The meeting must be conducted by the line manager.

(3) A human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings.

(4) Any other person specified in the notice referred to in order 16(1) may attend the meeting if the police officer concerned consents to such attendance.

(5) The line manager must—

- (a) explain to the police officer concerned the reasons why the line manager considers that the performance or attendance of the police officer concerned is unsatisfactory;
- (b) provide the police officer concerned with an opportunity to make representations in response;
- (c) provide his police friend (if the police officer concerned has one) with an opportunity to address the meeting in accordance with order 9(3)(a).

(6) If, after considering any representations made in accordance with paragraph (5)(b) or (c), the line manager finds that the performance or attendance of the police officer concerned has been unsatisfactory, the line manager must—

- (a) inform the police officer concerned in what respect his performance or attendance is considered unsatisfactory;
- (b) inform the police officer concerned of the improvement that is required in his performance or attendance;
- (c) inform the police officer concerned that, if a sufficient improvement is not made within a specified period, the police officer concerned may be required to attend a second stage meeting in accordance with order 22 and the line manager must specify the date on which this period ends;
- (d) inform the police officer concerned that he will receive a written improvement notice; and

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- (e) inform the police officer concerned that if the sufficient improvement referred to in subparagraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the specified period, the police officer concerned may be required to attend a second stage meeting in accordance with order 22.

(7) The line manager may, if he considers it appropriate, recommend that the police officer concerned seek assistance in relation to any matter affecting his health or welfare.

(8) The line manager may postpone or adjourn the meeting to a specified later time or date if it appears to the line manager necessary or expedient to do so.

Procedure following first stage meeting

18 (1) The line manager must, as soon as reasonably practicable after the date of the conclusion of the first stage meeting—

- (a) cause to be prepared a written record of the meeting; and
- (b) where the line manager found at the meeting that the performance or attendance of the police officer concerned had been unsatisfactory, cause to be prepared a written improvement notice.

(2) Where the police officer concerned has failed to attend a first stage meeting, if the line manager finds that the performance or attendance of the police officer has been unsatisfactory, the line manager must as soon as reasonably practicable—

- (a) cause to be prepared a written improvement notice; and
- (b) if the police officer concerned attended the meeting, cause to be prepared a written record of the meeting.

(3) A written improvement notice must—

- (a) record the matters of which the police officer concerned was informed (or would have been informed had the police officer concerned attended the meeting) under sub-paragraphs (a) to (c) and (e) of order 17(6);
- (b) state the period for which it is valid; and
- (c) be signed and dated by the line manager.

(4) A written improvement notice must be valid for a period of 12 months from the date of the notice (the “validity period”).

(5) The line manager must give a copy of any written record and any written improvement notice to the police officer concerned as soon as reasonably practicable after they have been prepared.

(6) Where the line manager found that the performance or attendance of the police officer concerned had been unsatisfactory and has caused to be prepared a written improvement notice, the line manager must, at the same time as supplying the documents mentioned in paragraph (5), notify the police officer concerned in writing of the matters set

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out in order 19, of the name of the person to whom a written notice of appeal must be given under that order, of his entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).

(7) Subject to paragraphs (8) and (9), the police officer concerned must be entitled to submit written comments on any written record to the line manager before the end of 7 business days beginning with the first business day after the day on which the copy is received by the police officer concerned.

(8) The line manager may, on the application of the police officer concerned, extend the period specified in paragraph (7) if he is satisfied that it is appropriate to do so.

(9) The police officer concerned is not entitled to submit written comments on the written record if the police officer concerned has exercised his right to appeal under order 19.

(10) The line manager must ensure that any written record, any written improvement notice and any written comments of the police officer concerned on the written record are retained together and filed.

Appeal against the finding and outcome of a first stage meeting

19 (1) This order applies where, at the first stage meeting, the line manager found that the performance or attendance of the police officer concerned had been unsatisfactory.

(2) Where this order applies, the police officer concerned may appeal against—

- (a) such finding; or
- (b) any of the matters specified in paragraph (3) and recorded in the written improvement notice (in these Orders referred to as the “relevant terms of the written improvement notice”),

or both.

(3) The matters specified in this paragraph are the—

- (a) respect in which the performance or attendance of the police officer concerned is considered unsatisfactory;
- (b) improvement that is required in his performance or attendance;
- (c) length of the period specified by the line manager in accordance with order 17(6)(c).

(4) The only grounds of appeal under this order are that—

- (a) the finding of unsatisfactory performance or attendance was unreasonable;
- (b) any of the relevant terms of the written improvement notice are unreasonable;
- (c) there is evidence that could not reasonably have been considered at the first stage meeting which could have materially affected the finding of

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unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice;

- (d) there was a breach of the procedures set out in these Orders or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice.

(5) Any appeal must be commenced by the police officer concerned giving written notice of appeal to the second line manager before the end of 7 business days beginning with the first business day after receipt of the documents referred to in order 18(5).

(6) Such notification must—

- (a) set out the grounds of appeal of the police officer concerned; and
(b) be accompanied by any evidence on which the police officer concerned relies.

(7) The second line manager may, on the application of the police officer concerned, extend the period specified in paragraph (5) if he is satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Orders as a “first stage appeal meeting”) must take place before the end of 7 business days beginning with the first business day after the day on which the notification under paragraph (5) is received by the second line manager.

