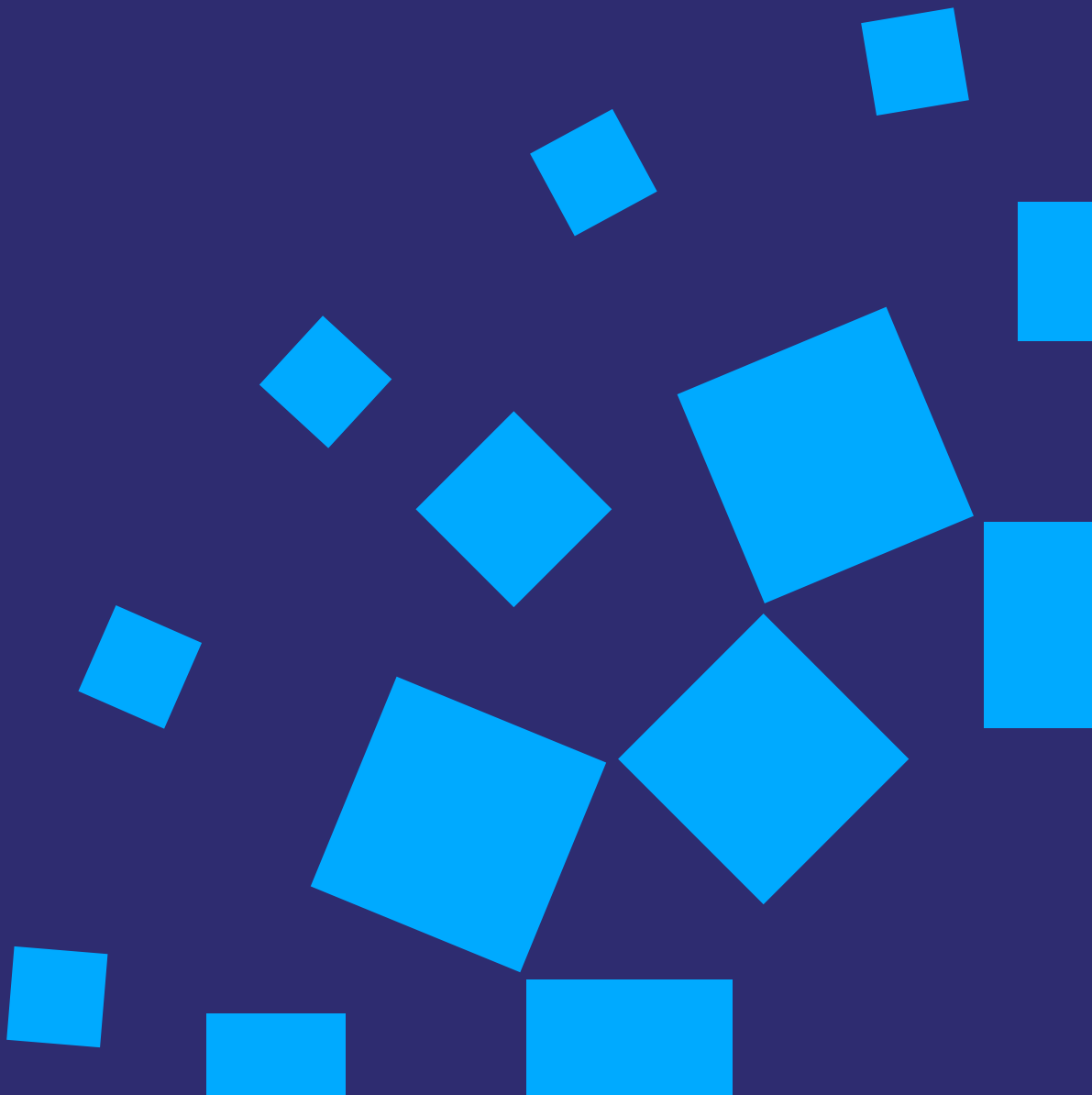




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Guidance on outcomes in police misconduct proceedings



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1 Introduction

- 1.1 This guidance has been issued by the College of Policing pursuant to section 87 of the Police Act 1996.¹ It applies to all police forces maintained by the Secretary of State for the Home Department.²
- 1.2 The guidance is intended to assist persons appointed to conduct misconduct proceedings (misconduct hearings, misconduct meetings and accelerated misconduct hearings) under Parts 4 and 5 of the Police (Conduct) Regulations 2020 ('the Conduct Regulations').³ The guidance may also be used to inform assessments of conduct under Regulation 14 of the Conduct Regulations or paragraph 19A of Schedule 3 to the Police Reform Act 2002 and Regulation 16 of the Police (Complaints and Misconduct) Regulations 2020. The guidance is designed to ensure consistency and transparency in assessing conduct and imposing outcomes at the conclusion of police misconduct proceedings.
- 1.3 Severity assessments may be revised if appropriate in accordance with the relevant regulation.⁴
- 1.4 Under the reformed 2020 regulations, the intention is that disciplinary proceedings are used for serious breaches of the Standards of Professional Behaviour, where a sanction at a minimum of written warning is justified. Where matters do not reach this threshold, the appropriate outcome may be to ensure reflection and learning through the reflective practice review process (RPRP) under Part 6 of the Conduct Regulations or the Police (Performance) Regulations 2020 ('the Performance Regulations').⁵

1 As amended by section 32 of the Policing and Crime Act 2017.

2 Pursuant to sections 2 and 5A of the Police Act 1996.

3 Unless otherwise stated, all references to regulations are to the Conduct Regulations. These regulations apply to the conduct of a police officer (Regulation 4), which is defined as 'a member of a police force or special constable' (Regulation 2(1)).

4 Regulation 19 of the Police (Complaints and Misconduct) Regulations 2020. Regulation 14(6) of the Conduct Regulations. The Home Office's [**Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing**](#) (HOG), paragraph 7.11, 7.15.

5 HOG, paragraphs 13.3 and 14.1. The Independent Office for Police Conduct (IOPC) Statutory Guidance, chapter 4.

- 1.5 The guidance does not override the discretion of the person(s) conducting the meeting or hearing, whose function is to determine the appropriate outcome. Each case will depend on its particular facts and circumstances. Guidance cannot and should not prescribe the outcome suitable for every case.⁶
- 1.6 Under section 87 of the Police Act 1996, persons to whom this guidance applies must have regard to the guidance in the discharge of their functions. There is, however, an expectation in case law that the process outlined in this guidance should be followed.⁷ Case law is presented in this guidance to underpin the principles given. However, it is not exhaustive and consideration should be given to any new case law that may be available.
- 1.7 This guidance outlines a general framework for assessing the seriousness of conduct, including factors that may be taken into account. These factors are non-exhaustive and do not exclude any other factor(s) that the person(s) conducting the proceedings may consider relevant.

6 Council for the Regulation of Health Care Professionals v General Medical Council [2004] EWHC 1850 at [24].

7 R (on the application of the Chief Constable of Greater Manchester) v Police Misconduct Panel (Roscoe – Interested Party) 13th November 2018 per HHJ Pelling QC.

