



## EASTERN REGION POLICE AND CRIME COMMISSIONERS

### INDEPENDENT PANEL MEMBER OF POLICE MISCONDUCT PANELS

#### MEMORANDUM OF UNDERSTANDING

#### INTRODUCTION

The Police Misconduct Hearing Panel (PMP) convened in any one of the six police areas that are together the Eastern Region Police and Crime Commissioners (ERPCCs) include an Independent Member (IPM) selected from a list of persons appointed by the ERPCCs. The PMPs conduct misconduct hearings for officers, other than senior police officers, including special constables and are governed by police conduct regulations.

The panel for each case currently comprises of a Legally Qualified Chair (LQC), a senior police officer (usually a Superintendent or Chief Superintendent) and an Independent Panel Member (IPM). Since 2014 police misconduct cases have been heard in public, except where there are special reasons for all or part of a hearing to be in private.

#### NATURE OF CASES

A PMP hears cases governed by police conduct regulations. The cases comprise allegations of misconduct by police officers. The severest outcome at a hearing would be dismissal from the police service without notice. Cases could include, for example, allegations of criminal acts, serious road traffic matters such as drink/driving or serious breaches of the standards expected of police officers, such as neglect of duty.

#### PURPOSE OF A MISCONDUCT HEARING

1. To give the police officer a fair opportunity to make his or her case having considered the investigation report including supporting documents and to put forward any factors the police officer wishes to be considered in mitigation (in addition to the submission which must be sent in advance to the person(s) conducting or chairing the meeting/hearing for his, her or their consideration).
2. To decide if the conduct of the police officer fell below the standards set out in the Standards of Professional Behaviour based on the balance of probabilities and having regard to all of the evidence and circumstances.
3. To consider what the outcome should be if misconduct is proven or admitted. Consideration will be given to any live written warnings or final written warnings (and any previous disciplinary outcomes

that have not expired and any early admission of the conduct by the police officer).

## COMPOSITION OF PMPs

4. A PMP consists of three persons:

- The LQC selected on a fair and transparent basis from the list of legally qualified persons maintained by the ERPCCs.
- a police officer of superintendent rank or above.
- An Independent Panel Member (IPM) selected on a fair and transparent basis from a list of IPM's maintained by the ERPCCs.

## THE MISCONDUCT PROCESS

5. Misconduct allegations against Police Officers are investigated by the Professional Standards Department (PSD) on behalf of the relevant Chief Constable, in accordance with legislation and guidance from the Home Office and Independent Office for Police Conduct (IOPC).
6. A PMP will commence if it is assessed that there is sufficient evidence to take the case forward as an allegation of "misconduct" or "gross misconduct".
7. Hearings are conducted in two parts. Firstly, the PMP decides (by a majority if necessary) whether the misconduct allegations presented amount to 'misconduct' or to 'gross misconduct' if the disputed facts are proved.
8. Misconduct is defined in the [Police \(Conduct\) Regulations 2020](#) as: 'a breach of the Standards of Professional Behaviour', and gross misconduct is defined as: 'a breach of the Standards of Professional Behaviour so serious that dismissal would be justified'.
9. In making their decisions, the PMP may have regard to the Code of Ethics published by the College of Policing, their local Force values and behaviours policy, as well as Home Office Guidance. When the decision has been made and announced at the first stage, unless it is found that there is no misconduct, the panel then proceeds to the second stage. It listens to submissions, and decides what sanction, if any, it is fair and proportionate to impose, in order:
  - to protect the public
  - to maintain public confidence in the police service, and
  - to uphold high standards in policing and deter misconduct.
10. If gross misconduct has been proven, the PMP can dismiss the officer, impose a final written warning or a written warning, direct that the officer must receive management advice, or take no further action. If only misconduct is proven, there is no power of dismissal, unless the officer is in breach of an earlier final written warning. In deciding upon sanctions, panels are assisted by Guidance on Outcomes in Police Misconduct Proceedings published by the [College of Policing](#).
11. Following the outcome, the officer may appeal to the Police Appeals Tribunal (PAT).

