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## THE ROLE AND DUTY OF A FRIEND

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Police officers have the right to consult with, and be accompanied by, a police friend at any misconduct investigatory interview and at all stages of the misconduct or performance proceedings.

The police officer concerned may choose a police officer, a police staff member or (where the police officer is a member of a police force) a person nominated by the police officer's staff association to act as his or her police friend. A person approached to be a police friend is entitled to decline to act as such.

A police friend 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.

The police friend can:

- Advise the police officer concerned throughout the proceedings under the Police (Conduct) Regulations 2012 or Police (Performance) Regulations 2012.
- Unless the police officer concerned has the right to be legally represented and chooses to be so represented, represent the police officer concerned at the misconduct proceedings, performance proceedings, appeal meeting or a special case hearing.
- Make representations to the appropriate authority concerning any aspect of the proceedings under the Conduct or Performance Regulations; and
- Accompany the police officer concerned to any interview, meeting or hearing which forms part of any proceedings under the Conduct or Performance Regulations.

It is good practice to allow the police friend to participate as fully as possible, but at an interview, meeting or hearing the police friend 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.

A police friend who has agreed to accompany a police officer is entitled to take a reasonable amount of duty time to fulfil his or her responsibilities as a police friend and should be considered to be on duty when attending interviews, meetings or hearings.

Subject to any timescales set out in the Conduct or Performance Regulations, at any stage of a case, up to and including a misconduct meeting or hearing or an unsatisfactory performance meeting, the police officer concerned or his or her police friend may submit that there are insufficient grounds upon which to base the case and/or that the correct procedures have not been followed, clearly setting out the reasons and submitting any supporting evidence. It will be for the person responsible for the relevant stage of the case to consider any such submission and determine how best to respond to it, bearing in mind the need to ensure fairness to the police officer concerned.

At a meeting, hearing or special case hearing under the Conduct Regulations or the Performance Regulations where the police friend attends, he or she may –

- vi) put the police officer concerned's case
- ii) sum up that case
- iii) respond on the police officer concerned's behalf to any view expressed at the meeting
- iv) make representations concerning any aspect of the proceedings
- v) confer with the police officer concerned
- vi) in a misconduct meeting or hearing, ask questions of any witness, subject to the discretion of the person(s) conducting that hearing.

A police officer is entitled to be legally represented at a misconduct hearing or special case hearing (in cases that fall to be dealt with under the Conduct Regulations) or a 3<sup>rd</sup> stage Performance meeting (for dealing with an issue of gross incompetence under the Performance Regulations). Where he decides to be so represented, the police friend can also attend and may consult with the police officer concerned, but will not carry out functions i)-iv) and vi) described above.

Where a police officer is arrested or interviewed in connection with a criminal offence committed whilst off duty that has no connection with his or her role as a serving police officer, then the police friend has no right to attend the criminal interview(s) of that police officer.

It is not the role of the police friend to conduct his or her own investigation into the matter.

Where a police friend is acting as such for a colleague from another force, then the appropriate authority for the police friend should pay the reasonable expenses of the police friend.

**Home Office Guidance 2012**

## PRIVILEGE and CONFIDENTIALITY

Lawyers have Legal Professional Privilege (LPP) – any conversation between lawyer and client *for the purposes of obtaining legal advice or relating to litigation* is privileged and cannot be disclosed by lawyer (nor anyone else present) without consent of client.

Friends – no decided case on this but a written Legal Advice has been obtained from senior Counsel experienced in police misconduct matters. This Advice has been in existence since 1987 and has never been challenged by Professional Standards Depts.

- The advice says:- *The effect of the Regulations and Guidance is to put the friend in the same position as the legal representative: it would be outlandish if, the accused having opted for the former rather than the latter, his position is materially prejudiced in that his confidential disclosures to the friend will/may be open to compulsory disclosure to others, whereas there are (practically) no circumstances in which the lawyer could make disclosure save with the client's express prior permission.*
- It also says:- *It is not an exaggeration to suggest that, unless the friend can receive information and advise in confidence, the current procedures for discipline and hybrid investigations would be fundamentally undermined... The friend often plays a vital role: he advises the suspected officer initially, often where a lawyer is not available: he liaises with the investigating officer; he may be able to achieve some compromise or other satisfactory early resolution of the problem. In order to do so effectively, he must have the co-operation of the suspected officer, who will hinder rather than assist his cause if he is other than candid with the friend. Candour is unlikely to be forthcoming if the suspect is aware that anything incriminating said by him to the friend will – or even may be – transmitted by the friend to the investigators.*

Communications between a Friend and an accused officer relating to an investigation or misconduct proceedings will be protected from disclosure by PII (public interest immunity). The Friend cannot disclose any information from such communications without the consent of the accused officer. Whilst in theory a tribunal or court could, having conducted a “balancing exercise” between the interests of the accused officer and those of the public, order disclosure in practice this is highly unlikely to happen.

The advice has stood the test of time.

## RIGHT TO ADVICE/REPRESENTATION

Federation Friend:-

An officer served with a notice informing him he is under investigation must be informed he ...