2 Police misconduct proceedings

- 2.1 Police officers exercise significant powers. The misconduct regime is a key part of the accountability framework for the use of these powers. If public confidence in the police service is to be maintained, outcomes should be sufficient to demonstrate individual accountability for any abuse or misuse of police powers. These outcomes must also be imposed fairly and proportionately, and must be used to achieve organisational justice.
- 2.2 When determining the appropriate outcome to impose, consider the purpose of police misconduct proceedings.
- 2.3 The purpose of the police misconduct regime is threefold:
1. to maintain public confidence in, and the reputation of, the police service
 2. to uphold high standards in policing and to deter misconduct
 3. to protect the public
- 2.4 These aims derive from the following authorities on the nature and purpose of professional disciplinary proceedings.
- a. *Bolton v Law Society*,⁸ in which Sir Thomas Bingham MR (as he then was) explained the apparent harshness of sanctions imposed by the Solicitors Disciplinary Tribunal:

‘The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending

8 *Bolton v Law Society* [1994] 1 WLR 512 at p 518H.

re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.'

- b. *Redgrave v Commissioner of Police of the Metropolis*,⁹ where Lord Justice Simon Brown stated, by reference to the dental profession:

'The purpose of disciplinary proceedings against a dentist who has been convicted of a criminal offence by a court of law is not to punish him a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession.'

- c. *R (Green) v Police Complaints Authority*,¹⁰ where Lord Carswell stated, in relation to the police service:

'Public confidence in the police is a factor of great importance in the maintenance of law and order in the manner which we regard as appropriate in our polity. If citizens feel that improper behaviour on the part of police officers is left unchecked and they are not held accountable for it in a suitable manner, that confidence will be eroded.'

- d. *R (Coke-Wallis) v Institute of Chartered Accountants*,¹¹ in which Lord Collins reaffirmed the purpose of professional disciplinary proceedings to be:

'[...] to protect the public, to maintain public

9 [2003] 1 WLR 1136 at [33], approving the dictum of Lord Diplock in *Zideman v General Dental Council* [1976] 2 All ER 334.

10 [2004] UKHL 6 at [78].

11 [2011] UKSC 1 at [60].

confidence in the integrity of the profession, and to uphold proper standards of behaviour: see eg *Bolton v Law Society* [1994] 1 WLR 512, 518, per Sir Thomas Bingham MR; *Gupta v General Medical Council* [2002] 1 WLR 1691, para 21, per Lord Rodger of Earlsferry.’

- 2.5 Consult the Home Office document **Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing** (HOG) when applying the Standards of Professional Behaviour.¹²
- 2.6 Be aware of, and adhere to, human rights and equality legislation. In determining the appropriate outcome to impose, have regard to the principle of proportionality, weighing the interests of the public with those of the officer.
- 2.7 Misconduct proceedings are not designed to punish police officers. As stated by Lord Justice Laws in *Raschid v General Medical Council*¹³:
- ‘The panel then is centrally concerned with the reputation or standing of the profession rather than the punishment of the doctor.’
- 2.8 However, the outcome imposed can have a punitive effect, which should therefore be no more than is necessary to satisfy the purpose of the proceedings.¹⁴ Consider less severe outcomes before more severe outcomes.^{15,16,17} Always choose the least severe outcome that deals adequately with the issues identified, while protecting the public interest.¹⁸ If an outcome is necessary to satisfy the purpose of the proceedings, impose it even where this would lead to difficulties for the individual officer.

12 HOG, chapter 2.

13 [2007] 1 WLR 1460 at [18].

14 *Chaudhury v General Medical Council* [2002] UKPC 41.

15 *Giele v General Medical Council* [2005] EWHC 2143 (Admin).

16 *R (on the application of James) v Nursing and Midwifery Council* [2008] EWHC 365 (Admin).

17 *Davey v General Dental Council* [2015] EWHC 3594 (Admin).

18 *Davey v General Dental Council* [2015] EWHC 3594 (Admin) at [18].

- 2.9 Ensure that processes and procedures are fair, objective, transparent and free from unlawful discrimination.
- 2.10 Do not use the misconduct procedures under the Conduct Regulations as a means of dealing with unsatisfactory performance,¹⁹ The Performance Regulations exist to address gross incompetence and unsatisfactory performance or unsatisfactory attendance. For matters that amount to low-level performance or do not meet the definition of misconduct²⁰ and are not a persistent matter, the RPRP²¹ under Part 6 of the Conduct Regulations may be an appropriate means to deal with this.
- 2.11 Misconduct proceedings must only be used to deal with misconduct that is so serious as to justify disciplinary proceedings.²² Conduct that does not meet the definition of misconduct should be dealt with in a proportionate manner, with a focus on ensuring learning.

19 HOG, paragraph 7.6.

20 Regulation 2(1) of the Conduct Regulations; HOG, paragraphs 2.13 and 2.14.

21 HOG, chapter 13.

22 Misconduct is defined as 'a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action' (Regulation 2 of the Conduct Regulations).

3 Available outcomes

- 3.1 Misconduct is generally defined as unacceptable or improper behaviour.²³ The Conduct Regulations further define misconduct as ‘a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action’.²⁴
- 3.2 Regulation 41(15) of the Conduct Regulations provides that the person(s) conducting the misconduct proceedings must:
- ‘[...] review the facts of the case and decide whether the conduct of the officer concerned amounts—
- in the case of a misconduct meeting, to misconduct or not; or
 - in the case of a misconduct hearing, to misconduct, gross misconduct or neither.’²⁵
- 3.3 Similarly, Regulation 61(15) provides that the person(s) conducting an accelerated misconduct hearing must review the facts of the case and decide whether or not the officer’s conduct amounts to gross misconduct.²⁶
- 3.4 Under Regulation 2(1):
- misconduct means a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action
 - gross misconduct means a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal

23 *Roylance v General Medical Council (No 2)* [2000] 1 AC 311: ‘Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.’

24 Regulation 2(1), 23(2)(a) and 23(2)(b) of the Conduct Regulations.

25 Regulation 41(16) of the Conduct Regulations adds that they ‘must not find that the conduct of the officer concerned amounts to gross misconduct unless- (a) they are satisfied on the balance of probabilities that this is the case; or (b) the officer admits it is the case’. Regulation 61(16) contains the same provision for accelerated misconduct hearings (in respect of gross misconduct).

26 Gross misconduct is defined as ‘[a] breach of the Standards of Professional Behaviour that is so serious as to justify dismissal’, Regulation 2 of the Conduct Regulations.