## POLICE APPEAL TRIBUNALS

12. A police officer of a rank up to and including Chief Superintendent has a right of appeal to a Police Appeals Tribunal (PAT) against any disciplinary finding and/or disciplinary outcome imposed at a misconduct hearing held under the relevant Police Conduct Regulations. Senior police officers, in addition, have the right to appeal to a PAT against any disciplinary finding and/or outcome imposed at a misconduct meeting.
13. A police officer may not appeal to a tribunal against a finding of misconduct or gross misconduct where that finding was made following acceptance by the officer that his or her conduct amounted to misconduct or gross misconduct (as the case may be).
14. The composition of a PAT is set out in Schedule 6 to the Police Act 1996 (as amended). Where the appeal is made by a police officer who is not a senior officer, the PAT appointed by the local policing body will consist of: -
  - An LQC drawn from a list maintained by the Home Office
  - a serving senior officer; and
  - A lay person
15. The 'layperson' is someone who is not, and has never been, a member of a police force, special constable, civilian police staff, Local Policing Body or other policing body as identified within the Police Act 1996. The inclusion of a lay person allows a further independent and impartial view on the tribunal from outside policing.
16. The ERPCCs have taken the decision to use the appointed IPMs for both Police Misconduct hearings and Police Appeals Tribunals.
17. The appointment of an IPM to a PAT will be carried out in the same way IPMs are appointed to police misconduct hearings.
18. An IPM cannot be appointed to a PAT if they have sat on the misconduct hearing which dealt with the matter initially.

## ROLES AND RESPONSIBILITIES OF THE INDEPENDENT MEMBER

19. Local policing bodies appoint persons as IPMs for Police Misconduct Hearing Panels as required under The Police Reform Act 2002 (as amended).
20. IPMs are people who have no relationship with the police service.
21. The role of an IPM is to assist other members of the Police Misconduct Hearing Panel in reaching a fair and evidence-based judgement about a particular officer's conduct and deciding on an appropriate sanction. They also ensure that there is an independent and impartial voice on such panels and provide assurance to the community that conduct matters are treated seriously and that misconduct proceedings are being properly investigated and adjudicated.
22. Some of the key responsibilities include:
  - attending and participating effectively in misconduct hearings as required.
  - preparing for hearings by considering in advance relevant papers, reports and background information.
  - constructively challenging accepted facts and views in these hearings where appropriate.

- attending training offered that is relevant to the role and taking a proactive approach to considering what additional development would be appropriate.
- maintaining high standards of professional conduct and ethics.

23. IPMs are available for appointment onto Police Appeals Tribunal (PAT) panels as detailed within paragraphs 12 to 18.

## INDEPENDENT PANEL MEMBERS CRITERIA

24. The qualities required of an IPM will include strong analytical abilities in order to properly evaluate the evidence being put to them. In addition, self-confidence is essential to bring the required level of independence to the process and engage constructively with the LQC and the senior police officer on the panel.
25. Ideally, an applicant for the role of IPM will have experience of professional regulations, tribunals, or other legal processes, and of working with disciplinary procedures.
26. Other attributes include the ability to take a balanced, open minded and objective approach to the issues and to reach evidence-based decisions that are robust and will withstand challenge, and the ability to clearly and cogently articulate views, while being receptive to other people's opinions. IPMs will have high standards of conduct and ethics and a commitment to fairness and equality. They must be committed to the process and be willing to set aside sufficient time to prepare for and attend hearings.

## APPOINTMENTS

27. The ERPCCs are responsible for maintaining and administering a list of persons to be appointed as IPMs.
28. The ERPCCs have collectively decided to maintain a list on a regional basis, with IPMs required to be able to cover any force area within that region.
29. Individual IPMs are able to sit on the lists for more than one policing region.
30. Appointments are made for an initial period of five years.
31. The independence and impartiality of an IPM is a fundamental requirement and IPMs must immediately inform the Local Policing Body Chief Executive (or equivalent) if there is any change in their circumstances, such as those exclusions given but not exhaustively in the list below, that may affect their eligibility to continue as an IPM.
32. Exclusions from sitting as an IPM:
- Serving and retired police officers.
  - Serving and retired police staff.
  - Serving and retired special constables.
  - Current and former Police and Crime Commissioners (from any Force area).
  - Current and former PCC staff (from any Force area).
  - Former police authority members and officers (from any police authority).
  - Undischarged bankrupts.
  - Anyone whose estate has been sequestrated and the sequestration has not been recalled or reduced or a discharge has not been obtained.
  - Anyone who has made a composition or arrangement with, or granted a trust deed for their

creditors and has not paid off the debts in full or five years have not yet passed since the terms of the deed of composition or arrangement, or trust deed were fulfilled.