(9) A first stage appeal meeting may take place after the period of 7 business days referred to in paragraph (8) if the second line manager considers it necessary or expedient, in which case he must notify the police officer concerned of his reasons in writing.

Arrangement of first stage appeal meeting

20 (1) As soon as reasonably practicable after receipt by the second line manager of the notification of appeal referred to in order 19(5), the second line manager must give a notice in writing to the police officer concerned—

- (a) informing the police officer concerned of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
(b) informing the police officer concerned that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
(c) informing the police officer concerned that, if he consents, any other person specified in the notice may attend the meeting;
(d) informing the officer concerned that he may seek advice from a representative of his staff association; and
(e) informing the police officer concerned that he may be accompanied and represented at the meeting by a police friend.

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(2) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the police officer concerned.

(3) Where no date and time are agreed under paragraph (2), the second line manager must specify a date and time for the meeting.

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

- (a) the police officer concerned or his police friend will not be available at that time; and
- (b) the police officer concerned proposes an alternative time which satisfies paragraph (5),

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

(5) 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 second line manager under paragraph (3).

(6) The second line manager must give to the police officer concerned a notice in writing of the date and time of the first stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

Procedure at first stage appeal meeting

21 (1) The following provisions of this order apply to the procedure to be followed at a first stage appeal meeting.

(2) The meeting must be conducted by the second line manager.

(3) A human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings.

(4) Any other person specified in the notice referred to in order 20(1) may attend the meeting if the police officer concerned consents to such attendance.

(5) The second line manager must—

- (a) provide the police officer concerned with an opportunity to make representations; and
- (b) provide his police friend (if the police officer concerned has one) with an opportunity to address the meeting in accordance with order 9(3)(a).

(6) After considering any representations made in accordance with paragraph (5), the second line manager may—

- (a) confirm or reverse the finding of unsatisfactory performance or attendance;
- (b) confirm or vary the relevant terms of the written improvement notice appealed against.

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(7) Where the second line manager has reversed the finding of unsatisfactory performance or attendance, the second line manager must also revoke the written improvement notice.

(8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to the second line manager necessary or expedient to do so.

(9) As soon as reasonably practicable after the conclusion of the meeting, the police officer concerned must be given written notice of the second line manager's decision and a written summary of the reasons for that decision, but in any event, the police officer concerned must be given written notice of the decision before the end of three business days beginning with the first business day after the conclusion of the meeting.

(10) Where the second line manager has—

(a) reversed the finding of unsatisfactory performance or attendance and revoked the written improvement notice; or

(b) varied any of the relevant terms of the written improvement notice,

the decision of the second line manager must take effect by way of substitution for the finding, the written improvement notice issued or the relevant terms of the written improvement notice appealed against from the date of the first stage meeting.

PART 4

SECOND STAGE

Circumstances in which a second stage meeting may be required

22 (1) Where a police officer has received a written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with order 17(6)(c) ends—

(a) the line manager must assess the performance or attendance of the police officer concerned during that period, in consultation with the second line manager or a human resources professional (or both); and

(b) the line manager must notify the police officer concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, the line manager must, at the same time as the line manager gives notification under paragraph (1)(b), also notify the police officer concerned in writing that the police officer concerned is required to attend a meeting (in these Orders referred to as a "second stage meeting") to consider his performance or attendance.

(3) Where—

(a) the police officer concerned has not been required to attend a second stage meeting under paragraph (2); or

- (b) the police officer concerned has been required to attend a second stage meeting under paragraph (2) but the second line manager did not make a finding of unsatisfactory performance or attendance at that meeting,

the police officer concerned may be required to attend a second stage meeting under paragraph (4).

(4) If the line manager considers that the police officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the written improvement notice remaining after the expiry of the period specified in accordance with order 17(6)(c), the line manager must notify the police officer concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that the line manager is of the view mentioned in paragraph (4); and
- (b) that the police officer concerned is required to attend a meeting (in these Orders referred to as a second stage meeting) to consider his performance or attendance.

(6) Any second stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

Arrangement of second stage meeting

23 (1) Where the line manager requires the police officer concerned to attend a second stage meeting, the second line manager must as soon as reasonably practicable give a notice in writing to the police officer concerned—

- (a) referring to the requirement on the police officer concerned to attend a second stage meeting of the unsatisfactory performance procedures with the second line manager;
- (b) informing the police officer concerned of the procedures for determining the date and time of the meeting under paragraphs (3) to (6);
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (d) informing the police officer concerned of the possible outcomes of a second stage meeting and a third stage meeting;
- (e) informing the police officer concerned that the line manager may attend the meeting;
- (f) informing the police officer concerned that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
- (g) informing the police officer concerned that, if the police officer concerned consents, any other person specified in the notice may attend the meeting;

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- (h) informing the police officer concerned that he may seek advice from a representative of his staff association;
- (i) informing the police officer concerned that he may be accompanied and represented at the meeting by a police friend; and
- (j) informing the police officer concerned that he must provide to the second line manager in advance of the meeting a copy of any document the police officer concerned intends to rely on at the meeting.

(2) Such notice must be accompanied by a copy of any document relied upon by the line manager when he formed the view referred to in order 22(2) or (4), as the case may be.

(3) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the police officer concerned.

(4) Where no date and time are agreed under paragraph (3), the second line manager must specify a date and time for the meeting.