- 3.5 The power to determine outcome therefore arises after the person(s) conducting the proceedings have:
- reviewed and determined the facts
 - established which, if any, Standards of Professional Behaviour have been breached
 - determined whether the conduct found proven against the officer amounts to misconduct, gross misconduct or neither
- 3.6 The HOG allows persons considering more than one allegation against the same officer at a misconduct hearing²⁷ to take the allegations together. They can treat them as a single allegation for the purposes of making an assessment, a finding, a determination or a decision in connection with conduct that is the subject matter of an allegation.²⁸
- 3.7 When assessing if a matter will proceed to misconduct proceedings, Regulation 23(5) of the Conduct Regulations provides that, where it is determined that there is no case to answer or no misconduct proceedings will be brought, the appropriate authority must assess which of the following is suitable:
- the matter amounts to practice requiring improvement and should be referred to be handled by the RPRP
 - the matter should be dealt with through the Performance Regulations
 - no further action is required

Part 4 proceedings: Misconduct proceedings

- 3.8 Where the person(s) conducting the misconduct proceedings find that the conduct amounts to neither misconduct or gross misconduct following a misconduct meeting or hearing, they may direct that the matter is referred to be dealt with under the RPRP as prescribed in Regulation 42(1)(b), or a decision may be made that no further action is required.²⁹

27 This also applies to misconduct meetings and accelerated misconduct hearings.

28 HOG, paragraph 11.132; Regulation 4(9) of the Conduct Regulations.

29 HOG, paragraph 11.121.

- 3.9 The power to impose disciplinary action at the end of misconduct proceedings is contained in Regulations 42(1), (2) and (3) of the Conduct Regulations.
- 3.10 If the case against an officer is proven as misconduct, then disciplinary action will follow and the appropriate outcome from the available outcomes below must be decided upon. The ability to take no action where misconduct is proven was purposefully removed from Conduct Regulations. It would be perverse to find misconduct proven and therefore amount to at least a breach of the Standards of Professional Behaviour that is so serious to justify disciplinary action to then not implement one of the disciplinary action outcomes.³⁰
- 3.11 The available outcomes at a misconduct meeting are:³¹
- written warning
 - final written warning
- 3.12 The available outcomes at a misconduct hearing are:³²
- written warning
 - final written warning
 - reduction in rank
 - dismissal without notice
- 3.13 The disciplinary action at a misconduct meeting or hearing shall have effect from the date on which it is notified to the officer concerned.³³
- 3.14 If the officer had a written warning in force on the date of the severity assessment, a written warning must not be given.³⁴

30 HOG, paragraphs 10.43, 11.122 and 11.123.

31 Regulation 42(2) of the Conduct Regulations.

32 Regulation 42(3) of the Conduct Regulations. Note that certain outcomes are only available where Regulation 42(5) or (6) apply.

33 Regulation 42(4) of the Conduct Regulations.

34 Regulation 42(7) of the Conduct Regulations.

- 3.15 If the officer had a final written warning in force on the date of the severity assessment, neither a written warning nor a final written warning may be given.³⁵ Where a written warning is given, it remains in force for a period of 18 months.³⁶ Where a final written warning is given, it remains in force for a period of two years.³⁷ At misconduct hearings, it is possible to extend this period to a maximum of five years.³⁸
- 3.16 When considering the length of time for a final written warning to be imposed, the panel should take into account:
- the seriousness of the conduct
 - the circumstances that gave rise to the misconduct
 - the public interest
 - the mitigation offered by the officer, including previous record of conduct³⁹
- 3.17 Before reduction in rank can be imposed, the panel must give the appropriate authority the opportunity to give its views, including in relation to likely operational impact.⁴⁰
- 3.18 Reduction in rank may not be imposed if the officer concerned, at the time of the initial severity assessment, had previously been reduced in rank under the Police (Conduct) Regulations 2020 or the Police (Conduct) Regulations 2004.⁴¹
- 3.19 Reduction in rank is appropriate where a tougher outcome than a final written warning is warranted, but the threshold for dismissal has not been reached.⁴² It should not be imposed as a 'softer option' or out of sympathy for the officer concerned. If the threshold at which dismissal is appropriate has been reached, the outcome should be dismissal.⁴³

35 Regulation 42(8) of the Conduct Regulations.

36 Regulation 42(9)(a) of the Conduct Regulations.

37 Regulation 42(9)(b) of the Conduct Regulations.

38 Regulation 42(10) of the Conduct Regulations.

39 HOG, paragraph 11.127.

40 Regulation 42(12) and Regulation 62(6) of the Conduct Regulations.

41 Regulation 42(13) and Regulation 62(7) of the Conduct Regulations.

42 HOG, paragraph 11.133.

43 HOG, paragraphs 11.133 and 11.135.

- 3.20 It may be appropriate to consider reduction in rank where the misconduct under consideration falls below the threshold for dismissal and involves poor leadership that is below the standard expected of the rank and responsibilities of the officer concerned. Reduction in rank may also be considered instead of dismissal where there are significant mitigating factors, or the absence of aggravating factors where the conduct may have been discreditable.⁴⁴
- 3.21 The officer concerned may be reduced to one or more ranks lower than his/her current rank.⁴⁵
- 3.22 Where a case involves more than one officer, it is not appropriate to give a higher-ranking officer reduction in rank while dismissing those of the rank of constable for the same conduct, unless there are clear attenuating and/or mitigating circumstances.⁴⁶
- 3.23 At a misconduct hearing, reduction in rank is available as an outcome despite the panel reaching a finding of misconduct rather than gross misconduct. This arises when, at the time of the initial severity assessment, the officer concerned was the subject of a live final written warning, or the officer's conduct arises from more than one incident and those incidents are not closely factually connected.⁴⁷
- 3.24 Regulation 42(14) provides that, when considering the question of disciplinary action, before any such question is determined, the person(s) considering it:
- must have regard to the officer's record of police service
 - may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question, including evidence of mitigating circumstances disclosed prior to the hearing – if representations are made in relation to mitigating circumstances and not mentioned at an earlier stage, consider whether an officer could reasonably

44 HOG, paragraphs 11.135 and 11.136.

45 HOG, paragraph 11.138.

46 HOG, paragraphs 11.139 and 11.140.

47 Regulation 42(3)(a)(iii), 42(5) and 42(6) of the Conduct Regulations.

have been expected to mention these, and accordingly determine the weight to give those circumstances

- must give the officer concerned, his police friend or relevant lawyer and the appropriate authority – as well as the Director General, where presenting the case – an opportunity to make oral or written representations

Part 5 proceedings: Accelerated misconduct proceedings

3.25 Where the person(s) conducting an accelerated misconduct hearing finds that the officer's conduct does not amount to gross misconduct, they may:⁴⁸

- dismiss the case
- return the case to the appropriate authority to deal with, in accordance with Part 4

3.26 The outcomes available at the conclusion of an accelerated misconduct hearing upon finding that the conduct amounts to gross misconduct are:⁴⁹

- a final written warning
- a reduction in rank
- dismissal without notice

3.27 If the officer concerned had a final written warning in force on the date of the severity assessment,⁵⁰ a final written warning must not be given.

