

POLICE SERVICE OF SCOTLAND (PERFORMANCE) REGULATIONS 2014

GUIDANCE



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1 Performance Regulations

1.1 Introduction

- 1.1.1 These performance procedures have been prepared by a Scottish Government led Working Group with representatives from Police Scotland, the Scottish Police Federation (SPF) and the Association of Scottish Police Superintendents (ASPS).
- 1.1.2 The formal procedures to deal with unsatisfactory performance including attendance are set out as below.
- 1.1.3 The purpose of this guidance is to help managers to decide how and when to use the formal procedures to manage unsatisfactory performance or attendance on the part of police officers. Guidance focussing specifically on attendance management can be found at section 3.
- 1.1.4 The underlying principle of the procedures is to provide a fair, open and proportionate method of dealing with performance and attendance issues and to encourage a culture of learning and development for individuals and the organisation.
- 1.1.5 The procedures in the Regulations are the same whether applied to unsatisfactory performance or attendance (the differences that do exist are set out clearly in this guidance). However the issues that arise in attendance cases may be different from those in performance cases. This guidance therefore contains separate sections dealing with performance and attendance before a section on the procedures.
- 1.1.6 Where reference is made to time periods (e.g. 3 working days) this will begin on the first working day following the day on which the particular action has taken place. The term of "working days does not include Saturdays, Sundays or Public Holidays.
- 1.1.7 The primary aim of the procedures is to improve poor performance and attendance in the police service. It is envisaged that early intervention via improvement action should achieve the desired effect of improving and maintaining a police officer's performance or attendance to an acceptable level.
- 1.1.8 There will, however, be cases where it will be appropriate for managers to take formal action under the procedures. At the conclusion of proceedings under the Regulations, one possible outcome is that a police officer's service may be terminated.

1.2 Delegated authority

- 1.2.1 The Chief Constable must designate a Deputy Chief Constable to exercise functions under these Regulations (and references in these Regulations to the

“Deputy Chief Constable” are, unless the context otherwise requires, references to that individual).

- 1.2.2 The Deputy Chief Constable may direct or authorise any of his or her functions under these Regulations to a police officer of at least the rank of Sergeant. References in this guidance to the Deputy Chief Constable recognise that the function may be so delegated.

1.3 Unsatisfactory performance

- 1.3.1 Unsatisfactory performance is defined in the as:

“an inability or failure of the constable to perform the duties of the constable’s role or rank (or both) to a satisfactory standard.”

- 1.3.2 This definition covers all performance issues including unsatisfactory attendance.

1.4 Scope

- 1.4.1 The procedures apply to police officers who have completed their period of probation, up to and including the rank of chief superintendent.
- 1.4.2 The procedures governing performance and attendance issues in respect of probationers are set out in the Police Service of Scotland Regulations 2013.
- 1.4.3 The procedures do not apply to special constables.

1.5 Principles

- 1.5.1 Performance and attendance management in the police service are intended to be positive and supportive processes, with the aim being to improve performance or attendance.
- 1.5.2 All unsatisfactory performance and attendance matters should be handled in a timely manner while maintaining confidence in the process. Performance procedures should be applied fairly in both a non-discriminatory and non-adversarial way and matters must be handled in the strictest confidence.
- 1.5.3 Where the performance procedures are used, line managers in the police service and others involved in the process must act in a way that an objective observer would consider reasonable. At all times, the requirements of the Regulations must be complied with.
- 1.5.4 The importance of challenging unsatisfactory performance or attendance of individual police officers in the context of overall performance and the police officer’s personal development should not be underestimated. Dealing sensitively and appropriately with unsatisfactory performance or attendance issues does not

constitute bullying. If a police officer believes that they are being unfairly treated, they may have available the avenues of appeal that exist at each stage of the performance procedures.

- 1.5.5 It is assumed that officers will cooperate with every stage of the process, although non-cooperation will not in itself prohibit the use of the Regulations.
- 1.5.6 In deciding matters of fact the person conducting each stage of the performance procedure must apply the standard of proof required in civil cases, that is, the balance of probabilities. Unsatisfactory performance or attendance will be proved on the balance of probabilities if the person conducting the meeting is/are satisfied by the evidence that it is more likely than not that the performance or attendance of the police officer is unsatisfactory. The more serious the allegation of poor performance that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be in order to meet that standard.
- 1.5.7 There is a general principle of openness and sharing in regard to documents to be used in evidence at meetings and hearings. Every effort should be made to share such documents in advance. However, despite the failure by any person to provide any document in advance of any meeting or hearing, the person conducting or chairing that meeting or hearing may allow that document to be considered at the meeting or hearing if it is considered appropriate to do so.

1.6 Police Representative

- 1.6.1 Police officers have the right to a police representative at all stages of the performance proceedings. A person approached to be a police representative is entitled to decline to act as such.
- 1.6.2 The Police officers concerned may choose another officer or representative from the Association of the Scottish Police Superintendents or Scottish Police Federation (as appropriate to their rank) as their representative. A person approached to be a police representative is entitled to decline to act as such.
- 1.6.3 A police representative may:
 - a) advise the officer throughout any proceedings under the Regulations;
 - b) accompany the officer to any meeting or hearing which the constable is required to attend under the Regulations;
 - c) make representations on the officer's behalf at any meeting or hearing under the Regulations (including asking questions of any witnesses where the officer would be entitled to do so); and
 - d) make representations to the deputy chief constable concerning any aspect of the proceedings under the Regulations.

- 1.6.4 A police representative cannot be appointed to act as such if he or she has had some involvement in that particular case e.g. he or she is a witness etc.
- 1.6.5 It is good practice to allow the police representative to participate as fully as possible, but at a meeting or hearing the police representative is not there to answer questions on the police officer's behalf. It is for the police officer concerned to speak for himself or herself when asked questions.
- 1.6.6 A police representative who has agreed to accompany a police officer is entitled to take a reasonable amount of duty time to fulfil their responsibilities as a police representative and should be considered to be on duty when attending meetings or hearings.

1.7 On-going performance assessment and review

- 1.7.1 Every police officer should have some form of performance appraisal, or what is commonly referred to as a "performance and development review' (PDR). The PDR should be the principal method by which the police officers performance and attendance is monitored and assessed. It is the responsibility of the line manager to set objectives for their staff and it is the responsibility of all police officers, with appropriate support from management, to ensure that they both understand and meet those objectives. Objectives set by the line manager should be specific, measurable, achievable, relevant and time-related (SMART).
- 1.7.2 The activities and behaviours expected of a police officer in order to achieve their objectives should be in accordance with the relevant national framework which will form the basis of the police officer's role profile.
- 1.7.3 Any shortfall in performance or attendance should be pointed out at the earliest opportunity by the line manager and consideration given as to whether this is due to inadequate instruction, training, supervision or some other reason.

1.8 Sources of information and Complaints

- 1.8.1 Unsatisfactory performance or attendance will often be identified by the first line manager of the police officer as part of their normal management responsibilities.
- 1.8.2 Where the police officer currently works to a manager who has no line management responsibility for him or her, it is the responsibility of that manager to inform the police officer's line manager of any performance or attendance issues identified.
- 1.8.3 Line managers may be police officers or police staff members.
- 1.8.4 It is also possible that line managers may be alerted to unsatisfactory performance on the part of one of their police officers as a result of information from a member of the public. The information from a member of the public may take the form of a

formal complaint. Such cases must be dealt with in accordance with the established procedures for the handling of complaints.

- 1.8.5 It may be that the outcome of an investigation into a complaint alleging misconduct is that an issue of unsatisfactory performance has been identified involving one or more police officers. The Police Service of Scotland (Conduct) Regulations 2014, contain provision to transfer from misconduct proceedings to the performance process at various stages to allow consideration of action under the performance procedures in order that the police officer may learn and improve.
- 1.8.6 There is no provision to transfer a case from performance procedures to the misconduct process once the formal performance procedures process has begun. However, where further incidents occur, the decision on the best course of action would be dependent on consideration of all the circumstances and it may then be appropriate to consider misconduct proceedings but only for the new incidents. Any sanction resulting from such further proceedings would need to carefully consider the progress the officer had made up to the point of the incident and in the period since.

Example

Through complaints from the public it is identified that an officer has a belligerent attitude. It is decided to address this by use of the Performance Regulations to allow the officer to improve and develop his skill in dealing with the public. The performance meeting goes ahead and an action plan agreed. All the complaints from the public up to that point are resolved by this action and no misconduct action can be taken in regard to them.

The officer complies with the improvement notice and his behaviour improves within the specified period. However, during the validity period there is a further complaint from a member of the public that the officer swore at them. In regard to this later incident of swearing it is decided to take misconduct action. The matter is to be considered at a Misconduct Meeting. In this case it would not be appropriate for the meeting to consider any evidence of the previous complaints in deciding whether or not the officer's conduct fell below the Standards of Professional Behaviour when coming to a determination on that occasion. However the meeting could consider the progress, or otherwise, the officer has made with their action plan when deciding on an outcome.