- Anyone who is subject to a disqualification order under the Company Directors Disqualification Act 1986, or to an order made under Section 429(2)(b) of the Insolvency Act 1986 (failure to pay under County Court Administration Order).

33. To maintain confidence in the process, the ERPCCs will not appoint someone with unspent criminal convictions (with the exception of fixed penalties). Each case will be considered on its merits. IPMs appointed must immediately notify the ERPCCs if they are arrested for or charged with a criminal offence.

34. The ERPCCs will also consider it to be inappropriate if there is perceived conflict of interest through relationships (e.g., family or close friends) with a Police and Crime Commissioner or officer of any of the ERPCCs, or a police officer or member of police staff or special constable. IPMs are required to declare any such relationships at any time during their term of appointment. IPMs must immediately notify the ERPCCs any subsequent relationships that may give rise to a perceived conflict of interest with their role as an IPM.

## CODE OF CONDUCT

35. Members of Police Misconduct Hearing Panels must maintain the highest standards of conduct and ethics and uphold the Committee on Standards in Public Life's seven principles of Public Life (see below). For example, when carrying out misconduct proceedings, panel members must not:

- Bring the Office into disrepute.
- Use the position improperly to advantage themselves, family or friends.
- Disclose confidential information.
- Breach of the Code of Conduct or The Principles of Standards in Public Life may lead to suspension or removal from the list of panel members.

36. IPMs must be committed to:

- Treating everyone with respect.
- Upholding human rights.
- Promoting equality of opportunity.
- Eliminating unlawful discrimination.

37. The Principles of Standards in Public Life ([The Nolan Principles](#)) are;

- **Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

- **Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership:** Holders of public office should promote and support these principles by leadership and example.

## IMPARTIALITY

38. Fairness and impartiality are the cornerstones of procedural justice and important for the achievement of legitimacy.
39. As an IPM, individuals must show impartiality throughout all their dealings with colleagues, the officer, their representatives, and representatives of PSD or Counsel.
40. This is achieved by being unprejudiced, fair, and objective. IPMs must consider different sides of a situation and ensure that each side is given equal consideration. IPMs must not favour one person or another and must not allow personal feelings, beliefs, or opinions to unfairly influence their actions in any situation thereby ensuring their decisions are clear and evidence based.

## CONFIDENTIALITY

41. Security is a paramount and essential element to ensure that the information contained within the hearing bundle and any related correspondence is retained and secure. The relevant PSD or OPCC will liaise with the IPM as to how the information will be provided (i.e., electronically or physically). It is incumbent upon the IPM to ensure that this information is not lost, stolen, or disclosed to others.
42. Should the IPM discover that such information is lost or stolen this should be reported immediately to the relevant PSD and OPCC. The IPM will need to provide them with full details of what has happened. The IPM will then be advised of the next steps and whether the matter needs to be reported to the Information Commissioner's Office (ICO)/ the Police.
43. During their role, the IPM may acquire considerable personal information about persons connected with police misconduct proceedings. That information must be protected against improper or unnecessary disclosure. The IPM should be aware that improper disclosure of information acquired during the role of IPM may attract civil or criminal proceedings.
44. Additionally, unauthorised disclosure of facts concerning police operations or security may constitute an offence under the Official Secrets Act 1911 and 1989, the Data Protection legislation including the General Data Protection Regulation (UK GDPR) and the Computer Misuse Act 1990.
45. At the end of a hearing, the IPM should not retain any physical papers as these should be handed back to the relevant PSD officers on the final day of the hearing. If, however, further discussions or deliberations are due to take place, the papers should be returned at the earliest opportunity by the most secure method. Where papers are provided electronically via a portal, the IPMs access will be removed. If they are provided via email, then the IPM should delete all records and send a

confirmation email to the relevant Local Policing Body Office/PSD to confirm that deletion has taken place.

