COMISIYNYDD HEDDLU A THROSEDDU DYFED-POWYS POLICE AND CRIME COMMISSIONER

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SWYDDFA COMISIYNYDD HEDDLU A THROSEDD GOGLEDD CYMRU OFFICE OF THE POLICE & CRIME COMMISSIONER NORTH WALES

South Wales Police and Crime Commissioner Comisiynydd yr Heddlu a Throseddu De Cymru

SELECTION AND APPOINTMENT OF MEMBERSHIP TO POLICE MISCONDUCT HEARINGS AND POLICE APPEALS TRIBUNALS

1 Misconduct Hearings

1.1 The Appointment of Legally Qualified Chairs and Independent Panel Members to Police Misconduct Hearings – Police (Conduct) Regulations 2020

1.2 Where for the purposes of the Police (Conduct) Regulations 2020 (the 2020 Regulations) a case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons comprising -

- a chair appointed by the local policing body selected on a fair and transparent basis from the list of legally qualified persons maintained by the local policing body for the purpose of the 2020 Regulations;
- a member of a police force of the rank of Superintendent or above (provided that the member is of a more senior rank than the officer concerned) appointed by the appropriate authority; and
- a person appointed by the local policing body selected on a fair and transparent basis from a list of candidates maintained by the local policing body for the purposes of the 2020 Regulations, (i.e. independent panel members)

1.3 The four local policing bodies (i.e. Police and Crime Commissioners) for each of the four police areas in Wales, namely Dyfed Powys, Gwent, North Wales and South Wales, have appointed legally qualified persons to a list of legally qualified chairs and a list of independent panel members for the purposes of misconduct hearings held within Wales.

1.4 Selections of legally qualified chairs and independent panel members to particular misconduct hearings are required to be made on a fair and transparent basis.

1.5 Statutory Guidance on Professional Standards, Performance and Integrity in policing issued by the Home Office states at paragraph 11.35 et seq:

"11.35 The misconduct hearing will be chaired by an independent legally qualified person who will be chosen from a pool held by the local policing body. They will be appointed at the point where the appropriate authority determines (under Regulation 23) to refer the case to misconduct hearing, at which stage they will ask for a legally qualified person to be appointed by the local policing body (under Regulation 28).

11.36 Appointment should be on a fair and transparent basis by the local policing body following a request from the appropriate authority. Fair and transparent will generally mean that a rota system is established (sometimes referred to as 'first cab off the rank system') so the next available person from the pool is chosen for the hearing. It will be good practice for the local policing body to publish how their rota system operates."

1.6 This document sets out how the four Police and Crime Commissioners in Wales will select the legally qualified chairs and independent panel members (as referred to above), to the misconduct hearings.

1.7 The Office of the Police and Crime Commissioner North Wales (OPCC North Wales) holds and administers the lists of legally qualified chairs and independent panel members on a day-to-day basis. The OPCC North Wales will construct these lists in a way that allows the number of hearings to be recorded and assigned to each legally qualified chair and independent panel member respectively.

1.8 The list will be established so that the legally qualified chairs and independent panel members with the least hearings to their names are at the top of their respective lists. It is not expected that legally qualified chairs and independent panel members will refuse cases for any other reason than availability. If they are not available for a particular hearing they will not thereby lose their place on the list. If however they refuse a case for any other reason than availability then, unless there are exceptional circumstances, their name will be moved to the bottom of the list. It is accepted that independent panel members may not wish to sit on a misconduct hearing outside of their local area due to the geography of the region.

1.9 Appointment of Legally Qualified Chair

1.9.1 At the point the appropriate authority (acting through their relevant Professional Standards Department [PSD]) determines to refer a case to a misconduct hearing, they will approach their relevant Police and Crime Commissioner (i.e. the Police and Crime Commissioner for the police area from where the misconduct originates) for a legally qualified chair to be appointed.

1.9.2 The Police and Crime Commissioner will, acting through staff within their office of the Police and Crime Commissioner, then approach the North Wales OPCC to ascertain the next available person from the list of legally qualified chairs. The Police and Crime Commissioner will then establish with the next available legally qualified chair as to whether they are able to take the referral of the misconduct hearing. The legally qualified chair will be given a reasonable period to check their availability and will be expected to advise within 48hours whether they can take the case. If they answer in the affirmative the Police and Crime Commissioner will proceed to appoint the person as legally qualified chair for the purposes of the misconduct hearing. They will then advise the North Wales OPCC as soon as practicably possible of the appointment in order that the list of hearings taken by legally qualified chairs can be kept fully up to date and so that it is possible to establish who the “next” available person is to take hearings. This is essentially a cab rank system of making appointments from the list.