- 1.8.7 A single complaint from a member of the public about a police officer's performance will not normally trigger the performance procedures, which are designed to deal with a pattern of unsatisfactory performance. However, where the complaint adds to existing indications of unsatisfactory performance, it may be appropriate to initiate the performance procedures or, if the police officer is already subject to these, to continue to the next stage of the process.
- 1.8.8 Whilst the unsatisfactory performance procedures are internal management

procedures, it may be necessary at times to inform public complainers of action taken with respect to the police officer to whom the complaint relates. In explaining the outcome of a complaint the Service may inform the complainer that the police officer may be subject to the statutory procedures for improving their performance.

1.9 Improvement action

1.9.1 Managers are expected to deal with unsatisfactory performance or attendance issues in the light of their knowledge of the individual and the circumstances giving rise to these concerns.

1.9.2 There are, however, some generally well understood principles which should apply in such circumstances:

- a) the line manager must discuss any shortcoming(s) or concern(s) with the individual at the earliest possible opportunity. It would be quite wrong for the line manager to accumulate a list of concerns about the performance or attendance of an individual and delay telling him or her about them until the occasion of the police officer's annual or interim PDR meetings;
- b) the reason for dissatisfaction must be made clear to the individual as soon as possible and there must be a factual basis for discussing the issues i.e. the discussion must relate to specific incidents or omissions that have occurred;
- c) line managers should seek to establish whether there are any underlying reasons for the unsatisfactory performance or attendance. For example, in the context of performance, a failure to perform a task correctly may be because the individual was never told how to do it or was affected by personal circumstances. In that case it may be appropriate for the line manager to arrange further instruction or guidance;
- d) consideration should be given as to whether there is any health or welfare issue that is or may be affecting performance or attendance. If a police officer has or may have a disability within the scope of Equality Act 2010, this in particular needs to be taken fully into account and the requirements of that legislation complied with;
- e) the line manager must make it clear to the police officer that they are available to give further advice and guidance if needed;
- f) depending on the circumstances, it may be appropriate to indicate to the police officer that if there is no, or insufficient, improvement, then the matter will be dealt with under the performance procedures;
- g) line managers are expected to gather relevant evidence and keep a comprehensive note of interactions with the police officer;

- h) challenging unsatisfactory performance or attendance in an appropriate manner does not constitute bullying. The appeals process under the Regulations should be used by officers who have a sense of grievance about any action arising from use of the Regulations. The relevant Police Service of Scotland Standard Operating Procedure should be consulted when considering whether action constitutes bullying.
- 1.9.3 The principles outlined above cover the position when a line manager first becomes aware of some unsatisfactory aspect(s) of the police officer's performance or attendance and is dealing with the issue as an integral part of normal line management responsibilities.
- 1.9.4 Improvement action taken as a result of identifying unsatisfactory performance or attendance should be put on record which may be the police officer's PDR. In particular, the line manager should record the nature of the performance or attendance issue; the advice given and steps taken to address the problems identified. Placing matters on record is important to ensure continuity in circumstances where one or more members of the management chain may move on to other duties or the police officer concerned moves to new duties. It is also important to put on record when improvement has been made in their performance or attendance.
- 1.9.5 Ideally, as a result of improvement action, performance or attendance will improve and continue to an acceptable level.
- 1.9.6 Where there is no improvement, insufficient improvement, or the improvement is not sustained over a reasonable period of time (preferably agreed between the line manager and the police officer), it will then be appropriate to use the performance procedures.
- 1.9.7 The period of time agreed or determined by the line manager for the police officer concerned to improve their performance or attendance prior to using the performance procedures must be sufficient to provide a reasonable opportunity for the desired improvement or attendance to take place and must be time limited.
- 1.9.8 This period may be extended if; due to some unforeseen circumstance (e.g. certified sickness absence in the context of performance issues) the police officer is unable to demonstrate whether or not the required improvement has been achieved.

2 Performance Issues

2.1 Introduction

- 2.1.1 The performance of individual police officers is a key element in the delivery of a quality policing service. Police officers should know what standard of performance

is required of them and be given appropriate support to attain that standard.

2.1.2 Performance management is an integral part of a line manager's responsibilities. Managers should let a police officer know when they are doing well or, if the circumstances arise, when there are the first signs that there is a need for improvement in their performance. An essential part of effective line management is that managers should be aware of the contribution being made to meeting the aims and objectives of the team by each of the individuals they manage.

2.2 Framework for action

2.2.1 There is no single formula for determining the point at which a concern about a police officer's performance should lead to formal procedures under the Regulations being taken. Each case must be considered on its merits. However the following points need to be emphasised:

- the intention of performance management including formal action under the Regulations is to improve performance;
- occasional lapses below acceptable standards should be dealt with in the course of normal management activity and should not involve the application of the performance procedures, which are designed to cover either repeated failures to meet such standards or more serious cases of unsatisfactory performance;
- managers should be able to demonstrate that they have considered whether improvement action is appropriate before using the performance procedures.

3 Attendance Issues

3.1 Introduction

3.1.1 The Police Service of Scotland has an Attendance Management Standard Operating Procedures in place. Failure to adhere to these procedures may result in the use of performance procedures.

3.1.2 The Police Service of Scotland is committed to providing, as far as is reasonably practicable, healthy and safe working environment for all staff. It recognises that the health and welfare of police officers is a key element in the delivery of quality services, as well as in maintaining career satisfaction and staff morale.

3.1.3 The key objective of the attendance management policy and the appropriate use of the Regulations insofar as they relate to managing unsatisfactory attendance, is to encourage an attendance culture.

3.1.4 Managing sickness absence is vitally important both in terms of demonstrating a

supportive attitude towards police officers and for the efficiency of the organisation. Managing attendance is about creating a culture where all parties take ownership of the policy and act reasonably in the operation of the scheme with managers being proactive in managing sickness.

- 3.1.5 The primary aim of the procedures is to improve attendance in the police service. It is envisaged that supportive action will in most cases achieve the desired effect of improving and maintaining a police officer's attendance to an acceptable level.
- 3.1.6 There may however be cases where it will be appropriate for managers to take formal action under the Regulations. At the conclusion of procedures under the Regulations, termination of service is a possible outcome.
- 3.1.7 Where the performance procedures are used in relation to attendance matters, such matters will normally relate to periods of sickness absence such that the ability of the police officer to perform their duties is compromised.
- 3.1.8 Where absence is due to genuine cases of illness, either self-certified or medically certified, the issue is one of capability and thus falls under the performance procedures rather than the procedures relating to misconduct. In such cases management should take a sympathetic and considerate approach, particularly if the absence is disability related and where reasonable adjustments in the workplace also need to be made which might enable the police officer to return to work.
- 3.1.9 On the basis of Occupational Health advice, management should consider whether alternative work is available. If there is some doubt about the nature of the police officer's illness or injury, the police officer will be informed that they will be examined by the Police Service of Scotland Medical Adviser. If the police officer refuses, they will be told in writing that a decision on whether they are to be subject to performance procedures will be taken on the basis of the information available. The above will be applied in accordance with the Police Service of Scotland attendance procedures.
- 3.1.10 In accordance with the Police Service of Scotland attendance management procedures, the line manager and the police officer should keep in regular contact. If management wish to contact the police officer's doctor, normal Police Service of Scotland arrangements will be followed.
- 3.1.11 The police officer should be made aware at the start of the performance procedures that if they remain unwell and if necessary adjustments cannot be made dismissal from the Police Service of Scotland is a possible outcome at a Performance Hearing.

3.2 Attendance at each stage of the procedures and ill-health

- 3.2.1 Attendance at any stage meeting/hearing is not subject to the same considerations

as reporting for duty. An illness or disability may render a police officer unfit for duty without affecting their ability to attend a meeting/hearing. However, if the police officer is incapacitated, the meeting/hearing may be deferred until there is sufficient improvement to allow attendance.

3.2.2 A meeting/hearing will not be deferred indefinitely because the police officer is unable to attend, although every effort should be made to make it possible for the police officer to attend if they wish to be present. For example:

- the acute phase of a serious physical illness is usually fairly short-lived, and the meeting/hearing may be deferred until the police officer is well enough to attend;
- if the police officer suffers from a physical injury — a broken leg, for instance, it may be possible to hold the meeting/hearing at a location convenient to him or her.

3.2.3 Where such circumstances apply at a Performance Hearing, the Police Service of Scotland may wish to consider the use of video, telephone or other conferencing technology.

3.2.4 Where, despite such efforts having been made and the meeting/hearing having been deferred, the police officer either persists in failing to attend the meeting/hearing or maintains their inability to attend, the person conducting the meeting/hearing will need to decide whether to continue to defer the meeting/hearing or whether to proceed with it, if necessary in the absence of the police officer. The person conducting the meeting/hearing must judge the most appropriate course of action.

3.2.5 Nothing in this section should be taken to suggest that, where a police officer's medical condition is found to be such that they would normally be retired on medical grounds the performance procedures should prevent or delay retirement.

3.2.6 Other forms of absence not related to genuine sickness would normally be dealt with under the misconduct procedures e.g. where a police officer's absence is unauthorised.

3.3 Framework for action

3.3.1 Attendance management in the police service is intended to be a positive and supportive process to improve attendance. In all cases, the starting point is supportive action. Except where a police officer fails to co-operate, appropriate supportive action must be taken before formal action is taken under the Regulations. A failure by a police officer to co-operate will not prevent formal action being taken or continued.