3.28 Where a final written warning is given, it remains in force for two years or can be extended to a maximum of five years.⁵¹

3.29 Under Regulation 62(10) of the Conduct Regulations, when considering the question of disciplinary action, the person(s) doing so must give consideration to those requirements as listed

48 Regulation 62(8) of the Conduct Regulations.

49 Regulation 62(1) of the Conduct Regulations.

50 Regulation 62(3) of the Conduct Regulations.

51 Regulation 62(4) of the Conduct Regulations.

at that regulation (which mirror those given at Regulation 42(14) for Part 4 proceedings and are summarised in [Part 4 proceedings: Misconduct proceedings](#) section).

Former officers

- 3.30 Misconduct hearings and accelerated misconduct hearings for former officers will be conducted under the Conduct Regulations (modified under Schedule 1) with some important differences in the possible sanctions and outcomes, the details of which are explained in the HOG.⁵²
- 3.31 A panel that finds that the conduct amounts to misconduct only will record the finding but can take no further action.⁵³ Where the panel finds that the conduct amounted to gross misconduct, it can only consider two outcomes: disciplinary action or no disciplinary action.⁵⁴ Where the finding is gross misconduct and disciplinary action is imposed, this can only be that the former officer would have been dismissed if still serving. No other sanctions can be enforced. If the finding is gross misconduct but the panel determines that dismissal is not justified, then no action will be taken and the gross misconduct will be recorded.
- 3.32 Similarly, at an accelerated misconduct hearing, if the special conditions apply,⁵⁵ disciplinary action can only be to find that the former officer would have been dismissed if still serving. A finding of misconduct can be recorded but no further action taken.
- 3.33 Before a panel decides to impose the disciplinary action that the former officer would have been dismissed if still serving, it must follow the same process that applies to serving officers in arriving at what the appropriate sanction would have been.

⁵² HOG, paragraphs 20.66 and 20.67. See also schedule 1 Regulation 32 of the Conduct Regulations (modifying Regulation 42).

⁵³ HOG, paragraph 20.66(c).

⁵⁴ HOG, paragraph 20.66(d).

⁵⁵ Regulation 49(2) of the Conduct Regulations and schedule 1, Regulation 36 (modifying Regulation 49).

4 Assessing seriousness

- 4.1 Assessing the seriousness of the conduct lies at the heart of the decision on outcome under Parts 4 and 5 of the Conduct Regulations. Whether conduct would, if proved, amount to misconduct or gross misconduct for the purposes of Regulation 14 of the Conduct Regulations is also a question of degree (ie, seriousness).
- 4.2 As Mr Justice Popplewell explained, there are three stages to determining the appropriate sanction:⁵⁶
- assess the seriousness of the misconduct
 - keep in mind the purpose of imposing sanctions
 - choose the sanction that most appropriately fulfils that purpose for the seriousness of the conduct in question
- 4.3 Assess the seriousness of the proven conduct, by reference to:⁵⁷
- the officer's culpability for the misconduct
 - the harm caused by the misconduct
 - the existence of any aggravating factors
 - the existence of any mitigating factors
- 4.4 When considering the outcome, first assess the seriousness of the misconduct, taking account of any aggravating or mitigating factors. The most important purpose of imposing disciplinary sanctions is to maintain public confidence in, and the reputation of, the policing profession as a whole. This dual objective must take precedence over the specific impact that the sanction has on the

⁵⁶ *Fuglers LLP v Solicitors Regulation Authority* [2014] EWHC 179 (Admin), paragraph 28.

⁵⁷ *Fuglers LLP v Solicitors Regulation Authority* [2014] EWHC 179 (Admin), paragraph 29: 'In assessing seriousness the most important factors will be (1) the culpability for the misconduct in question and (2) the harm caused by the misconduct. Such harm is not measured wholly, or even primarily, by financial loss caused to any individual or entity. A factor of the greatest importance is the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover the seriousness of the misconduct may lie in the risk of harm to which the misconduct gives rise, whether or not as things turn out the risk eventuates. The assessment of seriousness will also be informed by (3) aggravating factors (eg, previous disciplinary matters) and (4) mitigating factors (eg, admissions at an early stage or making good any loss).'

individual whose misconduct is being sanctioned.⁵⁸

- 4.5 Consider personal mitigation, such as testimonials and references, after assessing the seriousness of the conduct by the four categories above.
- 4.6 There may be overlap between these four categories and/or imbalances between them. Low-level culpability on the part of a police officer, such as a failure to respond in good time to an incident, can result in significant harm. Equally, an officer may commit serious misconduct that causes minimal harm to individuals or the wider public, but may still damage the reputation of the police service.
- 4.7 Carefully assess the officer's decisions and actions in the context in which they were taken. Where the misconduct has taken place on duty, consider the policing context, any rationale the officer provides and whether a decision making model was followed, such as the College of Policing's **National Decision Model**. Many police officers are required to take decisions rapidly and/or in highly charged or dangerous situations – for example, in a public order or other critical incident. Such decisions may carry significant consequences. Take care not to confuse these consequences with what the officer knew, or could reasonably have known, at the time of their decision.
- 4.8 Weigh all relevant factors and determine the appropriate outcome based on evidence, independently of any views expressed by the media.

Culpability

- 4.9 Culpability denotes the officer's blameworthiness or responsibility for their actions. The more culpable or blameworthy the behaviour in question, the more serious the misconduct and the more severe the likely outcome.
- 4.10 Conduct that is intentional, deliberate, targeted or planned will

⁵⁸ Fuglers LLP v Solicitors Regulation Authority [2014] EWHC 179 (Admin), paragraph 30.

generally be more culpable than conduct that has unintended consequences, although the consequences of an officer's actions will be relevant to the harm caused.

- 4.11 Where harm is unintentional, culpability will be greater if the officer could reasonably have foreseen the risk of harm.
- 4.12 Culpability will also be increased if the officer was holding a position of trust or responsibility at the relevant time. All police officers are in a position of trust, but an officer's level of responsibility may be affected by specific circumstantial factors, such as rank, their particular role and their relationship with any persons affected by the misconduct.
- 4.13 It is not possible to categorise all types of case where dismissal will be appropriate because the circumstances of the individual case must be considered. Many acts have the potential to damage public confidence in the police service.
- 4.14 However, the types of misconduct given in the following sections should be considered especially serious.
- 4.15 There is inevitably a degree of overlap between the particular types of misconduct highlighted below. Take care to avoid 'double counting' factors that have been identified as being relevant to the assessment of seriousness.
- 4.16 Equally, these considerations should not be considered an exhaustive list. There may be other factors specific to the behaviour in question, which render it more culpable and therefore more serious.