1.9.3 If the answer to the question as above is in the negative the relevant Police and Crime Commissioner must revert to the North Wales OPCC to advise them of the refusal and the reason therefore, and to seek the name of the next available person. The process is then repeated as necessary. The fact of the refusal and the reason therefore will be recorded by the North Wales OPCC on the relevant list.

1.9.4 Whether there is an acceptance or a refusal by a person to serve, they will not be offered another opportunity to take a hearing until the full list of eligible persons has been worked through (unless the reason for refusal is one of availability or other exceptional circumstances).

1.9.5 The operation of the cab rank system requires Police and Crime Commissioners to keep the North Wales OPCC updated in a timely way upon both acceptances and refusal of cases. The appropriate authority should be advised of an appointment at the same time as the North Wales OPCC is advised of the appointment.

1.9.6 It is not expected that the cab rank system of making appointments from the list will be departed from unless there are exceptional circumstances. If for any reason there is a departure the relevant Police and Crime Commissioner and the North Wales OPCC must set out the clear reason.

1.9.7 The officer who is subject to the misconduct hearing will be informed as soon as practicable by the appropriate authority of the person to chair their misconduct hearing and to whom they can object in writing before the end of 3 working days beginning with the first working day after the officer is given notice of the person's name, setting out their grounds for objection. Where the Police and Crime Commissioner is the relevant body to uphold or reject the objection they should advise the North Wales OPCC of any outcome to such objection in order to keep the appointment list up to date.

1.9.8 Once the legally qualified chair has been appointed the appropriate authority needs to nominate an individual to communicate with the chair with respect to administrative matters etc. who is independent of the investigation process.

1.10 Appointment of Independent Panel Member

1.10.1 The misconduct panel that undertakes a misconduct hearing also comprises of the two other members as described at paragraph 1.2 above. The independent panel member will be selected and appointed later in the process once the hearing date has been determined. When making this appointment priority will be given to independent panel members from the relevant force area. If those independent panel members from the relevant force area are unavailable or for any other reason determined by the Police and Crime Commissioner that an independent panel member from the force area should not be appointed, the Police and Crime Commissioner will approach the North Wales OPCC to ascertain the next available person from the list of independent panel members. It is accepted that independent panel members may not wish to sit on a misconduct hearing outside of their local area due to the geography of the region. The Police and Crime Commissioner will provide a clear explanation if an independent panel member from outside the force area is selected and appointed.

1.11 Appointment of police officer member

1.11.1 The police officer member of the misconduct panel will be appointed by relevant Chief Constable as appropriate authority.

1.12 It is for the relevant Police and Crime Commissioner to ensure that their formal selection and appointment decisions are made for the purposes of Regulation 28 (4) of the 2020 Regulations in accordance with their own internal decision-making arrangements.

1.13 Where the officer subject to the misconduct proceedings is a senior officer, the panel will consist of:

- a chair appointed by the local policing body selected on a fair and transparent basis from the list of legally qualified persons maintained by the local policing body for the purpose of the 2020 Regulations;
- the HMCIC or an inspector of constabulary nominated by HMCIC; and
- a person appointed by the local policing body selected on a fair and transparent basis from a list of candidates maintained by the local policing body for the purposes of the 2020 Regulations, (i.e. independent panel members)

2 <u>Police Appeals Tribunal</u>

2.1 <u>The Appointment of Legally Qualified Chairs and Independent Panel Members to a Police Appeals Tribunal – Schedule 6 of the Police Act 1996</u>

2.2 An officer may appeal from a misconduct hearing held under the Police (Conduct) Regulations 2020 and the Police (Performance) Regulations 2020. Senior officers, in addition, have the right to appeal to a Police Appeals Tribunal against any disciplinary finding and/or outcome imposed at a misconduct meeting in addition to the

right of appeal following a misconduct hearing.

2.3 Appeals related to decisions which have been made under the previous versions of these Regulations will be dealt with under the Police Appeals Tribunals Rules 2012.

2.4 The Police Appeals Tribunal Rules 2020 and the Home Office – Statutory Guidance on Professional Standards, Performance and Integrity in Policing at Chapter 26 set out clearly the circumstances in which an appeal may be brought and how the appeals should be progressed. A Police and Crime Commissioner has important procedural and administrative functions to discharge to enable the effective and efficient disposal of appeals. In the event of an appeal the Police and Crime Commissioner must ensure that they adhere closely to the legislation and guidance.