(5) Where a date and time are specified under paragraph (4) and—

- (a) the police officer concerned or his police friend will not be available at that time; and
- (b) the police officer concerned proposes an alternative time which satisfies paragraph (6),

the meeting 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 second line manager under paragraph (4).

(7) The second line manager must give to the police officer concerned a notice in writing of the date and time of the second stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.

(8) In advance of the second stage meeting, the police officer concerned must provide the second line manager with a copy of any document the police officer concerned intends to rely on at the meeting.

Procedure at second stage meeting

24 (1) The following provisions of this order apply to the procedure to be followed at the second stage meeting.

(2) The meeting must be conducted by the second line manager and may be attended by the line manager.

(3) A human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings.

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(4) Any other person specified in the notice referred to in order 23(1) may attend the meeting if the police officer concerned consents to such attendance.

(5) The second line manager must—

- (a) explain to the police officer concerned the reasons why the police officer concerned has been required to attend the meeting;
- (b) provide the police officer concerned with an opportunity to make representations in response; and
- (c) provide his police friend (if the police officer concerned has one) with an opportunity to address the meeting in accordance with order 9(3)(a).

(6) If, after considering any representations made under paragraph (5)(b) or (c), the second line manager finds that the performance or attendance of the police officer concerned has been unsatisfactory during the period specified in accordance with order 17(6)(c) or during any part of the validity period of the written improvement notice remaining after the expiry of such period, the second line manager must—

- (a) inform the police officer concerned in what respect his performance or attendance is considered unsatisfactory;
- (b) inform the police officer concerned of the improvement that is required in his performance or attendance;
- (c) inform the police officer concerned that, if a sufficient improvement is not made within the specified period, the police officer concerned may be required to attend a third stage meeting in accordance with order 29 and the second line manager must specify the date on which the specified period ends;
- (d) inform the police officer concerned that he will receive a final written improvement notice; and
- (e) inform the police officer concerned that if the sufficient improvement referred to in subparagraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the specified period the police officer concerned may be required to attend a third stage meeting in accordance with order 29.

(7) The second line manager may, if the second line manager considers it appropriate, recommend that the police officer concerned seek assistance in relation to any matter affecting his health or welfare.

(8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to the second line manager necessary or expedient to do so.

Procedure following second stage meeting

25 (1) The second line manager must, as soon as reasonably practicable after the date of the conclusion of the second stage meeting—

- (a) cause to be prepared a written record of the meeting; and

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- (b) where the second line manager made a finding at the meeting as set out in order 24(6), cause to be prepared a final written improvement notice.
- (2) Where the police officer concerned has failed to attend a second stage meeting, if the second line manager makes a finding as set out in order 24(6), the second line manager must as soon as reasonably practicable—
- (a) cause to be prepared a final written improvement notice; and
 - (b) if the police friend of the police officer concerned attended the meeting, cause to be prepared a written record of the meeting.
- (3) A final written improvement notice must—
- (a) record the matters of which the police officer concerned was informed (or would have been informed had the police officer concerned attended the meeting) under sub-paragraphs (a) to (c) and (e) of order 24(6);
 - (b) state the period for which it is valid; and
 - (c) be signed and dated by the second line manager.
- (4) A final written improvement notice must be valid for a period of 12 months from the date of the notice (the “validity period”).
- (5) The second line manager must give a copy of any written record and any final written improvement notice to the police officer concerned as soon as reasonably practicable after they have been prepared.
- (6) Where the second line manager made a finding as set out in order 24(6) and has caused to be prepared a final written improvement notice, the second line manager must, at the same time as supplying the documents mentioned in paragraph (5), notify the police officer concerned in writing of the matters set out in order 27, of the name of the person to whom a written notice of appeal must be given under that order, of his entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).
- (7) Subject to paragraphs (8) and (9), if the police officer concerned wishes to submit written comments on the written record to the second line manager he must do so before the end of 7 business days beginning with the first business day after the day on which the copy is received by the police officer concerned.
- (8) The second line manager may, on the application of the police officer concerned, extend the period specified in paragraph (7) if the second line manager is satisfied that it is appropriate to do so.
- (9) The police officer concerned must not be entitled to submit written comments on the written record if the police officer concerned has exercised his right to appeal under order 26.
- (10) The second line manager must ensure that any written record, any final written improvement notice and any written comments of the police officer concerned on the written record are retained together and filed.

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Appeal against the finding and outcome of a second stage meeting

26 (1) This order applies where, at the second stage meeting, the second line manager found that the performance or attendance of the police officer concerned had been unsatisfactory as set out in order 24(6).

(2) Where this order applies, the police officer concerned may appeal against one or more of the following—

- (a) such finding;
- (b) any of the matters specified in paragraph (3) and recorded in the final written improvement notice (in these Orders referred to as the “relevant terms of the final written improvement notice”);
- (c) the decision of the line manager to require the police officer concerned to attend the second stage meeting.

(3) The matters specified in this paragraph are—

- (a) the respect in which the performance or attendance of the police officer concerned is considered unsatisfactory;
- (b) the improvement that is required in his performance or attendance;
- (c) the length of the period specified by the second line manager in accordance with order 24(6)(c).