## SELECTION OF AN INDEPENDENT PANEL MEMBER FOR A MISCONDUCT CASE

46. The agreed method of selecting an IPM is the use of a 'cab rank' system. The ERPCCs selection policy is published on each individual OPCC's website. [Selection of Misconduct Panels and Police Appeals Tribunals](#).

## HEARING LENGTH

47. It is not always possible to accurately predict the length of time required to hear a case.

48. If a case does not take as long as estimated, the ERPCC has discretion to authorise payment in respect of the "over-estimated" days at the current half day rate for each of those days, up to a maximum of five days. The expectation is that the ERPCC Chief Executive will exercise his/her discretion in favour of authorising such payment. If he/she does not, full reasons therefore will be provided to the IPM.

## CANCELLATIONS

49. Whilst every effort will be made not to cancel hearings, there may be occasions when this is unavoidable.

50. The ERPCCs recognise that IPMs may have declined other work in order to participate at a hearing and have adopted the following approach to paying for cancelled days.

- a. If a hearing is cancelled over two weeks in advance of the proposed date there will be no payment made, but the IPM's named will, with their agreement, be put back at the top of the regional list of available IPMs.
- b. Where a hearing is cancelled 7-14 days prior to the commencement date the current half day rate will be payable for each of the days the hearing was expected to last, up to a maximum of five days. They will go the bottom of the regional list.
- c. Where less than seven days' notice is given, the full day rate will be payable for each of the days the hearing was expected to last, up to a maximum of five days.
- d. Cancellations without good reason by IPMs, especially if made to undertake other paid work, may result in an IPM being removed from the ERPCC list following discussions with the ERPCC Chief Executives. (For the avoidance of doubt, cancellation due to an existing professional commitment "overrunning" will be regarded as being with good reason).

## FEES AND EXPENSES

51. The rate of pay for an IPM is currently set at £211.50 per day for a full day (4+ hours, excluding meals breaks) and £104.50 per half day (under 4 hours).

52. These rates are payable for days when IPMs are sitting on Misconduct panels or on PATs. They are not applicable for preparation work as this is covered separately.

53. It is recognised that a sitting of less than 4 hours, and when taking travelling time into account on the same day, may cause an IPM to give up a whole day for a half day's session. IPMs may claim for a full day's sitting where the sitting is less than 4 hours (excluding meal breaks) and where hearing time and travel on the same day as the hearing together total over 7 hours.
54. A fee may be claimed at the rate of £15.00 for each hour necessarily spent in preparatory work.
55. Where a hearing runs late, but not into a further day, then a long sitting allowance may be claimed. The long sitting allowance may be claimed where the length of a tribunal sitting exceeds 7 hours (excluding meal breaks). The allowance payable is 1/6 of the normal daily rate for each hour, or part thereof, in excess of 7 hours.
56. IPMs attending training will be able to claim the current half day rate to cover attendance at training days. This approach recognises the time commitment in attending, but also recognises the value of the training IPMs will receive as part of their continuous professional development. IPMs would also be able to claim travel expenses.

## TRAVEL EXPENSES

57. Where public transport costs are incurred at the standard rate, these will be reimbursed in full on providing the relevant receipts.
58. Mileage will be reimbursed for mileage incurred travelling to and from any venue in relation to the work being undertaken. Mileage will be reimbursed at the HMRC vehicle rate, currently 45p per mile.
59. The vehicle, for which mileage is being claimed must be taxed, have appropriate insurance for business use and a valid MOT certificate (where applicable) at the time the journeys were made. Evidence of this may be requested for audit purposes.
60. Costs incurred for rail travel will be reimbursed at the standard rate. Any costs incurred for first class rail travel will not be reimbursed.
61. Travelling allowances are designed to meet expenses incurred and are in no sense a form of remuneration. Please note that no liability can be accepted in the event of any accident, damage, injury, or death whilst travelling or whilst undertaking hearing duties.
62. There is no provision for payment of travelling time.

