

GUIDANCE TO COMMISSIONERS IN RELATION TO EXERCISING DISCRETION TO DIRECT HOLDING POLICE MISCONDUCT HEARINGS IN PUBLIC

Introduction

1. The purpose of this guidance document is to assist Commissioners in the exercise of their discretion to direct the holding of police misconduct hearings in public.
2. Further to regulation 32(5) of the Police (Conduct) Regulations 2008 (the **2008 Regulations**), where the IPCC has conducted an independent investigation leading to a misconduct hearing, the IPCC may direct that all or part of the misconduct hearing is held in public, providing the IPCC considers that, '.....because of the gravity of the case or other exceptional circumstances it would be in the public interest to do so'.
3. A Commissioner, usually the Commissioner with oversight of the independent investigation, will take the decision whether to direct that the whole or part of the misconduct hearing be held in public (see Scheme of Delegation).
4. Before reaching his/her decision the Commissioner must consult with a number of parties (see below). The Commissioner will also consult with the IPCC Chair or Deputy Chair, who will monitor consistency of decision-making throughout the IPCC.
5. Misconduct hearings for employees are usually internal matters for employees and their employers and therefore held in private. However, owing to the nature of policing, police officers are subject to greater public scrutiny than other members of the public in relation to the way they conduct their work. Therefore, whilst a decision to direct a public hearing will be exceptional, there will be

circumstances where a Commissioner considers the requirements of regulation 32(5) are satisfied.

The regulatory test

6. Regulation 32(5) gives the Commissioner a discretion to direct that a misconduct hearing takes place in public if it is in the public interest to do so, because of:
 - a. the 'gravity' of the case; and / or
 - b. other 'exceptional circumstances'.

7. The ability to direct that misconduct proceedings take place in public only applies in relation to misconduct hearings, not misconduct meetings. Misconduct hearings involve cases where:
 - a. there is a case to answer for gross misconduct; or
 - b. there is a case to answer for misconduct and where the officer has a live final written warning.

8. Whether a case is sufficiently grave or exceptional to come within this regulation is essentially fact specific. But the 'gravity' or 'exceptional' circumstances of the 'case' are judged in relation to the conduct of the police officers concerned, not the handling of the police force as a whole.

9. If a complaint or conduct matter is independently investigated by the IPCC (a pre-condition of regulation 32(5)), it means that it is necessarily serious and that there is a public interest in the matter. Therefore, for the matter to be sufficiently grave or exceptional to come within regulation 32(5), there must be additional factors as the regulation limits an already limited category of case further.

10. Gravity and exception generally are assessed in terms of:

- a. the seriousness of the sanction likely to follow if the allegations are made out (i.e. a higher likelihood of dismissal if the allegation is made out increases the gravity of the case); and
 - b. the public confidence in the police complaints system (i.e. what effect holding the hearing in private or public will have on the public confidence in the police complaints system).
11. Assessing gravity and exception to determine where the public interest lies, may also engage the Commissioner in weighing up a number of further factors detailed below.

Consultation

12. Regulation 32(5) obliges the IPCC to consult with a number of different parties before reaching its final decision. These parties include:
 - a. the appropriate authority (the police force for junior officers and the police authority for senior officers);
 - b. the officer(s) concerned;
 - c. the complainant(s) or interested person(s); and
 - d. any witnesses.
13. Depending on the circumstances of the case, the IPCC may also choose to consult with a number of other persons, such as a Coroner or the Director of Public Prosecutions.

Factors guiding the exercise of this discretion

14. As part of assessing the public interest a Commissioner may take into account a variety of factors for and against making a direction – depending on the circumstances of each case. These may include, but are not limited to:
 - a. the transparency and effectiveness of the police complaints system;

- b. the number of complainants involved;
- c. the interest of the public in the case (including local, regional or national communities), as demonstrated by engagement directly with the public, with public representatives, community groups, relevant public bodies etc;
- d. the vulnerability of witnesses who may be called to give evidence at the hearing;
- e. operational factors (including security issues) engaged by a public hearing;
- f. the responses received through the consultation process;
- g. the effect of a public hearing on the officer(s) (e.g. welfare considerations); and
- h. whether criminal proceedings have been, or will be, brought against the officer(s) facing a misconduct hearing which have, or will, focus on the same allegations as those to be faced in the misconduct hearing, and whether the interest of the public in the case and the 'public interest' (i.e. that a public official is held accountable in public for an abuse of power / trust) will be sufficiently satisfied by these criminal proceedings.

Actions following taking the decision

- 15. The IPCC is obliged to inform those consulted further to regulation 32(5) of a decision to direct a public hearing as soon as practicable and in any event within 5 working days following the decision to direct.
- 16. If circumstances change between the initial decision to direct a public hearing and the hearing taking place, which materially changes whether it is in the public interest to direct a public hearing, the IPCC may revisit its decision. If so, the IPCC should confirm any change of position to those consulted under regulation 32(5).

Directing public misconduct hearings under the 2004 regulations

17. Regulation 30(5) for directing a public misconduct hearing further to the Police (Conduct) Regulations 2004 (pre-1st December 2008 cases), is almost identical to regulation 32(5) of the 2008 Regulations. The only minor differences are that 'interested persons' are not required consultees under the 2004 regulations and the period for confirming a direction is 5 calendar days (as opposed to 5 working days).

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