3.3.2 If supportive action is taken, the police officer co-operates and the attendance

improves and is maintained at a satisfactory level, then there will be no need to take formal action under the Regulations.

3.3.3 There is no single formula for determining the point at which concern about a police officer's attendance should lead to formal procedures under the Regulations being invoked. Each case must be considered on its merits. However the following points need to be emphasised:

- The intention of attendance management including formal action under the Regulations is to improve attendance.
- Where police officers are injured or ill they should be treated fairly and compassionately.
- Managers should be able to demonstrate that they have acted reasonably in all actions taken at all stages of the attendance management process, including any action under the Regulations.
- In cases where a decision is made at a performance hearing to impose an outcome, including dismissal from the service or reduction in rank, then the police officer will have the right to appeal to a police appeals tribunal.

3.3.4 By the very nature of the work they do, officers may on occasions be injured on duty, despite the best efforts of all concerned to minimise this. In these circumstances staff need to have the confidence that the service will support them throughout their recovery period. The presumption will always be against using the performance procedures for injuries/illnesses sustained on duty, instead the balance should be towards supportive action. However, each case must be considered on its own merits and injuries/illnesses sustained on duty will not ultimately preclude the use of the performance procedures where other avenues to improve attendance have been exhausted.

3.3.5 For the purposes of this guidance, an injury/illness shall be treated as being received by a person in the execution of their duty as a constable if this was received whilst exercising police powers or whilst carrying out Police Scotland directed and authorised training.

Examples

An officer is injured on duty in a road accident. After a period of recovery the officer is signed off as fit and returns to full duties. Following a period back at work the officer's line managers notice a pattern of the officer regularly reporting sick for night duty, citing a recurrence of the road accident injury as the reason. The line managers meet with the Officer and seek to understand what help and support they can give him and any background reasons for the absences. The officer refuses to co-operate and the pattern of sickness continues. Further

interventions by Line Managers and the HR Department make no difference. In these circumstances it would be appropriate to consider the formal performance procedures process.

An officer is seriously assaulted on duty and is on certificated absence for a considerable period due to the nature of his injuries. The officer meets with line managers who establish what further help and support they can give. The officer fully cooperates. In these circumstances it would be inappropriate to consider the performance procedures even where the absence continues for an extended period.

3.4 Monitoring attendance

- 3.4.1 The arrangements by the Police Service of Scotland for the effective monitoring of sickness absences (and the reasons for them) are set out in the relevant Standard Operating Procedure.
- 3.4.2 It is the responsibility of line managers, in conjunction with the Human Resources (HR) department if necessary, to monitor a police officer's attendance. A formal record of a police officer's period of illness will be kept.
- 3.4.3 HR managers should be consulted when line managers are deciding whether it might be appropriate to use the performance procedures in relation to unsatisfactory attendance.

3.5 Occupational health

- 3.5.1 The Occupational Health Service is an essential part of effective attendance management and should be involved as soon as any concerns about a police officer's attendance are identified that relate to their health.
- 3.5.2 Where action is taken under the performance procedures in respect of a police officer's attendance, the police officer may be referred to the Occupational Health Service for up to date information and advice at any stage within the procedure in accordance with policy. This should enable the Police Service of Scotland to make an informed decision about the officer's attendance. Where police officers do not attend appointments or otherwise fail to co-operate with the Occupational Health Service, an assessment will be made on the information available.
- 3.5.3 The role of the Occupational Health Service is to advise on medical issues affecting a police officer's performance and attendance. Where the Police Service of Scotland has concerns about a police officer's health and the effect it has on their work and attendance, Occupational Health medical advice can be sought on a range of issues, including but not limited to:
 - a) assessment of the impact of the police officer's medical condition;

- b) when the medical problem is likely to be resolved;
- c) whether the police officer will be fit to carry out his/her duties on their return to work;
- d) the duties that the police officer may be fit to undertake;
- e) whether the police officer is a disabled person within the meaning of the Equality Act 2010;
- f) whether there are any adjustments or adaptations to the work, equipment or workplace that might assist in improving attendance;
- g) the likelihood of the illness recurring or of some other illness emerging;
- h) any concerns raised by the police officer about their health and/or working environment;
- i) whether the police officer may be permanently disabled.

3.6 The Equality Act 2010 and other statutory obligations

3.6.1 In any unsatisfactory attendance case it is essential that managers and the Police Service of Scotland ensure compliance with their obligations under the Equality Act 2010.

3.6.2 Compliance with other statutory obligations including the Data Protection Act 1998 must also be ensured.

3.7 Action under the Regulations

3.7.1 It is not possible to be prescriptive about all circumstances where action under the Regulations may be appropriate. Scenarios include cases of unacceptable levels of persistent short-term absences or long-term absences due to sickness and/or injury, but may also include other circumstances. In deciding whether to take action under the procedures managers must treat each case on its merits and consider all of the pertinent facts available to them, including:

- a) whether the illness or injury was sustained in the line of duty;
- b) whether absences have been medically certified;
- c) the nature of the illness, injury or condition;
- d) the likelihood of the illness, injury or condition (or some other related illness, injury or condition) recurring;

- e) the pattern and length of absence(s) and the period of good health between them;
- f) the need for the work to be done i.e. what impact on performance and workload is the absence having;
- g) the extent to which a police officer has co-operated with supportive improvement action;
- h) whether the police officer was made aware, in the earlier supportive action, that unless an improvement was made, action under the Regulations might be used;
- i) whether the selected medical practitioner (SMP) has been asked by the Scottish Police Authority (SPA) to consider the issue of permanent disablement and/or the SPA is considering medical retirement;
- j) the impact of Equality Act 2010.

3.7.2 Action under the Regulations should not normally be invoked unless:

- a) earlier supportive action was offered but the police officer either declined it or failed to co-operate and as a result there has not been the necessary improvement in the police officer's performance or attendance; and/or
- b) the police officer is absent due to long-term sickness and, notwithstanding supportive improvement action having been taken, there is no realistic prospect of return to work in a reasonable timeframe.
- c) the police officer is showing unacceptable levels of persistent short term absences and notwithstanding supportive management action having been taken, there is insufficient improvement in their attendance.

3.7.3 Whether it is appropriate to take formal action in any particular case will depend on the known merits and facts of that case.

4 The Performance Procedures

4.1 Stages

4.1.1 There are potentially three stages to the performance procedures, each of which involves a different meeting composition and possible outcomes. The stages are:

1. Performance Meeting;

2. Progress Meeting; and
3. Performance Hearing

4.1.2 A line manager can ask an HR professional or police officer (who should have experience of performance procedures and be independent of the line management chain) to attend a performance meeting to advise them on the proceedings at the meeting. A line manager may also obtain such advice prior to the performance meeting if they are in any doubt about the process. The second line manager may also have an advisor (as above) in respect of the progress meeting. For the performance hearing, an HR professional or other officer of at least the same rank as the subject officer may be appointed to advise the officer chairing the proceedings.

4.2 Improvement notices and action plans

4.2.1 At a performance meeting or progress meeting, if it is found that the police officer's performance or attendance is unsatisfactory, an improvement notice or final improvement notice may be issued. These notices require a police officer to improve on their performance or attendance and must state:

- in what respect the police officer's performance or attendance is considered unsatisfactory;
- the improvement in performance or attendance required;
- the "improvement period" in which the improvement is required to take place (see below); and
- the "validity period", of the written improvement notice (see below).

4.2.2 The improvement notice and final improvement notice should also inform the police officer of the circumstances in which progress to the next stage may be necessary.

4.2.3 The improvement period/ final improvement period of an improvement notice/final improvement notice is a period specified by the manager conducting the meeting (having considered any representations made by or on behalf of the police officer) within which the police officer must improve their performance or attendance. It is expected that the specified period for improvement would not normally exceed 12 weeks. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but which should not exceed 12 months).

4.2.4 The "validity period" of an improvement notice/ final improvement notice describes the period of 12 months from the date of the notice within which performance or attendance must be maintained (assuming improvement is made during the specified period). If at any point the improvement is not maintained within this period then the next stage of the procedures may be used.

4.2.5 Improvement notices/ final improvement notices must be accompanied by the

written record of the meeting and a notice informing the police officer of their right to appeal against the finding or terms of the notice. Following a progress meeting, that documentation must also inform the police officer of their right to appeal against the decision to require him or her to attend the progress meeting. Any such appeal can only be made on the grounds that the meeting did not concern unsatisfactory performance or attendance which was similar to or connected with that referred to in the written improvement notice.

- 4.2.6 Written improvement notices must be signed and dated by the person responsible for issuing the notice e.g. in the case of an improvement notice issued following a progress meeting, by the second line manager.
- 4.2.7 An improvement notice would normally be followed by an action plan. An action plan describes what action(s) the police officer should take which should help them achieve and maintain the improvement required and would normally be formulated and agreed by both the police officer (and their police representative if desired) and their line manager. In particular, the action plan should:
- identify any weaknesses which may be the cause of unsatisfactory performance or attendance;
 - describe what steps the police officer must take to improve performance and/or attendance and what support is available from the organisation e.g. training and support;
 - specify a period within which actions identified should be followed up; and
 - set a date (s) for a staged review (s) of the police officer's performance or attendance.