Conviction or caution for a criminal offence

- 4.17 It is unacceptable for police officers, who are responsible for enforcing the law, to break the law themselves.
- 4.18 The level of culpability depends on the seriousness of the offence. The sentence imposed by the criminal court is not necessarily a reliable guide to seriousness in misconduct proceedings, which are principally directed towards maintaining public confidence in

the profession. A relatively minor criminal offence may be of the utmost gravity in the professional context.⁵⁹

- 4.19 The conviction or caution may relate to on-duty or off-duty conduct. While the person(s) conducting the proceedings cannot question the conviction or the sentence imposed, they can consider the circumstances of the offending and form their own view of the gravity of the case.⁶⁰
- 4.20 Offences of dishonesty, sexual offences (including possession of indecent images of children⁶¹) and violent crime are particularly serious and likely to terminate an officer's career. Such offending involves a fundamental breach of the public's trust in police officers and inevitably brings the profession into disrepute.
- 4.21 However, any criminal conviction will be serious and will be likely to have an adverse impact on public confidence in policing. Depending upon the type of offence, an officer's conviction or caution may be disclosed to the prosecution and defence during the course of a criminal trial, with the potential for undermining the investigation and prosecution.
- 4.22 In some cases, the officer will already have sustained a conviction for the conduct that is the subject of the misconduct proceedings. In other cases, there may be no conviction, either because there was no prosecution or because there has been an unsuccessful prosecution.⁶²
- 4.23 If the conduct found proven in the misconduct proceedings is criminal in nature, take this into account when considering the culpability of the officer, notwithstanding the absence of a criminal conviction. For example, a finding that an officer has used unreasonable force may amount to the equivalent of a finding

59 R (Low) v General Osteopathic Council [2007] EWHC 2839 (Admin), paragraph 20.

60 Royal College of Veterinary Surgeons v Samuel [2014] UKPC 13, paragraph 32.

61 Council for the Regulation of Healthcare Professionals v the General Dental Council and another (Alexander Fleischmann) [2005] EWHC 87 (QB), in which the sanction of 12 months' suspension following the practitioner's conviction for possession of a large collection of indecent images of children was held to be unduly lenient.

62 HOG, paragraphs 7.89 and 7.90.

of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861. By comparison, a finding that an officer watched adult pornography while on duty would not amount to a crime. Although the purpose of misconduct proceedings is not to punish the individual, the outcome imposed may reflect the criminal nature of the misconduct.

- 4.24 For these purposes, a criminal conviction is any finding by a criminal court in the United Kingdom, Channel Islands or Isle of Man, or by an overseas court if the conduct found proven would constitute a criminal offence if committed in England and Wales.⁶³ Cautions refer to offences committed in the British Isles or elsewhere, where no court proceedings took place because the individual admitted the offence and criminal proceedings were considered unnecessary. The offence need not be a recordable offence to be considered serious,⁶⁴ since some serious offences are non-recordable.⁶⁵ However, the fact that an offence is non-recordable may be a relevant consideration in less serious cases – for example, those involving some motoring offences.
- 4.25 When considering any finding by an overseas court, take care to establish that the officer has been afforded a fair trial and equivalent protections to those that operate in England and Wales.

Operational dishonesty, impropriety or corruption

- 4.26 Honesty and integrity are fundamental requirements for any police officer. Treat any evidence that an officer is dishonest or lacks integrity seriously. In the words of Lord Justice Maurice Kay in *Salter v Chief Constable of Dorset*,⁶⁶ police officers:

63 Where an officer is issued a penalty notice for disorder or crime that is undisputed, this should be treated as a conviction for the purposes of this guidance.

64 A recordable offence is any offence where the police are required to keep a record of the conviction on the Police National Computer. Under the National Police Records (Recordable Offences) Regulations 2000, recordable offences include all convictions, cautions, reprimands and warnings given in respect of any offence punishable with imprisonment, and any offence specified in the Schedule to these regulations.

65 For example, breach of the Data Protection Act 2018 (section 170) and driving without insurance (section 143 of the Road Traffic Act 1988).

66 [2012] EWCA Civ 1047, paragraph 21.

‘[...] carry out vital public functions in which it is imperative that the public have confidence in them. It is also obvious that the operational dishonesty or impropriety of a single officer tarnishes the reputation of his Force and undermines public confidence in it.’

- 4.27 Operational dishonesty is dishonesty in connection with a police operation. In *Salter v Chief Constable of Dorset*, the misconduct concerned an instruction to destroy evidence retrieved at the scene of a road traffic accident.
- 4.28 Impropriety involving corruption, deliberately misleading or compromising an investigation,⁶⁷ or wilfully failing to give proper disclosure in a criminal prosecution is likely to be comparably serious to, and/or to involve, operational dishonesty.⁶⁸ Other examples of operational dishonesty might involve tampering with evidence, interfering with witnesses or disclosing information held by police for financial reward.
- 4.29 Consider cases where an officer has exercised their police powers in bad faith, for personal gain, or at the behest of a friend or relative in this category of very serious misconduct.
- 4.30 There may be cases where an officer has behaved dishonestly but the dishonesty is unconnected to a police operation or investigation and could be regarded as minor or trivial in nature. Examine the circumstances of the case with care by reference to the four categories for assessing seriousness outlined above. Cases involving any form of dishonesty on duty will always be serious because of the importance of maintaining public trust and confidence in the police service.
- 4.31 Police officers and staff should not be dishonest off-duty, but some off-duty dishonesty may be of limited relevance to the profession as a whole when viewed in its context.

67 This applies to investigations by a police force, the Independent Office for Police Conduct, or any law enforcement agency.

68 This is apparent from the remarks of Lord Justice Maurice Kay in *Salter v Chief Constable of Dorset* [2012] EWCA Civ 1047, paragraph 22.

- 4.32 However, some off-duty dishonesty may be very serious, particularly where it carries implications for the officer's ability to carry out their professional duties or has the potential to bring the police service into disrepute. A dishonest statement made by a police officer in the public sphere, or in an official or otherwise solemn document – such as an application for a mortgage or loan, or a tax declaration – will be at the more serious end of the spectrum of off-duty dishonesty. Other serious cases might involve an officer using their status as a police officer to act dishonestly or otherwise exert improper influence. As ever, consider whether the proven dishonesty has the propensity to affect the reputation of, or the public's confidence in, the police service.
- 4.33 Specific case law has developed regarding the approach to outcomes in cases where operational dishonesty is found proven, which is considered further below.⁶⁹

Data protection and misuse

- 4.34 The misuse of police computer systems or confidential police information more generally is a particular concern for the police service. Police computer and manual systems hold a significant amount of information about members of the public. Most of this is sensitive, and it is both a public expectation and a legal requirement that information obtained during the course of policing duties should be treated in strictest confidence, properly protected and used only for legitimate policing purposes.
- 4.35 Under no circumstances should anyone access or use police information for personal benefit. Personal reasons for accessing confidential police information, such as general curiosity or a desire to check on criminal activity near an officer's home, are not acceptable. If an officer is accessing police information not available to the general public, there should always be a specific and proper policing purpose for doing so.

⁶⁹ See the [Operational dishonesty](#) section of this document.

4.36 Accessing confidential police information without a legitimate policing purpose is an abuse of an officer's position and may merit dismissal in serious cases. Accidental access to information without a legitimate policing purpose will not attract such an outcome.

4.37 Factors that support a more serious outcome include:

- accessing information of a secret nature or high classification
- onward disclosure of the information
- malicious motive for accessing or disclosing the information
- personal gain
- actual or potential compromise to a police investigation
- breaches of personal privacy where the data is very sensitive
- attempts to cover up improper accessing of data
- altering information held by the police

4.38 When considering any misuse of confidential police information, be aware of the data protection principles under the Data Protection Act 2018 and the offence of unlawfully obtaining personal data under section 170 of that Act.