(4) The only grounds of appeal under this order are—

- (a) that, in relation to an appeal under paragraph (2)(c), the police officer concerned should not have been required to attend the second stage meeting as the meeting did not, in accordance with order 22(6), concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice;
- (b) that the finding of unsatisfactory performance or attendance was unreasonable;
- (c) that any of the relevant terms of the final written improvement notice are unreasonable;
- (d) that there is evidence that could not reasonably have been considered at the second stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice;
- (e) that there was a breach of the procedures set out in these Orders or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice.

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(5) An appeal must be commenced by the police officer concerned giving written notice of appeal to the senior manager before the end of 7 business days beginning with the first business day after receipt of the documents referred to in order 25(5).

(6) Such notice must—

- (a) set out the grounds of appeal of the police officer concerned; and
- (b) be accompanied by any evidence on which the police officer concerned relies.

(7) The senior manager may, on the application of the police officer concerned, extend the period specified in paragraph (5) if the senior manager is satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Orders as a “second stage appeal meeting”) must take place before the end of 7 business days beginning with the first business day after the day on which the notification under paragraph (5) is received by the senior manager.

(9) A second stage appeal meeting may take place after the period of 7 business days referred to in paragraph (8) if the senior manager considers it necessary or expedient, in which case the senior manager must notify the police officer concerned of his reasons in writing.

Arrangement of second stage appeal meeting

27 (1) As soon as reasonably practicable after receipt by the senior manager of the notice of appeal referred to in order 26(5), the senior manager must give a notice in writing to the police officer concerned—

- (a) informing the police officer concerned of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
- (b) informing the police officer concerned that a human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings;
- (c) informing the police officer concerned that, if he consents, any other person specified in the notice may attend the meeting;
- (d) informing the police officer concerned that he may seek advice from a representative of his staff association; and
- (e) informing the police officer concerned that he may be accompanied and represented at the meeting by a police friend.

(2) The senior manager must, if reasonably practicable, agree a date and time for the meeting with the police officer concerned.

(3) Where no date and time are agreed under paragraph (2), the senior manager must specify a date and time for the meeting.

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

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- (a) the police officer concerned or his police friend will not be available at that time; and
- (b) the police officer concerned proposes an alternative time which satisfies paragraph (5),

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

(5) 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 senior manager under paragraph (3).

(6) The senior manager must give to the police officer concerned a notice in writing of the date and time of the second stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

Procedure at second stage appeal meeting

28 (1) The following provisions of this order apply to the procedure to be followed at a second stage appeal meeting.

(2) The meeting must be conducted by the senior manager.

(3) A human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings.

(4) Any other person specified in the notice referred to in order 27(1) may attend the meeting if the police officer concerned consents to such attendance.

(5) The senior manager must—

- (a) provide the police officer concerned with an opportunity to make representations; and
- (b) provide his police friend (if the police officer concerned has one) with an opportunity to address the meeting in accordance with order 9(3)(a).

(6) After considering any representations made in accordance with paragraph (5), the senior manager may—

- (a) in an appeal under order 26(2)(c), make a finding that the police officer concerned should not have been required to attend the second stage meeting and reverse the finding made at that meeting;
- (b) confirm or reverse the finding of unsatisfactory performance or attendance made at the second stage meeting;
- (c) confirm or vary the relevant terms of the final written improvement notice appealed against.

(7) Where the senior manager has reversed the finding of unsatisfactory performance or attendance made at the second stage meeting, the senior manager must also revoke the final written improvement notice.

(8) The senior manager may postpone or adjourn the meeting to a specified later time or date if it appears to the senior manager necessary or expedient to do so.

(9) As soon as reasonably practicable after the conclusion of the meeting, the police officer concerned must be given written notice of the senior manager's decision and a written summary of the reasons for that decision but in any event, the police officer concerned must be given written notice of the decision before the end of 3 business days beginning with the first business day after the conclusion of the meeting.

(10) Where the senior manager has—

- (a) reversed the finding made as set out in order 24(6) and revoked the final written improvement notice; or
- (b) varied any of the relevant terms of the final written improvement notice,

the decision of the senior manager must take effect by way of substitution for the finding, the final written improvement notice issued or the relevant terms of the final written improvement notice appealed against from the date of the second stage meeting.

PART 5

THIRD STAGE

Assessment following second stage meeting

29 (1) Where a police officer has received a final written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with order 24(6)(c) ends—

- (a) the line manager must assess the performance or attendance of the police officer concerned during that period, in consultation with the second line manager or a human resources professional (or both); and
- (b) the line manager must notify the police officer concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, the line manager must, at the same time as he gives notification under paragraph (1)(b), also notify the police officer concerned in writing that the officer concerned is required to attend a meeting (in these Orders referred to as a "third stage meeting") to consider his performance or attendance.

(3) Where—

- (a) the police officer concerned has not been required to attend a third stage meeting under paragraph (2); or
- (b) the police officer concerned has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

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the police officer concerned may be required to attend a third stage meeting under paragraph (4).

(4) If the line manager considers that the police officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with order 24(6)(c), the line manager must notify the police officer concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that the line manager is of the view mentioned in paragraph (4); and
- (b) that the police officer concerned is required to attend a meeting (in these Orders referred to as a third stage meeting) to consider his performance or attendance.