2.5 The composition of the Police Appeals Tribunals is set out in Schedule 6 to the Police Act 1996 (as amended).

2.6 Where the appellant is not a senior officer, the Tribunal shall consist of:

- a legally qualified chair taken from the list maintained by the Home Office;
- a serving senior police officer; and
- a lay person, who is defined at paragraph 10 (aa) of Schedule 6 of the Police Act 1996. It is a person who is not, and never has been, a member of a police force, or special constable, civilian police staff, local policing body or other policing body as per the Act.

2.7 The Home Office – Statutory Guidance on Professional Standards, Performance and Integrity in Policing Statutory states at paragraph 26.15 and 26.16:

"The members of the tribunal should be chosen on a fair and transparent basis by the local policing body [i.e. PCC]. There is a clear need for flexibility within this process but good practice would be for the local policing body to select chairs and laypersons on a random basis to ensure that all members are given the same opportunity for hearing cases. It is also good practice for the local policing body to publish, or be open to publishing, how their system operates.

The method of selection is an important principle of fairness for the officer concerned and ensuring proceedings are conducted in accordance with principles of natural justice in order that the selection itself and any subsequent proceedings cannot be called into question on the basis of any perceived, or actual, unfairness."

2.8 Where the appellant is a senior officer, the Tribunal shall consist of:

- a legally qualified chair taken from the list maintained by the Home Office;
- HM Chief Inspector of Constabulary and Fire and Rescue Services or an Inspector nominated by the Chief Inspector; and
- the Permanent Secretary to the Home Office or a Home Office Director nominated by the Permanent Secretary.

2.9 The Guidance also states at paragraph 26.18 and 26.19:

"In the interests of fairness, an individual should not sit on a tribunal for any officer if they have already heard the same case at a misconduct meeting or misconduct-hearing.

It is the responsibility of the local policing body to satisfy itself that the members who are sitting on the tribunal are sufficiently independent of the matter so as not to give rise to any suggestion of unfairness."

2.10 This document sets out the approach of the four Police and Crime Commissioners in Wales to selecting, where

they have discretion, the membership of police appeals tribunals.

2.11 The Police and Crime Commissioners will in selecting such membership take full account of their statutory obligations and the guidance.

2.12 The Police and Crime Commissioners will when selecting the legally qualified chairs as referred to in paragraphs 2.6 and 2.8 above, and having full regard to their obligations and guidance, make their selection on a random basis and with a view to ensuring that those on the Home Office list are given equal opportunity to hear cases.

2.13 All parties subject to the Police Appeal Tribunal will be informed who has been selected to Chair the Police Appeal Tribunal and can object in writing before the end of 3 working days beginning with the first working day after the officer is given notice of the person's name, setting out their grounds for objection. The Police and Crime Commissioner will then uphold or reject the objection based on the grounds provided.

2.14 In selecting lay persons (i.e. independent panel members) as referred to in paragraph 2.6 above, the four Police and Crime Commissioners in Wales have determined that those independent panel members appointed by them for the purpose of misconduct hearings will form the pool of laypersons from which individuals may be drawn to serve as appropriate upon a Tribunal, and where full regard will be had to the guidance referred to above.

2.15 The process for selecting a lay person will, as appropriate, follow the same process as for selection of independent panel members for misconduct hearings. The relevant Police and Crime Commissioner will prioritise independent panel members from the relevant force area when making this appointment. It is accepted that independent panel members may not wish to sit on a Tribunal hearing outside of their local area due to the geography of the region. The appointing Police and Crime Commissioner will confirm any appointment of an independent panel member as a layperson to the North Wales OPCC to ensure that the list is kept fully upto date.

2.16 No independent panel member will be appointed as a lay person if they have already heard the same case at a misconduct hearing.

2.17 It is for the relevant Police and Crime Commissioners to ensure that their formal selection and appointment decisions are made for the purposes of Schedule 6 to the Police Act 1996 and the Police Appeals Tribunals Rules 2020, in accordance with their own internal decision-making arrangements.

3. Publication

3.1 The Police and Crime Commissioners in Wales have all agreed to publish this document on their websites so that their approach to appointment of misconduct hearings and police appeals tribunals can be seen to be fair and transparent.