4.3 Improvement notice extensions and suspensions

- 4.3.1 On the application of the police officer or otherwise (e.g. on the application of their line manager) an officer above the rank of Chief Inspector and of higher rank than the subject officer may extend the improvement period/ final improvement period if they consider it appropriate to do so. This provision is intended to deal with situations that were not foreseen at the time of the issue of the improvement notice/final improvement notice. For example, where the police officer has not had sufficient time to improve due to an emergency deployment to other duties. An extended final improvement period may only be extended further by the Deputy Chief Constable.

- 4.3.2 In setting the extensions outlined above, consideration should be given to any known periods of extended absence from the police officer's normal role e.g. if the police officer is going to be on long periods of pre-planned holiday leave, study leave, or is due to undergo an operation. The extension must not lead to the improvement period exceeding 12 months.
- 4.3.3 If an improvement period is extended, the validity period specified in the relevant notice is also extended, provided that the validity period must end not later than 6 months after the end of the improvement period.
- 4.3.4 The period for improvement under an improvement notice/final improvement notice and the validity period do not include any time that the police officer is taking a career break. For example, if a police officer is issued with an improvement notice with a specified period of 3 months and then takes career leave two months into the notice, whenever the police officer returns, they will have one month left of the 3 month specified period and ten months of the validity period of the notice.
- 4.3.5 An improvement period or validity period must be suspended where the officer is absent from duty for a continuous period of 4 weeks or more. It will resume when the officer returns to a duty which allows them sufficient opportunity to fulfil the improvement plan. This does not apply where the officer's absence is the subject of the proceedings under the Regulations.

4.4 Multiple instances of unsatisfactory performance

- 4.4.1 In normal circumstances, a police officer can move to a later stage of the performance procedures only in relation to unsatisfactory performance or attendance that is similar to or connected with the unsatisfactory performance or attendance referred to in any previous written improvement notice. Where failings relate to different forms of unsatisfactory performance or attendance it will be necessary to commence the performance procedures at the first stage. If more than one performance procedure is commenced, then, given that the procedures will relate to different failings and will have been identified at different times, the finding and outcome of each should be without prejudice to the other(s).
- 4.4.2 However, there may be circumstances where procedures have been initiated for a particular failing and an additional failing comes to light prior to the performance meeting. In such circumstances it is possible to consolidate the two issues at the performance meeting provided that there is sufficient time prior to the meeting to comply with the notification requirements explained in more detail below. If this is not possible, the meeting should either be rearranged to a date which allows the requirements to be met or a separate performance meeting should be held in relation to the additional matter.

5 The First Stage – Performance Meeting

5.1 Preparation and purpose

5.1.1 Having considered the use of improvement action where a first line manager considers that a police officer's performance or attendance is unsatisfactory and decides that the performance procedures are the most appropriate way of addressing the matter(s), they will notify the police officer in writing that they are required to attend a performance meeting and include in that notification the following details:

- details of the procedures for determining the date and time of the meeting
- a summary of the reasons why the line manager considers the police officer's performance or attendance unsatisfactory;
- the possible outcomes of a performance meeting, progress meeting and performance hearing;
- any proposed attendance at the meeting of a human resources professional or a police advisor to advise the line manager on the proceedings;
- that if the police officer agrees, any other person specified in the notice may attend the meeting;
- that prior to the meeting the police officer must provide the line manager with any documentation they intend to rely on in the meeting; and,
- the police officer's rights i.e. their right to seek advice from a police representative and to be accompanied and represented at the meeting by a police representative.

5.1.2 The notice shall be accompanied by copies of related documentation relied upon by the first line manager in support of the view that the police officer's performance or attendance is unsatisfactory.

5.1.3 In advance of the meeting, the police officer shall provide the first line manager with any documents on which they intend to rely in support of their case. The general principle of sharing information in advance applies to all parties.

5.1.4 Any document or other material that was not submitted in advance of the meeting may be considered at the meeting at the discretion of the line manager. The purpose of allowing this discretion is to ensure fairness to all parties. However the presumption should be that such documents or material will not be permitted unless it can be shown that they were not previously available to be submitted in advance. Where such a document or other material is permitted to be considered, a short adjournment may be necessary to enable the line manager or the police officer, as the case may be, to read or consider the document or other material and consider its implications. The length of the adjournment will depend upon the case. A longer adjournment may be necessary if the material in question is complex.

5.1.5 The purpose of the meeting is to hear the evidence of the unsatisfactory

performance or attendance and to give the police officer the opportunity to put forward their views. It will also be an opportunity to hear of any factors that are affecting the police officer's performance or attendance and what the police officer considers can be done to address them.

- 5.1.6 The first line manager should explain that there are potentially three stages to the procedures and that the maximum outcome of a performance meeting is an improvement notice and the maximum outcome of a progress meeting is a final improvement notice. The manager will also explain that if the procedure is followed to the performance hearing stage, dismissal, a reduction in rank (but not for attendance cases), or an extended improvement notice (in exceptional circumstances) are possible outcomes.
- 5.1.7 Wherever possible, the meeting date and time should be agreed between the first line manager and the police officer. If the police officer or their police representative is not available at the date or time specified by the line manager, the police officer may propose an alternative time. Where agreement cannot be reached the manager must specify a time and date. Provided that the alternative time is reasonable and falls within a period of 10 working days from the date specified by the manager, the meeting must be postponed to that time.
- 5.1.8 Once the date for the meeting is fixed, the first line manager should send to the police officer a notice in writing of the date, time and place of the meeting.

5.2 At the performance meeting

- 5.2.1 At the performance meeting the first line manager will:
- a) explain to the police officer the reasons why the line manager considers that the performance or attendance of the police officer is unsatisfactory;
 - b) provide the police officer with the opportunity to make representations in response;
 - c) provide their police representative (if they have one) with an opportunity to make representations;
 - d) listen to what the police officer (and their police representative) has to say, ask questions and comment as appropriate.
- 5.2.2 The first line manager may postpone or adjourn the meeting at any time if they consider it is necessary or expedient to do so. An adjournment may be appropriate where information which needs to be checked by the line manager emerges during the course of the meeting or the manager decides that they wish to adjourn the meeting to make a decision.
- 5.2.3 Where the first line manager finds that the performance or attendance of the police

officer has been satisfactory during the period in question, they will inform the police officer that no further action will be taken.

5.2.4 Where having considered any representations by either the police officer and or their police representative, the first line manager finds that the performance or attendance of the police officer has been unsatisfactory they shall inform the officer:

- a) in what respect(s) their performance or attendance is considered unsatisfactory;
- b) of the improvement that is required in their performance or attendance;
- c) of the period within which improvement is required;
- d) that if a sufficient improvement is not made within the period specified by the line manager, they may be required to attend a progress meeting.
- e) that they will receive a written improvement notice;
- f) of the validity period of that notice
- g) that if the sufficient improvement in their performance or attendance is not maintained during the validity period of such notice they may be required to attend a progress meeting.

5.2.5 It is expected that the specified period for improvement would not normally exceed 12 weeks. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but must not exceed 12 months). In determining the specified period of an improvement notice, consideration should also be given to any periods of known extended absence from the police officer's normal role.

5.3 Procedure following the Performance Meeting

5.3.1 As soon as reasonably practicable, following the meeting, the first line manager shall prepare and send to the police officer a written record of the meeting and, where they found at the meeting that the performance or attendance of the police officer was unsatisfactory, a written improvement notice.

- 5.3.2 Any written improvement notice must set out the information conveyed to the police officer, state the period for which it is valid and be signed and dated by the line manager. Any improvement notice must be accompanied by a notice informing the police officer of their right to appeal, the grounds for appeal and the name of the person to whom the appeal should be sent. The notice must also inform the police officer of their right to submit written comments on the written record of the meeting and of the procedure for doing so.
- 5.3.3 The police officer may submit written comments on the written record not later than the end of 7 working days after the date that they received it. Any written comments provided by the police officer should be retained with the note.
- 5.3.4 It is the responsibility of the line manager to ensure that the written record, written improvement notice and any written comments of the police officer regarding the written record are retained together and filed in accordance with Police Service of Scotland policies.
- 5.3.5 Normally it will be appropriate to agree an action plan, setting out the actions which should assist the police officer to perform their duties to an acceptable standard. This may be agreed at the performance meeting or at a later time specified by the line manager. It is expected that the police officer will co-operate with implementation of the action plan and take responsibility for their own development or improvement. Equally, the police officer's managers must ensure that any actions to support the police officer to improve are implemented.

5.4 Assessment of Performance or Attendance

- 5.4.1 It is expected that the police officer's performance or attendance will be actively monitored against the improvement notice and, where applicable, the action plan by the first line manager throughout the specified period of the improvement notice. The manager should discuss with the police officer any concerns that they have during this period as regards their performance or attendance and offer advice and guidance where appropriate.
- 5.4.2 As soon as reasonably practicable after the specified period of the improvement notice comes to an end, the first line manager must formally assess the performance or attendance of the police officer during that period. If the manager considers that the police officer's performance or attendance is satisfactory, the line manager should notify the police officer in writing of this. The notification should also inform the officer that whilst their performance or attendance is now satisfactory, the improvement notice is valid for a period of 12 months (from the date of the notice) and the improvement must be maintained until the end of that period.