(6) Subject to order 31, any third stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

Arrangement of a third stage meeting

30 (1) Where the line manager requires the police officer concerned to attend a third stage meeting, the senior manager must as soon as reasonably practicable give a notice in writing to the police officer concerned—

- (a) referring to the requirement on the police officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
- (b) informing the police officer concerned of the procedures for determining the date and time of the meeting under order 36;
- (c) summarising the reasons why his performance or attendance is considered unsatisfactory;
- (d) informing the police officer concerned of the possible outcomes of the meeting;
- (e) informing the police officer concerned that a human resources professional or a police officer may attend the meeting to advise the panel on the proceedings;
- (f) informing the police officer concerned that a barrister may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
- (g) informing the police officer concerned that, if he consents, any other person specified in the notice may attend the meeting;
- (h) informing the police officer concerned that he may seek advice from a representative of his staff association; and

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- (i) informing the police officer concerned that he may be accompanied and represented at the meeting by a police friend and, subject to order 7, a barrister.

(2) Such notice must be accompanied by a copy of any document relied upon by the line manager when he formed the view referred to in order 29(2) or (4), as the case may be.

(3) A third stage meeting under this order must not take place unless the police officer concerned has been notified of his right to representation under paragraph (1)(j).

Circumstances in which a third stage meeting may be required without a prior first or second stage meeting

31 (1) This order applies where the appropriate authority considers that the performance of a police officer constitutes gross incompetence.

(2) Where this order applies, the appropriate authority must inform the police officer concerned in writing that the police officer concerned is required to attend a meeting to consider his performance.

(3) Such meeting must be referred to in these Orders as a “third stage meeting”, notwithstanding that the police officer concerned has not attended a first stage meeting or a second stage meeting in respect of such performance.

Arrangement of a third stage meeting without a prior first or second stage meeting

32 (1) Where the appropriate authority has informed the police officer concerned under order 31(2) that the police officer concerned is required to attend a third stage meeting, the appropriate authority must as soon as reasonably practicable give to the police officer concerned a notice in writing—

- (a) referring to the requirement on the police officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
- (b) informing the police officer concerned of the procedures for determining the date and time of the meeting under order 36;
- (c) summarising the reasons why his performance is considered to constitute gross incompetence;
- (d) informing the police officer concerned of the possible outcomes of the meeting;
- (e) informing the police officer concerned that a human resources professional or a police officer may attend the meeting to advise the panel on the proceedings;
- (f) informing the police officer concerned that a barrister may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;

- (g) in a case to which order 38 applies, informing the police officer concerned that the complainant or any interested person may attend the meeting as an observer;
- (h) in a case to which order 39(4) applies, informing the police officer concerned that a person nominated by the PCA may attend the meeting as an observer;
- (i) informing the police officer concerned that, if he consents, any other person specified in the notice may attend the meeting;
- (j) informing the police officer concerned that he may seek advice from a representative of his staff association;
- (k) informing the police officer concerned of the effect of order 5; and
- (l) informing the police officer concerned that he may be accompanied at the meeting by a police friend and, subject to order 7, a barrister.

(2) Such notice must be accompanied by a copy of any document relied upon by the appropriate authority when it formed the view referred to in order 31(1).

Appointment of panel

33 (1) In a case where a police officer has been referred to a third stage meeting under order 30 or 31, then that meeting must be conducted by a panel consisting of—

- (a) a legally qualified chair;
- (b) a lay member; and
- (c) a police officer of the rank of Superintendent or above.

(2) Any person appointed to a panel must not be an interested party.

(3) As soon as reasonably practicable after the panel has been appointed, the senior manager or appropriate authority must notify in writing the police officer concerned of the names of the panel members.

(4) As soon as the appropriate authority has appointed the panel, the appropriate authority must arrange for a copy of any document—

- (a) which was available to the line manager in relation to any first stage meeting;
- (b) which was available to the second line manager in relation to any second stage meeting; or
- (c) which was prepared or submitted under order 18, 21, 25, 28, 29, 30, 31 or 32, as the case may be,

to be made available to the panel; and a copy of any such document must be given to the police officer concerned.

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Procedure on receipt of notice of third stage meeting

34 (1) Before the end of—

- (a) 14 business days beginning with the first business day after the date on which a notice has been given to the police officer concerned under order 30 or 32; or
- (b) where that period is extended by the panel chair 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 concerned accepts that his performance or attendance has been unsatisfactory or that the police officer concerned has been grossly incompetent, as the case may be;
- (b) where the police officer concerned accepts that his performance or attendance has been unsatisfactory or that the police officer concerned has been grossly incompetent, any written submission the police officer concerned wishes to make in mitigation;
- (c) where the police officer concerned does not accept that his performance or attendance has been unsatisfactory or that the police officer concerned has been grossly incompetent, or where the police officer concerned disputes all or part of the matters referred to in the notice given under order 30 or 32, written notice of—
 - (i) the matters the police officer concerned disputes and his account of the relevant events; and
 - (ii) any arguments on points of law the police officer concerned wishes to be considered; and
- (d) notification by the police officer concerned that he wishes to be legally represented.

(3) The police officer concerned must provide the appropriate authority and the panel chair with a copy of any document the police officer concerned intends to rely on at the third stage meeting.

(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 senior manager and the police officer concerned must each supply to the other 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 senior manager.

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(6) Where no list of proposed witnesses is agreed under paragraph (4), the police officer concerned must supply to the appropriate authority his list of proposed witnesses.

Witnesses

35 (1) As soon as reasonably practicable after any list of proposed witnesses has been—

- (a) agreed; or
- (b) supplied,

the appropriate authority must supply that list to the panel chair, together with a list of its proposed witnesses.