## ACCOMMODATION AND SUBSISTENCE

63. Wherever possible hearings will be timed to avoid the necessity for overnight stays. If a hearing runs to two or more days, then IPM may, if travel to the hearing venue is likely to take more than an hour, claim reimbursement for the cost of overnight accommodation up to a maximum of **£126 per night**. This rate is made up as follows:
- Accommodation up to a limit of **£100** per night.
  - Plus, a flat rate allowance of **£26**. This allowance is intended to cover dinner and local travel (for example between hotel and the hearing venue) and to cover miscellaneous expenses. No additional amount is payable.
64. IPMs should arrive at the hearing sufficiently early and refreshed to prepare for the hearing and meeting other panel members. In cases where the IPM has a journey of more than one hour, the



ERPCC may agree to meet the cost of overnight accommodation the night prior to the first day of the hearing.

65. Unless the IPMs travel from the hearing venue to his/her home is likely to take more than an hour, an overnight accommodation claim may not be made in respect of the final day of the hearing if a long sitting allowance has been claimed.

66. Where an overnight stay is not necessary, an allowance may be claimed for the necessary costs spent on meals (day subsistence). The allowance is based on the period during which the IPM is absent from home. The rates are: -

- Absence of more than 5 hours and less than 10 hours     **£4.25**
- Absence of more than 10 hours                                     **£9.30**

67. This is a flat rate allowance which may be claimed whether the cost of meals was more, or less, than the actual amount of expenditure. It is not necessary for receipts to be provided. The allowance should not, of course, be claimed if a meal is provided free of charge.

68. It is accepted that in some areas accommodation will be more costly and a higher rate may be agreed locally with the Chief Executive, prior to expenditure being incurred.

## OTHER EXPENSES

69. Postage and telephone calls etc necessarily dispensed in respect of the determination of the hearing may be claimed upon provision of documentary evidence. Where it is necessary for papers to be dispatched this should be done by registered post or special delivery to preserve the confidentiality of papers. Evidence of the cost should be provided with any claim.

## CLAIMING EXPENSES

70. All claims must be submitted on a completed claim form which must be signed. IPMs who wish to submit an invoice may include a copy of this with the completed claim form but an invoice without a completed and signed claim form does not constitute an eligible claim.

71. Blank claim forms are available from the Professional Standards Department of the Constabulary arranging the misconduct hearing. Completed claims should be returned to that office.

72. VAT may be claimed by those IPMs registered for the purposes of VAT. In these cases, the VAT registration number should be shown on the completed claim form.

## INDEMNITY

73. The outcome of a misconduct hearing is based on a joint decision of the Police Misconduct Hearing Panel, though there are certain technical decisions relating to the hearing process that are vested with the Chair.

74. The ERPCC's and their respective officers are working with the Home Office and the National Association of LQCs (NALQC) and developed a pragmatic solution and a form of wording which covered the LQCs and IPMs. It offered LQCs and IPMs assurance that they were covered for damages unless it

was shown in a court or similar that they had acted in bad faith (this is similar to the wording of the magistrates' indemnity set out in the Courts Act 2003). It provided elected local policing bodies with a backstop to ensure that LQCs and IPMs acted professionally in their respective roles.