- 5.4.3 If the first line manager considers that the police officer's performance or attendance is still unsatisfactory, the line manager must refer the officer in writing to a progress meeting.
- 5.4.4 If the police officer has improved their performance or attendance to an acceptable standard within the specified improvement period, but then fails to maintain that standard during any part of the 12 month validity period, the manager must refer the officer to a progress meeting. If the improvement is not maintained during the validity period there is no need to wait until the end of the period before moving on to the next stage.

5.5 Performance Meeting Appeals

- 5.5.1 A police officer has a right of appeal against the finding and the terms of the improvement notice imposed at the performance meeting. However, any finding and outcome of the meeting will continue to apply up to the date that the appeal is determined. Therefore where the police officer contests the finding or outcome, they should continue to follow the terms of the improvement notice and any accompanying action plan pending the determination of the appeal.
- 5.5.2 Any appeal should be made in writing to the second line manager within 7 working days following the day of the receipt of the improvement notice and written record of the meeting (unless the period is extended by the second line manager following an application by the police officer). The notice of appeal must clearly set out the grounds and evidence for the appeal.

5.6 Appeal grounds

- 5.6.1 The grounds for appeal are:
- that the finding of unsatisfactory performance or attendance is unreasonable;
 - that any of the terms of the improvement notice are unreasonable;
 - that there is evidence that could not reasonably have been considered at the performance meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the terms of the written improvement notice;
 - that there was a breach of the procedures set out in the Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or the terms of the improvement notice.
- 5.6.2 On the basis of the above grounds of appeal, the police officer may appeal against the finding of unsatisfactory performance or attendance or the terms of the written

improvement notice, those being:

- the respect in which the police officer's performance or attendance is considered unsatisfactory;
- the improvement which is required of the police officer; and/ or the length of the period specified for improvement by the line manager at the performance meeting.

5.6.3 As soon as practicable after receipt of an appeal notice the second line manager must decide whether to hold an appeal meeting or not. An appeal can only be determined without a hearing where the police officer agrees to this course of action.

5.6.4 If the second line manager decides to require the officer to attend a performance appeal meeting the second line manager must send to the officer a written notice giving details of:

- the procedures for determining the date and time of that meeting;
- any proposed attendance at the meeting of a human resources professional or a police adviser to advise the second line manager on the proceedings;
- any proposed attendance at the meeting of the first line manager;
- any proposed attendance at the meeting of any other named person and the officer's right to refuse to consent to their attendance;
- the officer's right to seek advice from a police representative; and
- the officer's right to be represented at the meeting by a police representative.

5.6.5 Where a performance appeal meeting is to be held, the date and time should be agreed between the second line manager and the police officer. However, where agreement cannot be reached the second line manager must specify a time and date. If the police officer or their police representative is not available at the date or time specified by the second line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 10 working days beginning with the first working day after that specified by the second line manager, the meeting must be postponed to that time.

5.6.6 Once a date for the meeting is fixed, the second line manager must send to the police officer a notice in writing of the date, time and place of the appeal meeting together with the foregoing information required to be provided under the

Regulations.

5.7 At the performance appeal meeting

5.7.1 The following persons may attend the meeting:

- a human resources professional or a police adviser to advise the second line manager on the proceedings;
- the first line manager; and
- any other person whose proposed attendance was notified to the officer provided the officer has not refused to consent to their attendance.

5.7.2 At the appeal meeting the second line manager must:

- provide the officer with an opportunity to make representations; and
- provide the officer's police representative (if the officer has one) with an opportunity to make representations.

5.7.3 The second line manager may postpone or adjourn the performance appeal meeting to a later time or date if it appears necessary or expedient to do so. The procedure for setting the date of the performance appeal meeting applies to a postponed or adjourned meeting.

5.8 Determination of Appeal

5.8.1 Where a performance appeal meeting takes place, the second line manager must consider;

- the appeal notice submitted;
- any evidence accompanying that notice;
- the written record of the performance meeting;
- the officer's written comments on that record (if any); and
- any representations made at the meeting (if any).

5.8.2 Where no performance appeal meeting takes place, the second line manager must consider;

- the appeal notice submitted;

- any evidence accompanying that notice;
- the written record of the performance meeting; and
- the officer's written comments on that record (if any).

5.8.3 Having considered the foregoing the second line manager may

- confirm or reverse the finding of unsatisfactory performance or attendance; and
- endorse or vary the terms of the improvement notice appealed against.

5.8.4 The second line manager may deal with the police officer in any manner in which the line manager could have dealt with them at the performance meeting. Where the second line manager has reversed the finding of unsatisfactory performance or attendance they must also revoke the written improvement notice.

5.8.5 If the second line manager reverses the finding of unsatisfactory performance; or varies any of the relevant terms of the first improvement notice against which the appeal is made, the decision of the second line manager substitutes the previous finding, from the date of that decision.

5.8.6 As soon as reasonably practicable after determining an appeal the second line manager must send to the officer a written note of their decision. In a case where a performance appeal meeting has taken place, the second line manager must also send to the officer a written record of that meeting.

6 The Second Stage – Progress Meeting

6.1 Preparation and purpose

6.1.1 Initiation of the second stage must be for matters similar to or connected with the unsatisfactory performance or attendance referred to in the improvement notice issued at the first stage.

6.1.2 Where, a first line manager refers an officer to a progress meeting the second line manager must send a notice to the officer notifying them in writing that they are required to attend a progress meeting. The notification will state:

- the details of the procedures for determining the date and time of the meeting ;
- a summary of the reasons why the line manager considers the police officer's performance or attendance unsatisfactory;

- the possible outcomes of a progress meeting and performance hearing;
- that the first line manager may attend the meeting;
- that a human resources professional or a police adviser may attend the meeting to advise the second line manager on the proceedings;
- that if the police officer agrees, any other person specified in the notice may attend the meeting;
- that prior to the meeting the police officer must provide the second line manager with any documentation they intends to rely on in the meeting; and
- the police officer's rights i.e. their right to seek advice from a police representative and to be accompanied and represented at the meeting by a police representative.

6.1.3 The notice must also include copies of related documentation relied upon by the second line manager in support of the view that the police officer's performance or attendance continues to be unsatisfactory.

6.1.4 In advance of the meeting, the police officer shall provide the second line manager with any documents on which they intends to rely on in support of their case.

6.1.5 Any document or other material that was not submitted in advance of the meeting may be considered at the meeting at the discretion of the second line manager. The purpose of allowing this discretion is to ensure fairness to all parties. However the presumption should be that such documents or other material will not be permitted unless it can be shown that they were not previously available to be submitted in advance. Where such a document or other material is permitted to be considered, a short adjournment may be necessary to enable the second line manager or the police officer, as the case may be, to read or consider the document or other material and consider its implications. The length of the adjournment will depend upon the case. A longer adjournment may be necessary if the material in question is complex.

6.1.6 The purpose of the meeting is to hear the evidence of the unsatisfactory performance or attendance and to give the police officer the opportunity to put forward their views. It will also be an opportunity to hear of any factors that are continuing to affect the police officer's performance or attendance and what the police officer considers can be done to address them.

6.1.7 The second line manager should explain that there is potentially a further stage to the procedures and that the maximum outcome of the progress is meeting is a final improvement notice. The second line manager will also explain that if the

procedure is followed to the final stage, dismissal, a reduction in rank (in performance cases only), or an extended improvement notice (in exceptional circumstances) are possible outcomes.

- 6.1.8 Wherever possible, the meeting date and time should be agreed between the second line manager and the police officer. However, where agreement cannot be reached the second line manager must specify a time and date. If the police officer or their police representative is not available at the date or time specified by the second line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 10 working days beginning with the first working day after that specified by the second line manager, the meeting must be postponed to that time.
- 6.1.9 Once a date for the meeting is fixed, the second line manager should send to the police officer a notice in writing of the date, time and place of the progress meeting.

6.2 At the Progress Meeting

6.2.1 At the Progress Meeting the second line manager must:

- a) explain to the police officer the reasons why their performance or attendance is considered to be unsatisfactory;
- b) provide the police officer with the opportunity to make representations in response;
- c) provide the officer's police representative (if they have one) with an opportunity to make representations;
- d) listen to what the police officer (and/or their police representative) has to say, ask questions and comment as appropriate;

6.2.2 The second line manager may adjourn the meeting at any time if they consider it is necessary or expedient to do so. An adjournment may be appropriate where information, which needs to be checked by the line manager, emerges during the course of the meeting or the manager decides that they wish to adjourn the meeting whilst they make a decision.

6.2.3 Where an officer is required to attend a progress meeting and it is found that the officer's performance or attendance has improved or been maintained (contrary to the first line manager's assessment) the second line manager will inform the officer that no further action will be taken at that meeting. The first improvement notice remains in place for the entire validity period and the officer can still be required to attend another progress meeting if they do not maintain their improvement throughout the 12 months that the improvement notice is valid.

