

## **Misconduct Hearing: 2 July – 13 July 2018: Key Facts**

### **Background**

Following allegations made in late 2016 against Chief Constable Simon Byrne and following advice from the IPCC, a local investigation conducted by an external police force was undertaken in accordance with the statutory police conduct regime. Following receipt of the Investigation Report, and having carefully considered the evidence, the Commissioner determined that there was a case to answer for gross misconduct with regards to Authority, Respect and Courtesy and Discreditable Conduct. The matter has been referred to an independently chaired gross misconduct hearing.

In light of this determination, on the 22 August 2017, the Commissioner made the decision under Regulation 10 of the Police (Conduct) Regulations 2012 that he considered the public interest required that Chief Constable Byrne be suspended pending the conclusion of the hearing. Consideration was given to the nature of the allegations and temporary re-deployment. Deputy Chief Constable McCormick was immediately put in place as the Acting Chief Constable for Cheshire Constabulary.

An initial hearing took place from 16 to 24 April 2018 at which the Independent Panel refused Chief Constable Byrne's application to stay the proceedings and adjourned until 2 July 2018. The Panel's written judgement can be found on the Police & Crime Commissioner's website.

The misconduct proceedings are being undertaken in line with the Police (Conduct) Regulations 2012.

### **Notification of misconduct hearing**

On the 7 February 2018 the Police & Crime Commissioner complied with the direction of the Chair of the misconduct hearing and published the notice of the hearing. This was required to contain:

- a) the name of the officer concerned;
- b) the date of the hearing;
- c) the time of the hearing;
- d) the place at which the hearing will take place; and
- e) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be, as set out in the notice given in accordance with regulation 21(1)(a)(ii).

This can be found at <https://www.cheshire-pcc.gov.uk/news/news/gross-misconduct-hearing-chief-constable-simon-byrne/>

## **Panel conducting the misconduct hearing**

Regulation 26 of the Police (Conduct) Regulations 2012 states where the officer concerned is a senior officer, the misconduct proceedings shall be conducted by a panel of persons specified, appointed by the appropriate authority.

Those persons are:

- a chair selected by the appropriate authority from a list of persons who satisfy the judicial-appointment eligibility on a 7-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;
- Her Majesty's Chief Inspector of Constabulary (Sir Tom Winsor WS) or an inspector of constabulary nominated by him; and
- a person selected by the appropriate authority from a list of candidates maintained by a local policing body for the purposes of these Regulations.

## **Attendance of witnesses to give evidence**

The Chair of the hearing makes a ruling to determine which, if any, witnesses should attend the misconduct proceedings. No witness shall give evidence unless the person chairing the proceedings reasonably believes that it is necessary to do so in the interests of justice.

## **Conduct of misconduct hearing**

It is for the Chair to determine the course of the hearing in accordance with the regulations, the principles of natural justice and fairness.

The person chairing or conducting a hearing may also decide to impose other conditions in advance of, or during, a hearing. Conditions can include but are not limited to:

- a) Requirements for members of the public to register and/or produce valid identification;
- b) Restrictions on what can be brought into the hearing room or on to the premises where the hearing is to be held, whether for the purposes of security or otherwise;
- c) Restrictions on the number of people that can be accommodated and the procedure where more people wish to attend a hearing than can be accommodated;

- d) Any restrictions on reporting that members of the public or the media must adhere to in order to be granted access to the hearing.

The rationale for the imposition of any condition(s) on attendance should be explained in the notice given to the public or, where a decision is made at the hearing itself, orally by the chair conducting the hearing.

### **Conclusion of the misconduct hearing**

The persons conducting the misconduct hearing will consider the facts of the case and will decide (on the balance of probabilities) whether the officer's conduct amounted to misconduct, gross misconduct or neither. In this case, as the proceedings are conducted by a panel, any decision shall be based on a majority.

A finding that the conduct of the officer concerned amounts to misconduct or gross misconduct shall not be found unless the majority of the panel are satisfied on the balance of probabilities that this is the case; or the officer concerned admits it is the case.

In the case of a senior officer the persons conducting the misconduct hearing shall, as soon as practicable after the hearing, submit a report to the Police & Crime Commissioner, as the appropriate authority, and copied to the officer concerned. This will set out the findings, the reasons for the findings, a recommendation as to any disciplinary action which in their opinion should be imposed if the finding was one of misconduct or gross misconduct and any other matters arising out of the proceedings.

### **Procedure following misconduct hearing**

Following receiving the report detailed above the Police & Crime Commissioner, as the appropriate authority, will hold a further hearing for the purpose of considering what disciplinary action (if any) should be imposed. This will take place within 30 working days of the report being received by the Panel.

Public notification of the details of the further hearing will be made at least 5 working days in advance of it taking place.

### **Outcome of misconduct proceedings**

At the further hearing outlined above, if there is a finding of misconduct or gross misconduct the Police & Crime Commissioner, as the appropriate authority, may:

- Imposed any of the disciplinary action detailed below.
  - i. Management advice;
  - ii. Written advice
  - iii. Final written warning
  - iv. Dismissal with notice

- v. Dismissal without notice
- Where the finding set out in the report is that of misconduct but not gross misconduct, record a finding of misconduct but take no further action.

Where there is a finding that the conduct of the officer concerned amounts to misconduct but not gross misconduct, the officer may not be dismissed unless a final written warning is in force.

### **Notification of outcome**

The officer concerned shall be informed of any disciplinary action imposed as soon as practicable, and in any event, shall be provided with written notice of the action (if any) and the Police & Crime Commissioner reasons before the end of 5 working days starting the day after the conclusion of the further hearing set out above. Those identified as interested persons under the regulations will also receive a copy of the written notification.

Having considered the appropriate representations, a notice will be published 12 working days after the conclusion of the further hearing which may contain information relating to:

- a) the name of the officer concerned;
- b) the conduct that was the subject matter of the case and how that conduct was alleged to amount to misconduct or gross misconduct (if any) as the case may be, as set out in the notice given in accordance with regulation 21(1)(a)(ii);
- c) the finding of the person or persons conducting the misconduct hearing; and
- d) any disciplinary action imposed (if any).

The notice will be published on the Commissioner's website for a period of no less than 28 days.

### **Right of appeal**

Where the officer concerned is a senior officer, as is the case in these circumstances, there is a right of appeal to a police appeals tribunal.