75. Until such time as a national solution is found the agreed wording (revised in November 2022) is:  
*“ In respect of the case of ..... which is to be held on ..... I (in my role as Police and Crime Commissioner or equivalent) agree to indemnify you as the Legally Qualified Chair (“LQC”)/Independent Panel Member (“IPM”) in respect of any liabilities arising (including reasonable costs as agreed with you in connection with responding to or engaging with any legal proceedings or matters arising from the discharge of your functions as an LQC/IPM) for anything done or omitted to be done by you in the discharge of those functions unless, having received representations or submissions by or on your behalf, you are proved in a court of law or other tribunal with appropriate jurisdiction to have acted in bad faith. Furthermore, in the event of your being held to have any liability for anything done or omitted to be done by another member of the Panel of which you are part, I agree to indemnify you in full in respect of any such liability. In addition, and/or for the avoidance of doubt, it is confirmed that this indemnity includes, but is not limited to, any costs you may incur:*
- In seeking legal advice in relation to the receipt of a witness summons/order or an application therefor.*
  - In relation to the preparation of any representations and/or witness statements in relation to an application for a witness summons/order and/or in relation to an application to set aside the issuing of a witness summons/order.*
  - In relation to securing legal representation at any hearing of an application for a witness summons/order and/or the hearing of any application to set aside the issuing of a witness summons/order.*
  - In relation to the costs (including costs of legal representation) of participating in any appeal and/or application for judicial review (and any appeal therefrom) arising as a consequence of your being in receipt of an application for a witness summons/order or an application therefor; and*
  - In relation to attending a hearing or hearings, including the time spent thereat.*
76. *However, save where the issue/matter needs to be addressed by you immediately, no costs to which this indemnity applies should be incurred by you before you have notified the Chief Executive of my Office of the nature and extent of the issue/matter giving rise to a claim under it.”*
77. The liability of Police Misconduct Panels members in legal proceedings other than Judicial Review proceedings (e.g., employment tribunals) is currently the subject of ongoing legal proceedings. The ERPCC’s and the National Association of Legally Qualified Chairs (NALQC) have agreed that the indemnity set out above will be periodically reviewed whilst the legal proceedings continue and at their final conclusion.

## **TRAINING AND DEVELOPMENT**

78. IPM’s who have not previously served as an IPM in police misconduct cases will not be able to sit on a Panel until they have completed training to the satisfaction of the ERPCCs. Refresher training will be provided as deemed necessary by the ERPCCs.
79. Should there be changes in regulations or if the ERPCC’s identifies training needs for IPMs to facilitate an efficient discharge of their responsibilities the ERPCC will arrange suitable training to be developed.
80. Fees and expenses arrangements for attendance at training events are dealt with in paragraph 56.

## **COMPLAINTS, SUSPENSION, IMPOSITION OF CONDITIONS AND TERMINATION**

81. Whilst there will be no formal appraisal of their performance in the role of IPM, ERPCCs will consider any concerns received relating to an IPM's performance and discuss these with the IPM.
82. Any concerns about an IPM or their performance and/or conduct will be discussed by the Chief Executives for the ERPCCs. Should the matter remain unresolved the procedures for considering removal would be invoked.
83. Misconduct may include such matters as a conviction for a criminal offence or abusing the position as an IPM by failing to act in accordance with the standards previously detailed.
84. An IPM's appointment may be suspended at any time by the Chief Executives of the ERPCCs upon receiving a report of misconduct or poor performance.
85. The Chief Executives of the ERPCCs may terminate the appointment of an IPM having considered a report of misconduct or poor performance providing that before a decision to terminate or not is taken, an opportunity is given to the IPM in question to make oral and/or written representations. The IPM will be notified of the grounds on which removal is being considered in advance of them being given the opportunity to make representations. An appeal of this decision lies with the ERPCCs.
86. Similarly, the ERPCCs will welcome feedback from IPMs on their experiences including any concerns. Any feedback should in the first instance be referred to the Chief Executive of the Hertfordshire OPCC.

## REVIEWS

87. The ability to assess how an IPM has 'performed' during the process is important to ensure the ERPCCs retain effective IPM's. This can be done in a variety of ways and could enable IPMs to feedback on the service they have received from the ERPCCs and the PSD involved. Some elements could be:
  - The number of hearings that they have attended during a calendar year against the number of hearings that occurred within that force or region.
  - Availability - should an IPM continually or habitually not be available then this does have an impact upon the local policing body/Region and their ability to have hearings in a timely manner.
  - Attendance at any provided training, continued failure to do so may negate them being able to preside over a hearing.
  - Constructive feedback on the case and identify any best practice or learning from the IPM, local policing body, the officer concerned or his/her representatives, PSD/Legal department.
88. These factors will be considered by the ERPCCs when discussing the re-appointment of any IPM.