6.2.4 Where, having considered any representations by either the police officer and/ or their police representative, the second line manager finds that the performance or attendance of the police officer has been unsatisfactory (either during the period specified in the written improvement notice or during the validity period of the written improvement notice) they shall inform the police officer:

- a) in what respect(s) their performance or attendance is considered unsatisfactory;
- b) of the improvement that is required in their performance or attendance;
- c) of the period within which improvement is required (the final improvement period);
- d) that if a sufficient improvement is not made within the period specified by the second line manager, they may be required to attend a performance hearing.
- e) that they will receive a written final improvement notice;
- f) of the validity period of that notice;
- g) that if the sufficient improvement in their performance or attendance is not maintained during the validity period of such notice they may be required to attend a performance hearing.

6.2.5 It is expected that the specified period for improvement would not normally exceed 12 weeks. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but which should not exceed 12 months). In determining the specified period of an improvement notice, consideration should also be given to any periods of known extended absence from the police officer's normal role.

6.3 Procedure following the progress meeting

6.3.1 As soon as reasonably practicable following the meeting, the second line manager will prepare a written record of the meeting and, where they found at the meeting that the performance or attendance of the police officer was unsatisfactory, a final improvement notice. The written record and any final improvement notice shall be sent to the officer as soon as reasonably practicable.

6.3.2 The final improvement notice must set out the information previously conveyed to the police officer, state the period for which it is valid, and be signed and dated by the second line manager. Any improvement notice must be accompanied by a notice informing the police officer of their right to appeal and the name of the person to whom the appeal should be sent. The notice must also inform the police

officer of their right to submit written comments on the written record of the meeting and of the procedure for doing so.

- 6.3.3 The police officer may submit written comments on the written record not later than the end of 7 working days after the date that they received it (unless an extension has been granted by the second line manager following an application by the police officer). Any written comments provided by the police officer should be retained with the note.
- 6.3.4 It is the responsibility of the second line manager to ensure that the written record, written improvement notice and any written comments of the police officer on the written record are retained together and filed in accordance with Police Service of Scotland policy.
- 6.3.5 Normally it will also be appropriate to agree an action plan setting out the actions which may assist the police officer to perform their duties to an acceptable standard e.g. attending training courses or a recommendation that the police officer seek welfare or medical advice. It is expected that the police officer will co-operate with implementation of the action plan and take responsibility for their own development or improvement. Equally, the police officer's managers must ensure that any actions to support the police officer to improve are implemented.

6.4 Assessment of performance or attendance

- 6.4.1 It is expected that the police officer's performance or attendance will be actively monitored against the improvement notice and, where applicable, the action plan by the first line manager throughout the specified period of the final improvement notice. The line manager should discuss with the police officer any concerns that the line manager has during this period as regards their performance or attendance and offer advice and guidance where appropriate.
- 6.4.2 As soon as reasonably practicable after the specified improvement period of the final improvement notice comes to an end, the first line manager must formally assess the performance or attendance of the police officer during that period.
- 6.4.3 If the first line manager considers that the police officer's performance or attendance is satisfactory, the line manager should notify the police officer in writing of this. The line manager must also notify the police officer that whilst the performance or attendance of the police officer is now satisfactory, the final improvement notice is valid for a period of 12 months from the date printed on the notice so that it is possible for the Performance Hearing procedures to be initiated if the performance or attendance of the police officer falls below an acceptable level within the remaining period.

- 6.4.4 If the first line manager considers that the police officer's performance or attendance is unsatisfactory at the end of the final improvement period, the first line manager must refer the officer to a Performance Hearing.
- 6.4.5 If the police officer has improved their performance or attendance to an acceptable standard within the final improvement period, but then fails to maintain that standard during any part of the validity period, the first line manager must refer the officer to a Performance Hearing to consider the performance or attendance issues. If the improvement is not maintained during the validity period there is no need to wait until the end of the period before moving on to the next stage.
- 6.4.6 Where the first line manager is of the opinion that the police officer has maintained the improvement to the end of the validity period, they must inform the officer of this in writing.

6.5 Progress Meeting Appeals

- 6.5.1 A police officer has a right of appeal against the finding and the terms of the improvement notice imposed at progress meeting and against the decision to require them to attend the meeting. However, any finding and outcome of this progress meeting will continue to apply up to the date that the appeal is determined. Therefore where the police officer contests the finding or outcome, they should continue to follow the terms of the final improvement notice and any accompanying action plan pending the determination of the appeal.
- 6.5.2 Any appeal should be made in writing to the senior manager within 7 working days following the day of the receipt of the improvement notice (unless the period is extended by the senior manager following an application by the police officer). The notice of appeal must clearly set out the grounds and evidence for the appeal.

6.6 Appeal grounds

- 6.6.1 The grounds for appeal are:
- That the progress meeting did not consider only unsatisfactory performance or attendance which was similar to or connected with the unsatisfactory performance or attendance referred to in the first improvement notice;
 - that the finding of unsatisfactory performance or attendance is unreasonable;
 - that any of the terms of the final improvement notice are unreasonable;
 - that there is evidence that could not reasonably have been considered at the progress meeting which could have materially affected the finding of

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

- that there was a breach of the procedures set out in the Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or the terms of the improvement notice.

6.6.2 On the basis of the above grounds of appeal, the police officer may appeal against the finding of unsatisfactory performance or attendance or the terms of the final improvement notice, those being:

- the respect in which the police officer's performance or attendance is considered unsatisfactory;
- the improvement which is required of the police officer; and/ or the length of the final improvement period.

6.6.3 As soon as practicable after receipt of an appeal notice the senior manager must decide whether to hold an appeal meeting or not. An appeal can only be determined without a hearing where the police officer agrees to this course of action.

6.6.4 If the senior manager decides to require the officer to attend a progress appeal meeting the senior manager must send to the officer a written notice giving details of:

- the procedures for determining the date and time of that meeting;
- any proposed attendance at the meeting of a human resources professional or a police adviser to advise the senior manager on the proceedings;
- any proposed attendance at the meeting of the second line manager;
- any proposed attendance at the meeting of any other named person and the officer's right to refuse to consent to their attendance;
- the officer's right to seek advice from a police representative; and
- the officer's right to be represented at the meeting by a police representative.

6.6.5 Where a progress appeal meeting is to be held, the date and time should be agreed between the senior manager and the police officer. However, where agreement cannot be reached the senior manager must specify a time and date. If

the police officer or their police representative is not available at the date or time specified by the senior manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 10 working days beginning with the first working day after that specified by the senior manager, the meeting must be postponed to that time.

6.6.6 Once a date for the meeting is fixed, the senior manager must send to the police officer a notice in writing of the date, time and place of the appeal meeting together with the information required to be provided under the Regulations.

6.7 At the progress appeal meeting

6.7.1 The following persons may attend the meeting:

- a human resources professional or a police adviser to advise the second line manager on the proceedings;
- the second line manager; and
- any other person whose proposed attendance was notified to the officer, provided the officer has not refused to consent to their attendance.

6.7.2 At the appeal meeting the senior manager must:

- provide the officer with an opportunity to make representations; and
- provide the officer's police representative (if the officer has one) with an opportunity to make representations in accordance.

6.7.3 The senior manager may postpone or adjourn the performance appeal meeting to a later time or date if it appears necessary or expedient to do so. The procedure for setting the date of the progress appeal meeting applies to a postponed or adjourned meeting.

6.8 Determination of Appeal

6.8.1 Where a progress appeal meeting takes place, the senior manager must consider;

- the appeal notice submitted;
- any evidence accompanying that notice;
- the written record of the progress meeting;
- the officer's written comments on that record (if any); and
- any representations made at the meeting (if any).

6.8.2 Where no progress appeal meeting takes place, the senior manager must consider;

- the appeal notice submitted;
- any evidence accompanying that notice;
- the written record of the progress meeting; and
- the officer's written comments on that record (if any).

6.8.3 Having considered the foregoing the senior manager may

- confirm or reverse the finding of unsatisfactory performance or attendance; and
- endorse or vary the terms of the improvement notice appealed against.

6.8.4 The senior manager may deal with the police officer in any manner in which the second line manager could have dealt with them at the progress meeting. Where the second line manager has reversed the finding of unsatisfactory performance or attendance they must also revoke the written improvement notice.

6.8.5 If the senior manager reverses the finding of unsatisfactory performance; or varies any of the relevant terms of the final improvement notice against which the appeal is made, the decision of the senior manager substitutes the previous finding, from the date of that decision.

6.8.6 As soon as reasonably practicable after determining an appeal the senior manager must send to the officer a written note of their decision. In a case where a progress appeal meeting has taken place, the senior manager must also send to the officer a written record of that meeting.