4.39 Officers regularly need to access and process confidential information, and errors can occur. Officers who have acted in good faith or on instructions from a supervisor are less culpable and may be more appropriately addressed under the performance regime or through the Reflective Practice Review Process.

Violence, intimidation or sexual impropriety

4.40 Misconduct involving violence, intimidation or sexual impropriety is serious and can significantly undermine public trust in the profession (see also the section on 'Violence against women and girls').

4.41 This includes cases involving bullying or harassment, either in the police service or towards members of the public. Give attention to the degree of persistence, the vulnerability of the other party, the number of people subjected to the behaviour and whether the

officer was in a specific position of authority or trust.⁷⁰ More serious action is likely to be appropriate where the officer has demonstrated predatory behaviour motivated by a desire to establish a sexual or improper emotional relationship with a colleague or member of the public.⁷¹

- 4.42 If the matter involves sexual harassment, consider whether the behaviour has been driven by misogyny, which will increase the assessed seriousness.
- 4.43 The presence of any of these factors is likely to increase the seriousness of the misconduct, although the treatment of a single individual can be sufficiently serious to amount to gross misconduct.

Abuse of position of trust or authority

- 4.44 The nature of the office of constable means that all police officers are in a position of trust and authority in relation to members of the public. An officer's misconduct will be more culpable where it involves an abuse of this position. The abuse of position for a sexual purpose (APSP) is a form of serious corruption,⁷² defined as any behaviour by a police officer, whether on-duty or off-duty, that takes advantage of their position as a member of the police service to misuse their position, authority or powers in order to pursue a sexual or improper emotional relationship with any member of the public.⁷³ Such conduct can cause substantial damage to public trust and confidence in the police, and is particularly serious where the subject of the officer's behaviour is a vulnerable person.⁷⁴

70 See also the [Culpability](#) and [Abuse of position of trust or authority](#) sections.

71 College of Policing. (2019). [Appropriate personal relationships and behaviours in the workplace](#) [internet].

72 Regulation 4(1)(a)(iii) and Regulation 7(1)(c) of the Police (Complaints and Misconduct) Regulations 2020; paragraphs 9.15 to 9.20 of the IOPC statutory guidance.

73 National Police Chiefs' Council APSP Strategy.

74 On vulnerability, see the [Misconduct involving a vulnerable person](#) section of this document.

- 4.45 In addition to the office of constable, an officer may hold a position of trust or responsibility. Within the police service, positions of responsibility may be defined in relation to rank.⁷⁵ There may, however, be other circumstances giving rise to an imbalance of power or authority – for example, a senior constable on a shift or a tutor constable in relation to their tutee or those in supervisory or senior leadership roles.
- 4.46 An officer may also assume a specific responsibility to a person by performing a particular role – for example, as a family liaison officer, personal protection officer or cadet leader. In the aforementioned roles, and other such roles in situations of express responsibility towards a particular person or group of people, the need for scrupulous professionalism is greater.
- 4.47 The misconduct may involve members of the public, victims of crime, offenders or witnesses during the course of an officer’s duties or as part of an investigation.
- 4.48 Criminal investigations, prosecutions and any appeal period following conviction can span a significant period of time – often years – while the requirements of the Criminal Procedures and Investigations Act 1996 are engaged. Wherever an investigation, prosecution or the potential to appeal is engaged, sexual or improper relationships with victims, witnesses and suspects is a serious risk to the integrity of the criminal justice process.

Misconduct involving a vulnerable person

- 4.49 Many people come into contact with the police when they are at a particularly difficult or distressing point in their lives, and they are entitled to be treated professionally.
- 4.50 Officers must not, under any circumstances, use their professional position to initiate or pursue a sexual or improper emotional relationship with a vulnerable person.

75 *Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin), paragraph 71: ‘High rank and long service carry with them responsibilities, which the panel clearly expressed; and the maintenance of public confidence and respect in the police service may mean that a high-ranking officer must suffer a harder fall than would a junior officer in similar circumstances.’

4.51 Where an officer has a specific responsibility to a person – for example, as a family liaison officer, personal protection officer or cadet leader – there is likely to be a high level of reliance by that person on the officer, which may make that person vulnerable. Developing a sexual or improper relationship in such a situation undermines the professional relationship between the person and the officer, and can harm the vulnerable person. Such relationships, while the professional context or duty prevails, are matters of serious concern.

4.52 Factors that may give rise to vulnerability include:

- age (and any other protected characteristic)
- physical disability
- mental ill health or learning disability
- substance misuse
- social circumstances, such as homelessness or bereavement
- cultural differences and the person's ability to communicate in English
- experience of crime, including harassment or domestic abuse
- victims of modern slavery, human trafficking or other exploitation (whether defined by the Modern Slavery Act 2015 or not)
- sex workers
- young people in the care system and recent care leavers
- the person's status relative to the officer⁷⁶

4.53 Decide whether a person could be considered vulnerable in a given situation and whether the officer recognised or should have recognised this, taking account of all the circumstances.

⁷⁶ See the **Violence, intimidation or sexual impropriety** and **Abuse of position of trust or authority** sections of this document.

Discrimination

4.54 Discrimination towards persons on the basis of any protected characteristic is never acceptable and always serious.

4.55 Protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation⁷⁷

4.56 Discrimination may involve language or behaviour. It may be directed towards members of the public or colleagues. It may be conscious or unconscious.

4.57 Cases where discrimination is conscious or deliberate will be particularly serious. In these circumstances, the public cannot have confidence that the officer will discharge their duties in accordance with the Standards of Professional Behaviour.

4.58 However, unconscious discrimination can also be serious and can also have a significant impact on public confidence in policing.

4.59 The Independent Office for Police Conduct (IOPC) guidelines for handling allegations of discrimination give factors that should be considered when assessing the gravity of discrimination.⁷⁸

⁷⁷ Section 4 of the Equality Act 2010.

⁷⁸ Independent Police Complaints Commission. (2015). '[IPCC guidelines for handling allegations of discrimination](#)' [internet]. pp III-IV.

Violence against women and girls

- 4.60 The term 'violence against women and girls' refers to acts of violence or abuse that are known to disproportionately affect women and girls.⁷⁹
- 4.61 Policing has come under national scrutiny through high-profile cases where there has been a failing to prevent or protect women and girls from abuse and violence, and/or violence has been perpetrated by those serving the police. It is imperative that policing makes it clear that misconduct of this nature is wholly unacceptable, setting a clear expectation as to the seriousness to which these matters are treated.
- 4.62 Violence against women and girls perpetrated by a police officer, whether on-duty or off-duty, will always have a high degree of culpability, with the likely outcome being severe.

Harm

- 4.63 The harm caused by an officer's actions can be considered in various ways, including the following.