(2) The panel chair must—

- (a) consider the list or lists of proposed witnesses; and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the third stage meeting.

(3) The panel chair may determine that witnesses not named in any list of proposed witnesses should attend the third stage meeting.

(4) No witness must give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case he must—

- (a) where the witness is a police officer, cause that person to be ordered to attend the third stage meeting; 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 meeting.

Timing and notice of third stage meeting

36 (1) Subject to paragraphs (2) and (6) and order 37, the third stage meeting must take place before the end of 30 business days beginning with the first business day after the day on which a notice has been given to the police officer concerned under order 30 or 32.

(2) The panel chair may extend the time period specified in paragraph (1) where the panel chair considers that it would be in the interests of fairness to do so.

(3) Where the panel chair extends the time period under paragraph (2), the panel chair must provide written notification of his reasons for so doing to the appropriate authority and the police officer concerned.

(4) The panel chair must, if reasonably practicable, agree a date and time for the third stage meeting with the police officer concerned.

(5) Where no date and time are agreed under paragraph (4), the panel chair must specify a date and time for the third stage meeting.

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- (6) Where a date and time are specified under paragraph (5) and—
- (a) the police officer concerned or his police friend will not be available at that time; and
 - (b) the police officer concerned proposes an alternative time which satisfies paragraph (7),

the third stage meeting 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 panel chair.

(8) The panel chair must give to the police officer concerned a notice in writing of the date and time of the third stage meeting determined in accordance with this order and of the place of the meeting.

(9) Where the police officer concerned informs the panel chair in advance that the police officer concerned is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the police officer concerned to participate in the meeting by video link or other means.

Postponement and adjournment of a third stage meeting

37 (1) If the panel chair considers it necessary or expedient, the panel chair may direct that the third stage meeting take place at a different time to that specified in the notice given under order 36.

(2) Such direction may specify a time which falls after the period of 30 business days referred to in order 36(1).

(3) Where the panel chair makes a direction under paragraph (1), the panel chair must notify in writing the police officer concerned and the appropriate authority of his reasons and the revised time and place for the meeting.

Attendance of complainant or interested person at a third stage meeting

38 (1) This order applies in a case falling within order 31 where the third stage meeting arises from—

- (a) a conduct matter; or
- (b) the investigation of a complaint.

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

(3) Subject to the provisions of this order and any conditions imposed under order 39(7)—

- (a) the complainant may attend as an observer any part of the third stage meeting relating to the subject matter of his complaint; and
- (b) an interested person may attend as an observer any part of the third stage meeting relating to the subject matter of the complaint or conduct matter in respect of which he is an interested person.

(4) Subject to paragraph (5) and any conditions imposed under order 39(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 third stage meeting, the complainant or interested person and any person allowed to accompany him must not be allowed to attend the meeting before the complainant or interested person gives his evidence.

(6) Where the police officer concerned objects to the complainant or interested person, or any person accompanying the police officer concerned, being present while a submission is made in mitigation on the police officer's behalf, the panel chair may require the complainant or interested person, or any person accompanying the police officer concerned, to withdraw while the submission is made.

(7) The panel chair may, at his discretion, put any questions to the 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 panel chair, he has a disability or learning difficulty, or does not have sufficient knowledge of English, so that he is made to fully participate in or understand the third stage meeting.

Attendance of others at a third stage meeting

39 (1) Subject to order 38 and the provisions of this order, the third stage meeting must be in private.

(2) A human resources professional or a police officer may attend the meeting to advise the panel chair on the proceedings.

(3) A barrister also may attend the meeting to advise the panel chair on the proceedings and on any question of law that may arise at the meeting.

(4) Any other person specified in the notice to the police officer concerned in accordance with order 30(1) or 32(1) may attend the meeting if the police officer consents to such attendance.

(5) Subject to any contrary decision by the panel chair, a witness other than a complainant, interested person or the police officer concerned must only attend the third stage meeting for the purposes of giving their evidence.

(6) The panel chair may, at his discretion, permit a witness in the third stage meeting to be accompanied at that meeting by one other person.

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(7) The panel chair may impose such conditions as he sees fit relating to the attendance under this order, or order 38, of persons at the third stage meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the meeting.

Exclusion from a third stage meeting

40 (1) Where it appears to the panel chair that any person may, in giving evidence, disclose information which ought not to be disclosed to any person attending the meeting because it is information to which paragraph (2) applies, the panel chair must require such attendees to withdraw while the evidence is given.

(2) This paragraph applies to information in so far as the panel chair considers that preventing disclosure of it 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 purposes of the prevention or detection of misconduct by other police officers or their apprehension for such matters;
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (f) otherwise in the public interest.

Procedure at a third stage meeting

41 (1) Subject to the provisions of these Orders, the procedure at the third stage meeting must be such as the panel chair may determine.

(2) Where the police officer concerned is required to attend a third stage meeting under order 29, the panel chair must—

- (a) provide the police officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under order 30;
- (b) provide his police friend with an opportunity to address the meeting in relation to such matters in accordance with order 9(3)(a).

(3) Where the police officer concerned is required to attend a third stage meeting under order 31, the panel chair must—

- (a) provide the police officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under order 32;

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- (b) provide the person representing the officer with an opportunity to address the meeting in relation to such matters in accordance with order 9(3)(a).
- (4) The panel chair may adjourn the meeting to a specified later time or date if it appears to the panel chair necessary or expedient to do so.
- (5) A verbatim record of the meeting must be taken and the police officer concerned must, on request, be supplied with a copy.