- - *has the right to seek **advice** from his staff association or any other body.*
- – *right to ...accompany the officer concerned to any interview, meeting or hearing.*

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- - Officer facing hearing may be represented by Friend (and at meeting if officer chooses not to be legally represented). At a meeting or hearing Friend may *put the officer concerned's case; sum up that case; respond on the officer concerned's behalf to any view expressed at the meeting; make representations; ask questions of any witness.*
- -Police officers have the right to consult with, and be accompanied by, a police friend at any misconduct investigatory interview and at all stages of the misconduct or performance proceedings.
- -At the investigation stage Friend can ...advise the officer concerned **throughout** the proceedings under these Regs –

; and make representations to the appropriate authority concerning **any aspect** of the proceedings...  
 ...at any stage of a case, up to and including a misconduct meeting or hearing or an unsatisfactory performance meeting...the friend may submit that there are insufficient grounds upon which to base the case and/or the correct procedures have not been followed....

Lawyer:-

If an officer is to face hearing where ultimate outcome of dismissal may be imposed he has a right to be legally represented at that hearing.

- Can be solicitor or counsel.
- In addition to consulting a friend, officer may feel that he or she should seek legal advice, either generally or in respect of, for example, some aspect of an interview during any informal enquires or formal investigation.

Thus if criminal investigation officer has right to seek advice from lawyer and friend. In interview, for criminal investigation, officer has a right under PACE 1984 to have lawyer present (but no legal right to have friend present .In misconduct investigation officer has right to have friend present (but no legal right to have lawyer present – only right to seek advice from lawyer). Up to lawyer/friend to negotiate with investigation officer to enable both to be present.

### RIGHT TO BE INFORMED

An officer has the right to be given notice in writing that he or she is under investigation – Reg 15. Notice must inform officer of his right to seek advice from a friend and that he is not obliged to say anything.

Notice must give information ...describing the conduct...and how that conduct is alleged to have fall below the Standards of Professional Behaviour...and confirm assessment as to whether, if proved, it amounts to misconduct or gross misconduct.

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How detailed should the information in the notice be?

*The notice should clearly describe in **unambiguous language** the particulars of the conduct that it is alleged fell below the standards expected....* Friend should be prepared to argue that there must be sufficient information given so that he understands the nature of the allegation and the strength of the evidence so as to be able to properly advise the officer as to whether he should put his side of the story or exercise his right of silence. In practice it often comes down to the issue of the “adverse inference” caution and whether on the basis of the information provided it would be reasonable for the officer to put his side of the story.

*As soon as practicable* means days not weeks –

**R v CC Merseyside ex parte Calveley 1986 1QB 424** and  
**R v CC Merseyside ex parte Merrill 1989 1 WLR 1077**;

*...I regard the Regulation as an essential protection for Police Officers facing disciplinary charges. It follows from this that prima facie an officer is prejudiced by any breach and the greater the breach, if it takes the form of delay in giving notice, the greater the prejudice...If the...notice is not given “as soon as practicable” the investigating officer must be prepared to justify the delay.*

## NEGOTIATING WITH THE APPROPRIATE AUTHORITY

Friend should be prepared to negotiate with line manager and/or DPS to seek to influence decision whether to deal with matter locally or whether formal investigation required, and during or after formal investigation, whether matter merits misconduct proceedings.

Proportionality – The stated objectives of the new **conduct** procedures is *...investigations and hearings to be less formal and managed and **proportionate** to the context and nature of the issue at stake... Where these standards of behaviour are being applied in any decision or misconduct meeting/hearing, they shall be applied in a*

***reasonable,  
transparent,  
objective and  
proportionate manner...***

New **performance** procedures say *...the underlying principle...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.*

The Friend must be prepared to argue as to how these stated objectives can best be achieved at every stage of the process. *...a frequent criticism of previous misconduct investigations was that they were lengthy, disproportionate and not always focused on the relevant issues. It is therefore crucial that any investigation is kept proportionate to ensure that an overly lengthy investigation does not lead to grounds for **challenge**...*

Friend has opportunity to get involved and guide or suggest proportionate way of dealing with matter at ASSESSMENT stage in two areas

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- Initial Assessment – is this a “conduct” matter requiring investigation or can it be dealt with by “management action” –
- Severity Assessment – is this misconduct or gross misconduct - .

Management Action in conduct proceedings may be way of heading off potential misconduct proceedings

NB that management action ...*does not have to be revealed to the CPS....*

Even where DPS has decided that there is a case to answer on misconduct, there is a discretion not to refer the matter to a meeting, but to deal with the matter by way of ...*immediate management action...e.g.* where member has accepted conduct fell below the standards expected and has demonstrated a commitment to improve.

## DUTY STATEMENTS

For the purposes of this guidance the term ‘duty statement’ is best defined as **“those statements called for by a supervising officer as a direct result of a complaint or misconduct report”**. In one sense, a duty statement is any statement made by a police officer, **but we are only concerned here with those that have some connection with police misconduct**

The following guidance is to be found in the “Death after Police Contact advice 2008”.

*“You cannot lawfully be required to provide a duty statement if you are or may be investigated for criminal or misconduct matters.*

*If you are asked to provide a first account or a duty statement you should make it clear to the Investigating Officer(s) that you intend to reserve your position until you have had the benefit of independent advice from a Federation Representative and/or Solicitor”*

This guidance holds good for all manor of cases, however it is not intended to restrict police officers making statements about matter that are not linked to criminal or misconduct matters. The contents of a pocket note book can never be withheld and officers are to make any statements as a witness in the normal course of their duty.

The rules of natural justice dictate that you cannot be compelled to incriminate your self, and this guidance is protection for officers from so doing. If you are in any way unsure seek advice in the first instance.

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