7 The third stage – Performance Hearings

7.1 Preparation and purpose

7.1.1 Initiation of the third stage must be for matters similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

- 7.1.2 Where a first line manager refers a police officer to a performance hearing the Deputy Chief Constable must appoint a police officer of at least the rank of superintendent and of a rank higher than the officer to act as chair at the performance hearing.
- 7.1.3 The Deputy Chief Constable may appoint a human resources professional and an officer of at least the same rank as the subject officer to advise the chairing constable at the performance hearing.
- 7.1.4 A person must not be appointed as outlined above if the Deputy Chief Constable holds a reasonable concern as to whether that person could act impartially in relation to the subject police officer.
- 7.1.5 The police officer may object to the appointment of any person under this regulation. The objection must be made in writing not later than 3 working days from receipt of the notice of the arrangement of the hearing and must indicate the officer's reasons for objecting.
- 7.1.6 The Deputy Chief Constable must decide whether to uphold an objection and must notify the police officer in writing of that decision. Where the objection is upheld the Deputy Chief Constable must make a new appointment and notify the officer in writing of the name of the person appointed.
- 7.1.7 The Deputy Chief Constable must arrange for the provision to every person appointed;
- any document which was available to the first line manager in relation to the performance meeting;
 - any document which was available to the second line manager in relation to the progress meeting;
 - the records of the performance meeting and the progress meeting;
 - any submission by the police officer or their representative;
 - any documents relating to any appeal; and
 - the improvement notice and the final improvement notice.
- 7.1.8 Where the first line manager refers the police officer to a performance hearing the senior manager must send a notice in writing requiring the officer to attend such a hearing. The notification will state:
- the persons appointed to chair the hearing and the human resources advisor, where appropriate;

- the procedures for determining the date and time of the performance hearing;
- the respect in which the officer's performance is considered unsatisfactory;
- the possible outcomes of a performance hearing;
- The requirement on the police officer to respond to the notice in writing within 20 days stating whether or not they accept the first line manager's opinion.
- any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
- any proposed attendance at the hearing of any other named person and the police officer's right to refuse to consent to their attendance;
- the police officer's right to seek advice from a police representative;
- the police officer's right to be represented at the hearing by a police representative; and
- the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the officer intends to rely.

7.1.9 The notice must be accompanied by a copy of any document relied upon in coming to the view that the performance of the police officer is unsatisfactory; and copies of the documents set out in paragraph 8.1.7.

7.1.10 It is important to note that a performance hearing may not take place unless the police officer has been notified of his right to representation by a police representative.

7.2 Procedure on receipt of notice of performance hearing

7.2.1 The police officer must, not later than 20 working days from receipt of the notice to attend a performance hearing, respond in writing indicating whether they accept the first line manager's opinion or not.

7.2.2 Where the police officer accepts the first line manager's opinion they may make a written submission to the Deputy Chief Constable. Where the officer does not accept that opinion they must provide a written submission explaining the reasons for not accepting that opinion. All submissions must be accompanied by any document on which the officer intends to rely at the performance hearing.

7.3 Witnesses

7.3.1 The first line manager and the police officer must, no later than 10 working days after receipt of the officer's response, supply to each other the names and addresses of any witnesses on whom they propose to rely at the performance hearing and a summary of the evidence each witness will give; or give notice that they do not intend to rely on any witnesses.

7.3.2 The first line manager and the police officer must, if it is reasonably practicable to do so, agree on a joint list of witnesses and provide that list to the chairing constable. If it is not possible for the first line manager and the police officer to agree on a joint list of witnesses, they must each supply a list of proposed witnesses to the chairing constable.

7.3.3 As soon as reasonably practicable after receiving lists of witnesses the chairing constable must decide which, if any, of the listed witnesses should attend the performance hearing; and notify the first line manager and the officer of that decision.

7.3.4 The chairing constable may determine that witnesses not included in any list (whether joint or otherwise) are to attend the performance hearing.

7.3.5 No witnesses will give evidence at a performance hearing unless the chairing constable reasonably believes that it is necessary for the witness to do so, in which case they will:

a) in the case of a police officer, cause him or her to be ordered to attend the performance hearing;

b) in any other case, cause him or her to be given notice that their attendance at the performance hearing is necessary. Such notices will include the date, time and place of the meeting.

7.3.6 Where a witness attends to give evidence then any questions to that witness should be made through the chairing constable. This would not prevent the chairing constable allowing questions to be asked directly if they feel that this is appropriate.

7.4 Timing of performance hearing

7.4.1 The performance hearing must take place not later than 35 working days after the

police officer has been given notice of the hearing. However, the chairing constable may extend this time period if it would be in the interests of fairness to do so. Where the time period is extended the chairing constable must provide written notification to both the Deputy Chief Constable and the officer of the reasons for that extension.

- 7.4.2 Where the time period is extended the chairing constable must, if reasonably practicable, agree a time and date for the performance hearing with the police officer. However, where agreement cannot be reached the chairing constable must specify a time and date. If the police officer or their police representative is not available at the date or time specified by the line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable, falls within a period of 10 working days from the date specified by the manager, and 35 working days from the notice of the performance hearing was given the hearing must be postponed to that time.
- 7.4.3 When the date and time of the performance hearing are determined in accordance with the foregoing paragraph, the chairing constable must send a notice in writing to the police officer specifying the date, time and place of that hearing.
- 7.4.4 The chairing constable may allow a police officer or their police representative (or both) who is unable, on reasonable grounds, to attend the performance hearing to participate in that hearing by video link or any other reasonable means.

7.5 Postponement and adjournment of performance hearing

- 7.5.1 The chairing constable may, if satisfied that it is necessary or expedient in the circumstances postpone to a specified date a performance hearing which has not commenced; **or** adjourn to a specified date a performance hearing which has commenced. The date specified under paragraph may fall after the end of the period of 35 working days specified in the performance hearing notice.
- 7.5.2 Where a hearing is postponed or adjourned the chairing constable must notify in writing the police officer, the Deputy Chief Constable and any person appointed by the Deputy Chief Constable of the revised date, time and place of the hearing; and the reasons for the postponement or adjournment.
- 7.5.3 In cases where the police officer is absent (for example through illness or injury) a short delay may be reasonable to allow him or her to attend. If this is not possible or any delay is considered not appropriate in the circumstances then the person(s) conducting the meeting/hearing may allow the police officer to participate by telephone or video link. In these circumstances a police representative will always be permitted to attend the meeting/hearing to represent the police officer in the normal way.

7.6 Procedure at performance hearing

7.6.1 The hearing must be conducted by the chairing constable. The following persons may attend the hearing if requested to do so by the chairing constable—

- the first line manager;
- the second line manager;
- the senior manager;
- any person whose attendance was notified to the police officer, provided the officer has not refused to consent to their attendance.

7.6.2 The chairing constable must:

- explain to the police officer how their performance is considered to be unsatisfactory; and
- provide the police officer or their police representative, with an opportunity to make representations in response.

7.6.3 The chairing constable may permit the police officer to ask questions of any witness.

7.6.4 An audio recording of the hearing must be made and the officer must, on request, be supplied with a copy of that recording.

7.7 Finding

7.7.1 Following the performance hearing the chairing constable must decide whether:

- the officer has failed to make the required improvement in performance by the end of the final improvement period; or
- in a case where the required improvement in performance has been made by the end of that period, that improvement has not been maintained during the validity period. It will be sufficient to show that the performance had not been sustained during the validity and there is no requirement to wait until the end of the period.

7.7.2 Not later than 3 working days from the conclusion of the performance hearing the chairing constable must give both the police officer and the first line manager written notice of

- a) the chairing constable's decision;
- b) the reasons for that decision; and
- c) the disposal.

7.7.3 Where the outcome is dismissal or demotion in rank then the police officer must be given notice of the right to appeal and of the procedure for making such an appeal.

7.8 Disposal

- 7.8.1 Where the chairing constable decides that the police officer's performance is unsatisfactory they may order:
- a) dismissal of the officer with notice;
 - b) demotion in rank (but not for attendance cases); or
 - c) extension of the final improvement notice.
- 7.8.2 If dismissal of the officer with notice is ordered, the period of notice must be determined by the chairing constable, but must be not less than 28 days.
- 7.8.3 Extension of the final improvement notice may be ordered only where the chairing constable is satisfied that there are exceptional circumstances which justify such an outcome.
- 7.8.4 If extension of the final improvement notice is ordered the chairing constable must amend the final improvement notice to state that if the police officer does not make a sufficient improvement in performance within such reasonable period as the chairing constable specifies (being a period of no more than 6 months from the date of extension) the police officer may be required to attend a further performance hearing; and specify a new validity period.
- 7.8.5 The chairing constable may also amend the terms of the final improvement notice which relate to the respect in which the police officer's performance is considered to be unsatisfactory; or the improvement that is required in the officer's performance.

7.9 Assessment of performance following performance hearing

- 7.9.1 Where, in exceptional cases, the chairing constable has extended a final improvement notice period, it is expected that the police officer's performance or attendance will be actively monitored by the line manager throughout the specified period of the final/extended final improvement notice. The line manager should discuss with the police officer any concerns that the line manager has during this period as regards their performance or attendance and offer advice and guidance where appropriate.
- 7.9.2 The first line manager must assess the police officers performance or attendance:
- a) at the end of the extended final improvement period specified; and
 - b) during any part of the validity period specified.
- 7.9.3 The first line manager must inform the police officer where in the first line manager's opinion:

- a) there has been a sufficient improvement in the officer's performance by the end of the extended final improvement period; and
- b) that improvement has been maintained until the end of the validity period.