Finding

- 42
- (1) Following the third stage meeting, the panel must make a finding whether—
 - (a) in a case falling within order 29(2), the performance or attendance of the police officer concerned during the period specified in accordance with order 24(6)(c) has been satisfactory or not;
 - (b) in a case falling within order 29(4), the performance or attendance of the police officer concerned during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with order 24(6)(c) has been satisfactory or not; or
 - (c) in a case falling within order 31, the performance of the police officer concerned constitutes gross incompetence, unsatisfactory performance or neither.
 - (2) The panel chair must prepare (or must cause to be prepared) the decision in writing which must state the finding and the reasons, as well as any outcome which the panel may order under order 43.
 - (3) As soon as reasonably practicable after the conclusion of the meeting, the panel chair must give a written copy of the decision to—
 - (a) the police officer concerned; and
 - (b) the line manager,

but in any event, the police officer concerned must be given written notice of the finding before the end of 3 business days beginning with the first business day after the conclusion of the meeting.

(4) Where the panel has made a finding of unsatisfactory performance or attendance, or gross incompetence, and the outcome is dismissal with or without notice, the copy of the decision given to the police officer concerned must be accompanied by a notice in writing setting out the circumstances in which and the time within which a police officer may appeal to the Public Service Commission under the appeals regulations.

Outcomes

- 43
- (1) If the panel makes a finding that, in a case falling within order 29(2) or (4), the performance or attendance of the police officer concerned has been unsatisfactory, the panel may, subject to paragraph (4), order—
 - (a) one of the outcomes mentioned in paragraph (3)(a), (c) or (f); or

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(b) where the panel is satisfied that there are exceptional circumstances which justify it, the outcome mentioned in paragraph (3)(d).

(2) If the panel makes a finding that, in a case falling within order 31, the performance of the police officer concerned constitutes gross incompetence, the panel may order one of the outcomes mentioned in paragraph (3)(b), (c), (e) or (f).

(3) The outcomes mentioned in this paragraph are—

- (a) dismissal of the police officer concerned with notice, the period of such notice to be decided by the panel, subject to a minimum period of 28 days;
- (b) dismissal of the police officer concerned with immediate effect;
- (c) reduction in rank of the police officer concerned with immediate effect;
- (d) the issue of a final written improvement notice;
- (e) an extension of the final written improvement notice;
- (f) redeployment to alternative duties (which may involve a reduction of rank) within the Service.

(4) The panel may not order the outcome mentioned in paragraph (3)(c) where the third stage meeting relates to the attendance of the police officer concerned.

(5) Where the question of ordering any of the outcomes mentioned in paragraph (3) is being considered, the panel—

- (a) must have regard to the record of the service of the police officer concerned as shown on his personal record;
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (c) must give—
 - (i) the police officer concerned, his police friend or, in a case falling within order 31, his barrister; and
 - (ii) the appropriate authority,

an opportunity to make oral or written representations before any such question is determined.

(6) If the panel makes a finding, in a case falling within order 31, of unsatisfactory performance, the panel must order the issue of a written improvement notice.

(7) A written improvement notice or a final written improvement notice issued under this order must—

- (a) state in what respect the performance or attendance of the police officer concerned (as the case may be) is considered unsatisfactory or grossly incompetent;
- (b) state the improvement that is required in his performance or attendance;

- (c) state that, if a sufficient improvement is not made within the specified period, the police officer concerned may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice) and state the date on which this period ends;
 - (d) state that it must be valid for a period of 12 months from the date of the notice (the “validity period”);
 - (e) state that, if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period remaining after the expiry of the period specified in accordance with sub-paragraph (c), the police officer concerned may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice); and
 - (f) be signed and dated by the panel chair.
- (8) Where the panel orders an extension of the final written improvement notice—
- (a) the notice must be amended to state—
 - (i) that if the police officer concerned does not make a sufficient improvement within such reasonable period as the panel specifies (being a period not greater than 12 months), he may be required to attend another third stage meeting; and
 - (ii) the date on which this period ends;
 - (b) the panel may vary any of the other matters recorded in the notice;
 - (c) the notice must be valid for a further period of 12 months from the date of the extension (the “validity period”) and must state the date on which it expires.

Assessment of performance or attendance following third stage meeting

44 (1) This order applies where a written improvement notice has been issued under order 43.

(2) Where this order applies, the performance of the police officer concerned must be assessed under order 22 as if he had received a written improvement notice under order 18.

(3) Where, as a result of such assessment, the police officer concerned is required to attend a second stage meeting, these Orders have effect as if he had been required to attend that meeting under order 22; and—

- (a) references to the period specified in accordance with order 17(6)(c) must be construed as references to the period specified under order 43(7)(c); and
- (b) references to the validity period of the written improvement notice must be construed as references to the validity period of the written improvement notice issued under order 43.

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(4) Where a police officer is required to attend such a second stage meeting, that meeting must concern unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the written improvement notice.

Assessment of performance or attendance at the conclusion of a final written improvement notice period

45 (1) This order applies where a final written improvement notice has been issued or extended under order 43.