Type of harm

- 4.64 The types of harm caused or risked by different types of police misconduct are diverse. Victims may suffer:
- physical injury
 - sexual abuse
 - financial loss
 - damage to health
 - psychological distress
 - reputational harm
 - loss of liberty (for example, if a person has been wrongfully arrested or detained)
 - infringement of human rights

⁷⁹ HM Government. (2021). [Tackling violence against women and girls](#) [internet]. p 8.

Persons affected

4.65 Misconduct may affect particular individuals, in which case the harm caused may depend on the victim's personal characteristics and circumstances. Misconduct can also harm the wider community. Such harm may involve economic loss, harm to public health or interference with the administration of justice.

Effect on the police service and/or public confidence

4.66 Harm will likely undermine public confidence in policing. Harm does not need to be suffered by a defined individual or group to undermine public confidence. Where an officer commits an act that would harm public confidence if the circumstances were known to the public, take this into account. Always take misconduct seriously that undermines discipline and good order within the police service, even if it does not result in harm to individual victims.

4.67 Assess the impact of the officer's conduct, having regard to the factors in the Discrimination section of this document and to the victim's particular characteristics.

4.68 Where no actual harm has resulted, consider the risks attached to the officer's behaviour, including the likelihood of harm occurring and the gravity of harm that could have resulted.

4.69 How such behaviour would be, or has been, perceived by the public will be relevant, whether or not the behaviour was known about at the time.⁸⁰

4.70 If applicable, consider the scale and depth of local or national concern about the behaviour in question. However, a case being reported in local or national media does not necessarily mean that there is a significant level of local or national concern. Distinguish objective evidence of harm to the reputation of the police service from subjective media commentary.

⁸⁰ R (Chief Constable of Wiltshire Police) v Police Appeals Tribunal & Woollard [2012] EWHC 3288 (Admin), paragraph 51.

- 4.71 Whether a matter is of local or national concern will be a matter for the person(s) conducting the proceedings based on their experience and the circumstances of the case.
- 4.72 Consideration of the harm caused will usually follow findings in relation to the facts, breaches of Standards of Professional Behaviour and whether the behaviour amounted to misconduct or gross misconduct.
- 4.73 Harm, including death or serious injury, can result where an officer has behaved appropriately and no misconduct has been established.
- 4.74 Where gross misconduct has been found and the behaviour has caused – or could have caused – serious harm to individuals, the community and/or public confidence in the police service, dismissal is likely to follow. A factor of the greatest importance is the impact of the misconduct on the standing and reputation of the profession as a whole.⁸¹ For example, violence against women and girls perpetrated by a police officer, whether on-duty or off-duty, will always harm public confidence in policing, since this is inimical to the values of modern policing and the Standards of Professional Behaviour.

Aggravating factors

- 4.75 Aggravating factors are those tending to worsen the circumstances of the case, in relation to either the officer's culpability or the harm caused.
- 4.76 Factors that indicate a higher level of culpability or harm include:
- premeditation, planning, targeting, or taking deliberate or predatory steps
 - malign intent, such as sexual gratification, financial gain or personal advantage

⁸¹ *Fuglers LLP v Solicitors Regulation Authority* [2014] EWHC 179 (Admin), paragraph 29.

- abuse of trust, position, powers or authority⁸²
- deliberate or gratuitous violence or damage to property
- concealing wrongdoing in question and/or attempting to blame others
- regular, repeated or sustained behaviour over a period of time
- continuing the behaviour after the officer realised, or should have realised, that it was improper
- serious physical or psychological impact on the victim
- vulnerability of the victim
- multiple victims
- additional degradation – for example, taking photographs as part of a sexual offence
- any form of violence against women and girls, whether on-duty or off-duty
- any element of unlawful discrimination
- significant deviation from instructions, whether an order, force policy or national guidance
- failure to raise concerns or seek advice from a colleague or senior officer
- scale or depth of local or national concern about a particular issue
- leadership responsibility, where there is an expectation of acting as a role model
- multiple proven allegations and/or breaches of the Standards of Professional Behaviour⁸³

4.77 This list is not intended to be exhaustive and the aggravating factors are not listed in any particular order of priority.

82 See [Violence, intimidation or sexual impropriety](#) and [Abuse of position of trust or authority](#) sections of this document..

83 See [Available outcomes](#) section of this document.

4.78 On occasions, two or more of the factors listed will describe the same feature of the misconduct. Take care to avoid 'double counting'.

Mitigating factors

4.79 Mitigating factors are those tending to reduce the seriousness of the misconduct. Some factors may indicate that an officer's culpability is lower, or that the harm caused by the misconduct is less serious than it might otherwise have been. This is not the same as personal mitigation, which is dealt with in the 'Personal mitigation' section of this guidance. Take care not to confuse personal mitigation with those mitigating factors that had an impact on the misconduct at the time.

4.80 Where representations are received in relation to mitigating circumstances, the person(s) considering it:

(i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer could reasonably have been expected to mention them⁸⁴

(ii) may determine, in the light of their conclusions under paragraph (i), that it is appropriate to place less weight on those circumstances

4.81 Factors indicating a lower level of culpability or harm include:

- misconduct confined to a single episode or brief duration
- the officer's involvement in the misconduct being limited in extent
- any element of provocation, threat or disturbance that may have affected the officer's judgement – for example, in relation to the use of force in the heat of the moment⁸⁵

84 Regulation 42(14)(d) and 62(10)(d) of the Conduct Regulations.

85 See, for example, per Lord Morris in *Palmer v R* [1971] AC 814 at pp 831-832, now reflected in section 76 of the Criminal Justice and Immigration Act 2008.

- acting pursuant to a legitimate policing purpose or in good faith (ie, a genuine belief that there was a legitimate purpose but getting things wrong)
- mental ill health, disability, medical condition or stress that may have affected the officer's ability to cope with the circumstances in question
- whether the officer was required to act outside their level of experience and/or without appropriate training or supervision
- open admissions at an early stage⁸⁶
- early actions taken to reduce the harm caused
- evidence of genuine remorse, insight and/or accepting responsibility for one's actions

4.82 In cases where the misconduct occurred several years prior to the meeting or hearing, consider the outcome by reference to the standards of the time rather than current attitudes and standards. Give due account to the officer's conduct in the intervening years – for example, whether they performed their duties to a high standard.

⁸⁶ See also the HOG, paragraph 9.6(a).

5 Operational dishonesty

5.1 Following Lord Bingham’s judgment in *Bolton v Law Society*,⁸⁷ Lord Justice Jackson held in *Law Society v Salsbury* that for cases involving dishonesty by a solicitor, there would only be a ‘very small residual category where striking off was not appropriate’.⁸⁸

5.2 In the High Court case of *Salter*,⁸⁹ a case involving operational dishonesty on the part of a police officer,⁹⁰ Mr Justice Burnett confirmed that:

‘The reasons which underpin the strict approach applied to solicitors and barristers apply with equal force to police officers. Honesty and integrity in the conduct of police officers in any investigation are fundamental to the proper workings of the criminal justice system. [...] The public should be able unquestioningly to accept the honesty and integrity of a police officer. The damage done by a lack of integrity in connection with the investigation of an alleged offence may be enormous. The guilty may go free. The innocent may be convicted. Large sums of public money may be wasted. Public confidence in the integrity of the criminal justice system may be undermined. The conduct of a few may have a corrosive effect upon the reputation of the police service in general.’