- 7.9.4 If the first line manager is of the opinion that there has been a sufficient improvement in the officer's performance by the end of the extended final improvement period, the first line manager must remind the officer of the need to maintain that improvement until the end of the validity period.
- 7.9.5 If, the first line manager is of the opinion that the officer has failed to make the required improvement in performance by the end of the extended final improvement period; or where the required improvement in performance has been made by the end of that period, that improvement has not been maintained during the validity period, the first line manager must refer the officer to a further performance hearing to consider the officer's performance. If the improvement is not maintained during the validity period there is no need to wait until the end of the period before moving on to the next stage.
- 7.9.6 A further performance hearing may consider only unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the final improvement notice extended at the previous performance hearing.
- 7.9.7 A further performance hearing must be conducted by the charring constable who conducted the previous performance hearing and they must be advised by the same advisor. If either of these is unable to attend the Deputy Chief Constable may appoint a replacement, and the same conditions of appoint will apply.
- 7.9.8 The Deputy Chief Constable must arrange for the provision to every person appointed;
- any document which was available to the first line manager in relation to the performance meeting;
 - any document which was available to the second line manager in relation to the progress meeting;
 - the records of the performance meeting and the progress meeting;
 - any submission by the police officer or their representative;
 - any documents relating to any appeal; and
 - the first improvement notice, final improvement notice and extended final improvement notice.
- 7.9.9 If the first line manager refers a police officer to a further performance hearing, the senior manager must send a notice in writing requiring the officer to attend such a hearing. The notice must inform the officer of the:
- the identity of the charring constable and any person appointed to advise that constable;

- the procedures for determining the date and time of the further performance hearing;
- the respect in which the police officer's performance is considered to be unsatisfactory;
- the possible outcomes of a further performance hearing;
- the requirement on the police officer to respond to the notice in writing within 20 days stating whether or not they accept the first line manager's opinion.
- any proposed attendance at the hearing of the first line manager, the second line manager or the senior manager;
- any proposed attendance at the hearing of any other named person and the officer's right to refuse to consent to their attendance;
- the officer's right to seek advice from a police representative;
- the officer's right to be represented at the hearing by a police representative; and
- the requirement to provide to the chairing constable, in advance of the hearing, a copy of any document on which the officer intends to rely.

7.9.10 The notice must be accompanied by a copy of any document relied upon in coming to the view that the officer's performance is unsatisfactory.

7.9.11 The further performance hearing will proceed in the same format as set out for a performance hearing.

7.9.12 A police officer may only be given an extension to a final improvement notice on one occasion. Therefore where the police officer is required to attend a further performance hearing and the chair finds that the police officer's performance or attendance continues to be unsatisfactory, the only outcomes available are demotion in rank or dismissal (with notice).

7.10 Appeal against finding at performance hearing

7.10.1 Where at a performance hearing or a further performance hearing, the chairing constable finds that the police officer's performance is unsatisfactory and orders dismissal or demotion in rank, the officer may appeal against;

- the finding of unsatisfactory performance; and
- the outcome ordered.

7.10.2 An appeal may be made only on one or more of the following grounds:

- that the finding of unsatisfactory performance is unreasonable;
- that the outcome ordered is unreasonable;
- that there is evidence that could not reasonably have been considered at the performance hearing or further performance hearing (as the case may be) which could have affected materially,
 - the finding of unsatisfactory performance; or

- the outcome ordered; and
- that there was a breach of the procedures set out in these Regulations or any other unfairness which could have affected materially,
 - the finding of unsatisfactory performance; or
 - the outcome ordered.

7.10.3 An appeal is to be commenced by the police officer submitting a written appeal notice to the Deputy Chief Constable not later than 30 working days from the date on which the officer receives the notice of the decision in relation to which the appeal is made.

7.10.4 An appeal notice must:

- set out the finding or the outcome (or both) against which the appeal is made;
- set out the grounds of appeal;
- specify whether the officer requests an appeal hearing; and
- be accompanied by any evidence on which the officer intends to rely.

7.10.5 The Chief Constable may, on the application of the police officer, extend the period allowed to submit an appeal if satisfied that it is appropriate to do so.

7.11 Procedure for determining appeal

7.11.1 An appeal must be determined by a senior officer who is appointed by the Deputy Chief Constable. In a case where the appellant is a chief superintendent, the appeal must be determined by a Deputy Chief Constable other than the Deputy Chief Constable designated under these regulations.

7.11.2 If the police officer requests an appeal hearing, the person determining the appeal must decide whether to:

- a) hold an appeal hearing; or
- b) determine the appeal without holding such a hearing.

7.11.3 Where the police officer does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined on the basis of

- a) the appeal notice and any evidence sent with that notice; and
- b) the audio recording of the performance hearing or further performance hearing to which the appeal relates.

7.11.4 Where an appeal is to be held the person determining the appeal must within 30 working days of receipt of an appeal notice send a notice in writing:

- a) requiring the officer to attend an appeal hearing; and
- b) specifying a date and time for that hearing.

7.11.5 The appeal hearing is to be heard not more than 10 working days from the date on which the decision to hold that hearing was made.

7.11.6 The appeal hearing is to be conducted in such manner as the person determining the appeal decides, provided that;

- a) the officer's police representative must be permitted to attend; and
- b) the officer and the officer's police representative must be permitted to make oral representations.

7.12 Outcome of appeal

7.12.1 The person determining the appeal may, whether after an appeal hearing or otherwise:

- a) confirm or reverse the finding of unsatisfactory performance;
- b) confirm the outcome; or
- c) order an outcome which is less severe than that ordered by the chairing constable of the performance hearing or further performance hearing (as the case may be).

7.12.2 In the case of an appeal against a decision or outcome ordered at a further performance hearing, the person determining the appeal may not order a further extension of the final improvement notice.

7.12.3 The person determining the appeal must notify the police officer in writing of the decision and the reasons for that decision. This notice must be given as soon as reasonably practicable and no later than 90 working days from the date the appeal notice was lodged. Where the outcome is a demotion in rank this will have effect from the date of this notice is given.

7.12.4 Where the person determining the appeal orders an extension of the final improvement notice then the procedures previously outlined for final improvement notices will apply.

7.12.5 Where the person determining the appeal confirms that the police officer's performance is unsatisfactory; and the officer is to be dismissed or demoted in rank they must be given notice in writing setting out the circumstances in which the officer may appeal to a police appeals tribunal and the procedure for making such an appeal.

7.13 Medical retirement under police pension legislation

7.13.1 The Police Pensions Regulations 1987 in relation to the Police Pension Scheme

and the Police Pensions Regulations 2006 in relation to the New Police Pension Scheme provide that where a police authority is considering whether a police officer is permanently disabled it shall refer the issue to the selected medical practitioner (SMP) for a decision.

7.13.2 Some cases of unsatisfactory attendance may raise the need to consider whether the police officer is permanently disabled within the meaning of the Police Pension Regulations 1987 or 2006. In such cases, this guidance should be read in conjunction with the PNB Joint Guidance on Improving the Management of Ill-Health.

7.13.3 Where a police officer is referred to the SMP for consideration of permanent disablement under the Police Pensions Regulations, no action shall be commenced or continued under the Police Service of Scotland (Performance) Regulations 2014 with regard to the unsatisfactory attendance of a police officer until the issue of permanent disablement has been considered and the report of the SMP has been received by the SPA.

7.13.4 Where a police officer appeals against a decision of the SMP that they are not permanently disabled or against a decision of the SPA not to refer the permanent disablement questions to a SMP, no action shall be commenced or continued under the Police (Scotland) Performance Regulations 2013 with regard to the unsatisfactory attendance of the police officer until the appeal has been resolved.

7.13.5 Action can, however, be taken under the performance procedures where a case has been referred or is the subject of appeal if the unsatisfactory attendance is unrelated to the condition forming the basis of the referral or appeal. However, the Police Service of Scotland must be confident that there is no connection as a decision to proceed in such circumstances may be challenged in the courts or tribunals. If the appropriate manager is unsure whether any condition forming the basis of a referral to the SMP or an appeal is related to the unsatisfactory attendance of a police officer, then advice should be sought from the HR professional acting on behalf of the SPA before any decision is taken to commence or continue the performance procedures. Medical advice from the Police Service of Scotland medical advisor (FMA) may also be necessary.

7.13.6 It is important that there is a clear distinction between an officer being subject to medical discharge procedures, which should be overseen by the SPA and an officer subject to performance procedures, which are overseen by the Police Service of Scotland. There must be no confusion and an officer who is genuinely permanently disabled should leave the Police Service of Scotland using the medical discharge procedures and not the performance procedures.

7.14 Competency Related Threshold Payments and Promotion

7.14.1 A finding or admission of unsatisfactory performance or attendance at a performance procedure meeting will not automatically result in the removal of a

police officer's competency related threshold payment. However, where a police officer has received an improvement notice or final improvement notice, this may trigger a review of the appropriateness of that police officer continuing to receive such payments. Any such review should take into account the qualifying criteria for payments under these schemes. Likewise there will not be an automatic debar on an officer from entering the promotion process, although the circumstances of each case, including the level of sustained progress made would have to be examined on its own merit.

7.15 The use of records under performance procedures

7.15.1 The terms of Regulation 11 of the Police Service of Scotland Regulations will apply in regard to the recording of "performance proceedings" on personal records.

7.15.2 Records of any part of the performance procedures should not be taken into account after an improvement notice has ceased to be valid. Equally, where a police officer appeals and that appeal is successful, the record of that procedure should not be taken into consideration in any future proceedings or for any other purpose.