(2) Where this order applies, as soon as reasonably practicable after the period or reasonable period specified by the panel under order 43(7)(c) or (8)(a) ends—

- (a) the panel must assess the performance or attendance of the police officer concerned (as the case may be) during that period; and
- (b) the panel must notify the police officer concerned in writing whether the panel considers that there has been a sufficient improvement in performance or attendance during that period.

(3) If the panel considers that there has not been a sufficient improvement, the panel must, at the same time as he gives notification under paragraph (2)(b), also notify the police officer concerned in writing that he is required to attend another third stage meeting to consider his performance or attendance.

(4) Where the police officer concerned has—

- (a) not been required to attend a third stage meeting under paragraph (3); or
- (b) been required to attend a third stage meeting under paragraph (3) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the police officer concerned may be required to attend a third stage meeting under paragraph (5).

(5) If the panel considers that the police officer concerned has failed to maintain a sufficient improvement in his performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with order 43(7)(c) or (8)(a), the panel must notify the police officer concerned in writing of the matters set out in paragraph (6).

(6) Those matters are—

- (a) that the panel is of the view mentioned in paragraph (5); and
- (b) that the police officer concerned is required to attend another third stage meeting to consider his performance or attendance.

(7) In a case falling within paragraph (3) or (5), the appropriate authority must give the police officer concerned the notice referred to in order 30.

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(8) Where the police officer concerned is required to attend a third stage meeting under this order, these Orders have effect as if the case fell within order 29(2) or (4), as the case may be, and—

- (a) references to the period specified in accordance with order 24(6)(c) must be construed as references to the period specified under order 43(7)(c) or (8)(a), as the case may be; and
- (b) references to the validity period of the final written improvement notice must be construed as references to the validity period mentioned in order 43(7)(d) or (8)(c), as the case may be.

(9) Any third stage meeting which a police officer is required to attend under this order must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice issued or extended under order 43.

(10) References in this order to the panel are references to the panel that conducted the initial third stage meeting, subject to paragraph (11).

(11) Where the panel is not able to continue to act as such, the appropriate authority must appoint a new panel.

(12) As soon as reasonably practicable after any such appointment, the appropriate authority must notify in writing the police officer concerned of the names of the new panel members.

(13) The police officer concerned may object to the appointment of any member of the panel appointed under paragraph (11).

Conduct of a third stage meeting under order 45

46 (1) Where a police officer is required to attend another third stage meeting under order 45—

- (a) that meeting must be conducted by the same panel as conducted the initial third stage meeting (subject to any change in the panel under order 45);
- (b) the police officer concerned must not have the right to object to the composition of the panel, except in accordance with order 45(13);
- (c) subject to paragraph (2), orders 34 to 43 apply to, or in relation to, that meeting.

(2) Following that third stage meeting, the panel may not order the outcome mentioned in order 43(3)(d).

SCHEDULE

(Order 1)

APPLICATION OF THESE ORDERS TO SUPERINTENDENTS AND ASSISTANT
COMMISSIONERS

Application of these Orders to Superintendents and Assistant Commissioners

1 (1) For the purposes of order 2(2), the application of these Orders to superintendents is as follows—

- (a) Parts 1 and 2 apply without modification;
- (b) Part 3 applies, subject to the following modifications—
 - (i) in order 16—
 - (A) in paragraph (1)(d), delete “, a second stage meeting”;
 - (B) for paragraph (1)(h) substitute “(h) informing the police officer concerned that he may be accompanied and represented at the meeting by a police friend and, subject to order 7, a barrister.”;
 - (C) in paragraph (5)(a), after “police friend” insert “or barrister”;
 - (ii) in order 18—
 - (A) in paragraph (2)(b), after “police friend” insert “or barrister”;
 - (B) paragraphs (6) and (9) do not apply; and
 - (C) in paragraph (10), in the first line of the paragraph, after “any written record”, for “,” substitute “and” and in the second line omit “and any written comments of the police concerned on the written record”;
 - (iii) orders 19, 20 and 21 do not apply;
- (c) Part 4 does not apply;
- (d) Part 5 applies, subject to the following modifications—
 - (i) in order 29—
 - (A) in the heading to order 29, for “second” substitute “first”;
 - (B) in paragraph (1), for “order 24(6)(c)” substitute “order 17(6)(c)”;
 - (C) in paragraph (4), substitute “order 17(6)(c)” for “order 24(6)(c)”;
 - (ii) in order 31(3), delete “or a second stage meeting”;
 - (iii) in order 33(1)—
 - (A) delete “either”; and
 - (B) subparagraph (c) does not apply;

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- (iv) in order 33(5)(c), delete “25, 28,”;
 - (v) in order 36(6), after “police friend” insert “or barrister”;
 - (vi) in order 43—
 - (A) in paragraph (7)(c), delete “a second stage meeting (in the case of a written improvement notice) or”;
 - (B) in paragraph (7)(e), delete “a second stage meeting (in the case of a written improvement notice) or”;
 - (vii) order 44 does not apply; and
 - (viii) in order 45(8)(a), for “order 24(6)(c)” substitute “order 17(6)(c)”.
- (2) In addition for—
- (a) “senior manager” substitute “appropriate authority”; and
 - (b) “second stage meeting” substitute “third stage meeting”, except for the purposes of order 16(1)(d), 31(3) and 43(7);

wherever these terms occur in the Orders.

Made this 29th day of November 2016

Acting Governor