5.3 Notwithstanding Mr Salter’s unblemished service and the impressive character evidence called on his behalf, Mr Justice Burnett concluded:⁹¹

87 See paragraph 2.4 in relation to the purpose of disciplinary proceedings and paragraph 6.1 regarding personal mitigation.

88 [2009] 1 WLR 1286, paragraph 37.

89 *R (Chief Constable of Dorset) v Police Appeals Tribunal* [2011] EWHC 3366 (Admin), paragraph 22.

90 Neil Salter had attempted to procure the deliberate destruction of evidence.

91 *R (Chief Constable of Dorset) v Police Appeals Tribunal* [2011] EWHC 3366 (Admin),

‘[...] the correct approach for a decision maker is to recognise that a sanction which results in the officer concerned leaving the force would be the almost inevitable outcome in cases involving operational dishonesty. That terminology itself recognises that there may be exceptions. In concluding that the case is exceptional, the decision maker must identify the features of the circumstances of the misconduct which support a different conclusion, recognising that the number of such cases would be very small. The decision maker would take account of personal mitigation, but must recognise its limited impact in this area.’

- 5.4 The proper approach to cases involving operational dishonesty, derived from the case of *Salter*,⁹² can be summarised as follows:
- dismissal will be almost inevitable in cases where operational dishonesty has been found proven
 - there may be exceptions but the number of such cases will be very small
 - where the person(s) conducting the proceedings concludes that a case involving operational dishonesty falls into this very small residual category, they must identify the features of the case that render it exceptional
- 5.5 Personal mitigation can be taken into account, although its impact will be limited. This applies to all types of police misconduct.⁹³

paragraph 30.

92 Burnett J’s dictum at paragraph 30 of the High Court decision was upheld by the Court of Appeal in *Salter v Chief Constable of Dorset* [2012] EWCA Civ 1047 at paragraphs 19 and 21.

93 *Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin). See also the ‘Personal mitigation’ section of this document.

6 Personal mitigation

6.1 As Lord Justice Maurice Kay confirmed in the Court of Appeal decision in the case of *Salter*:⁹⁴

‘As to personal mitigation, just as an unexpectedly errant solicitor can usually refer to an unblemished past and the esteem of his colleagues, so will a police officer often be able so to do. However, because of the importance of public confidence, the potential of such mitigation is necessarily limited.’

6.2 Purely personal mitigation is not relevant to the seriousness of the misconduct. Tributes and testimonials should not be confused with the mitigating factors relating to the misconduct itself, as outlined above.⁹⁵ Consider any personal mitigation after forming an assessment of the seriousness of the misconduct.

6.3 Consider any personal mitigation advanced by the officer when deciding on the appropriate outcome.⁹⁶ Such mitigation may include whether the officer has shown remorse, acted out of character or made a significant contribution to the police service.

6.4 However, due to the nature and purpose of disciplinary proceedings, the weight of personal mitigation will necessarily be limited, particularly where serious misconduct has been proven. In the words of Mr Justice Holroyde in *Williams v Police Appeals Tribunal*:⁹⁷

‘[...] the importance of maintaining public confidence in and respect for the police service is constant, regardless of the nature of the gross misconduct under consideration. What may vary will be the extent to which the particular gross

⁹⁴ *Salter v Chief Constable of Dorset* [2012] EWCA Civ 1047, paragraph 23.

⁹⁵ See the [Effect on the police service and/or public confidence](#) section of this document.

⁹⁶ Regulations 42(14) and 62(10) of the Conduct Regulations; HOG, paragraph 9.6.

⁹⁷ [2016] EWHC 2708 (Admin), paragraph 67.

misconduct threatens the preservation of such confidence and respect. The more it does so, the less weight can be given to personal mitigation.’

6.5 As Lord Bingham stated in *Bolton v Law Society*, of disciplinary proceedings:⁹⁸

‘Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to reestablish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and

98 *Bolton v Law Society* [1994] 1 WLR 512, paragraph 519B-E.

unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.’

6.6 The primary consideration for the panel or chairperson is the seriousness of the misconduct found proven. If the misconduct is so serious that nothing less than dismissal would be sufficient to maintain public confidence, personal mitigation will not justify a lesser sanction.

6.7 However, there is also a public interest in retaining officers who have demonstrated or developed particular skills and experience. In the words of Mr Justice Collins in *Giele v General Medical Council*:⁹⁹

‘It must be obvious that misconduct which is so serious that nothing less than erasure would be considered appropriate cannot attract a lesser sanction simply because the practitioner is particularly skilful. But if erasure is not necessarily required, the skills of the practitioner are a relevant factor.’

6.8 Although personal mitigation may carry more weight where lesser outcomes are being considered, the case law confirms that the interests of the profession, and the protection of the public, are more important than those of the individual officer.¹⁰⁰

6.9 Nonetheless, personal mitigation is always relevant and should always be taken into account.¹⁰¹

99 *Giele v General Medical Council* [2005] EWHC 2143 (Admin), paragraph 30.

100 *Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin), paragraph 67.

101 *Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin), paragraph 67.

7 Conclusion

- 7.1 This guidance should be used to inform the approach taken by panels and chairpersons to determining outcomes in police misconduct proceedings. It sets out an approach for assessing the seriousness of conduct, which can be applied to assessments of conduct under Regulation 14 of the Conduct Regulations or paragraph 19A of Schedule 3 to the Police Reform Act 2002 and Regulation 16 of the Police (Complaints and Misconduct) Regulations 2020.
- 7.2 There are three stages to determining the outcome:
- assess the seriousness of the misconduct
 - keep in mind the threefold purpose for imposing outcomes in police misconduct proceedings¹⁰²
 - choose the outcome that most appropriately fulfils that purpose, given the seriousness of the conduct in question
- 7.3 Assessing the seriousness of the conduct is the first of these three stages. In assessing the seriousness of the conduct, have regard to the four categories outlined: culpability, harm, aggravating factors and mitigating factors.
- 7.4 Consider less severe outcomes before more severe outcomes.¹⁰³ The more serious the conduct found proven against an officer, the more likely it is that dismissal will be justified.
- 7.5 Always take personal mitigation into account. Due to the purpose of disciplinary proceedings, its impact will necessarily be limited. Less weight can be attached to personal mitigation where serious misconduct has been proven.
- 7.6 The reasons for imposing a particular outcome should be recorded and usually read out in public. Refer to this guidance and explain any departures from it.

102 See [Police misconduct proceedings](#) section of this document.

103 See [Police misconduct proceedings](#) section of this document.

- 7.7 Each case will depend on its particular facts. Have regard to all relevant circumstances when determining the appropriate and proportionate outcome to impose.

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