

BRITISH TRANSPORT POLICE AUTHORITY



NON – COG APPEALS POLICY

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BRITISH TRANSPORT POLICE AUTHORITY

APPEALS POLICY

This policy has been informed by British Transport Police (Conduct) Regulations (2008), British Transport Police (Performance) Regulations (2008), British Transport Police Appeal Tribunal Regulations (2008), Police Appeals Tribunals Rules (2008) Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures, IPCC Statutory Guidance 2005, Schedule 6 of the Police Act 1996 and the Police Reform Act, 2002.

1. Background

A police officer has the right to make an appeal to a Police Appeals Tribunal following:

- A finding of misconduct or gross misconduct resulting from a misconduct hearing, or a finding of gross misconduct resulting from a special case hearing.
- A police officer may also appeal against any finding of misconduct or gross misconduct made at a misconduct hearing under the performance regulations.
- A police officer against whom a finding of unsatisfactory performance or attendance, or gross incompetence, has been made at a third stage meeting under the performance regulations, may also appeal to a police appeals tribunal.
- A police officer may not appeal to a police appeals tribunal on finding where the finding was made following acceptance by the officer that their conduct amounted to misconduct or gross misconduct, or that their performance or attendance was unsatisfactory, or that they have been grossly incompetent.

The police authority plays a central role in the police appeals tribunal process and this role is set out in the following policy document.

2. The Appeals Process

2.1. Notice of Appeal

An officer must be informed by the Force, in writing, of the right to appeal to a Police Appeals Tribunal, at the same time they are notified of the outcome of the misconduct hearing or third stage meeting.

If the officer concerned wishes to exercise the right to appeal they must do so in writing to the police authority within 10 working days, beginning with the first working day after the day on which they were notified in writing of the relevant decision. The police authority will, as soon as is reasonably practicable, send a copy of the notice of appeal to the respondent, and in the case of a specified appeal¹ the IPCC.

2.2. Respondent's initial submission

When the respondent (usually the Chief Constable) receives the notice of appeal they should make available to the police authority, within 15 working days following the first working day after receipt:

- A copy of the relevant decision made at or following the original hearing.
- Any documents that were available to the panel conducting the original hearing.
- A copy of the transcript of the original hearing.

This final document will be copied to the appellant at the same time, if requested. The police authority will again acknowledge receipt of these documents in writing and will appoint a Chair at this time.

2.3. Appellant's submission of statement of grounds for appeal documents

Within 20 working days, beginning with the first working day following receipt of the transcripts of the original hearing, (see 2.2 above) the appellant should

¹ A specified appeal means an appeal where the relevant decision arose from a complaint or conduct matter that was supervised, managed or independently investigated by the IPCC.

submit a set of documents to the Tribunal via the police authority. This submission should include:

- A statement of the relevant decision and the grounds for the appeal.
- Any supporting documents
- Where the appellant is permitted to present witness evidence, a list of any proposed witnesses, and a witness statement from each proposed witness.
- If the appellant consents to the appeal being determined without a hearing, they should also include a notice of consent.

Where the appellant did not request the transcript they have 35 working days, beginning with the first working day after the day they gave notice of the appeal, to supply the above documents. The police authority will acknowledge receipt of these documents in writing and copy the documents to the respondent as soon as practicable.

2.4. Respondent's submission of response to grounds of appeal

Within 20 working days, beginning with the first working day following receipt of the appellant's documents, the respondent will supply to the police authority and the appellant:

- A statement of its response to the appeal.
- Any supporting documents.
- Where the respondent is permitted to present witness evidence, a list of any proposed witnesses, and a witness statement from each proposed witness.
- If the respondent consents to the appeal being determined without a hearing, they should also include a notice of consent.

2.5. Extension of time limits

The appellant or respondent may apply to the police authority for an extension of a relevant period. Any application must contain the period of extension required and the reason for the application. The police authority will give the application to the other party to ask whether they consent to the application. If the other party does consent the relevant period will be extended. If the other

party does not consent the application will be referred to the Chair who shall determine whether the relevant period shall be extended, and if so, by how long. The Chair/police authority will then write to both the appellant and respondent advising them of this decision.

2.6. Review of Appeal

Once the above documentation has been received the Chair will review the case. The appeal will be dismissed if the Chair considers that the appeal has no real prospect of success or there is no other compelling reason why the appeal should proceed. If the Chair considers the appeal should be dismissed they will notify the appellant and respondent of this decision in writing including the reasons for that view. The appellant and respondent then have 10 working days, beginning with the first working day following receipt of this notification, to make written representations in response to the Chair. The Chair will then consider any written representations submitted before making their final determination. Any determination will be sent in writing to the appellant, respondent and police authority, including reasons for the determination.

2.7. Determination of an Appeal

Where an appeal is not dismissed the Chair will determine whether it should be dealt with at a hearing. The Chair may only determine that the appeal be heard without a hearing if the appellant has consented. Where the appeal is to be dealt with at a hearing the Chair will supply the appellant and respondent with their name and contact address.

2.8. The Tribunal Panel

The tribunal panel nominated by the police authority will consist of:

- A legally qualified Chairman selected from a list maintained by the Home Office
- A Member of the police authority nominated by the authority

- A serving or former Chief Constable from outside the British Transport Police selected from a list maintained by the Home Office
- A retired officer of appropriate rank drawn from a list maintained by the Home Office or nominated by the BTP Federation².

2.9. Distribution of Appeal Documents

The Police Authority will distribute copies of all the submitted documents to both the Tribunal Panel and the respondent at the Force, as soon as is practicable. The respondent must distribute the following documents to the appellant:

- The written response to the appeal
- Any written representations they wish to make or a written statement that no written representations will be made
- A list of any supporting documents that will be considered

2.10. Power to Request Disclosure of Documents

The appellant or respondent may apply to the Chair for disclosure of any document held by the other party that is relevant to the appeal process. Where the request is not complied with the party concerned will give its reasons for non-disclosure in writing.

2.11. Notice of Hearing

The Chair shall cause the appellant and respondent to be given written notice of the date, time and place of the hearing at least 20 working days before the date of the hearing. The IPCC will also be notified in the case of a specified appeal.

2.12. The Hearing

The police authority will keep a verbatim record of any evidence given at the hearing for a minimum of 2 years.

² The make-up of the police appeal tribunal is prescribed in paragraph 1 of Schedule 6 of the Police Act 1996

2.13.Determination of Appeal

The Chair of the Tribunal will prepare a written statement of both the determination of the appeal and the reasons for it. The Chair will cause the appellant, respondent and police authority to be given a copy of the statement. Where a case has arisen from a complaint that was certified as special requirements³, the police authority will inform the complainant and any interested party of the decision of the Tribunal. Where the appeal was a specified appeal the police authority will notify the IPCC of the decision of the Tribunal.

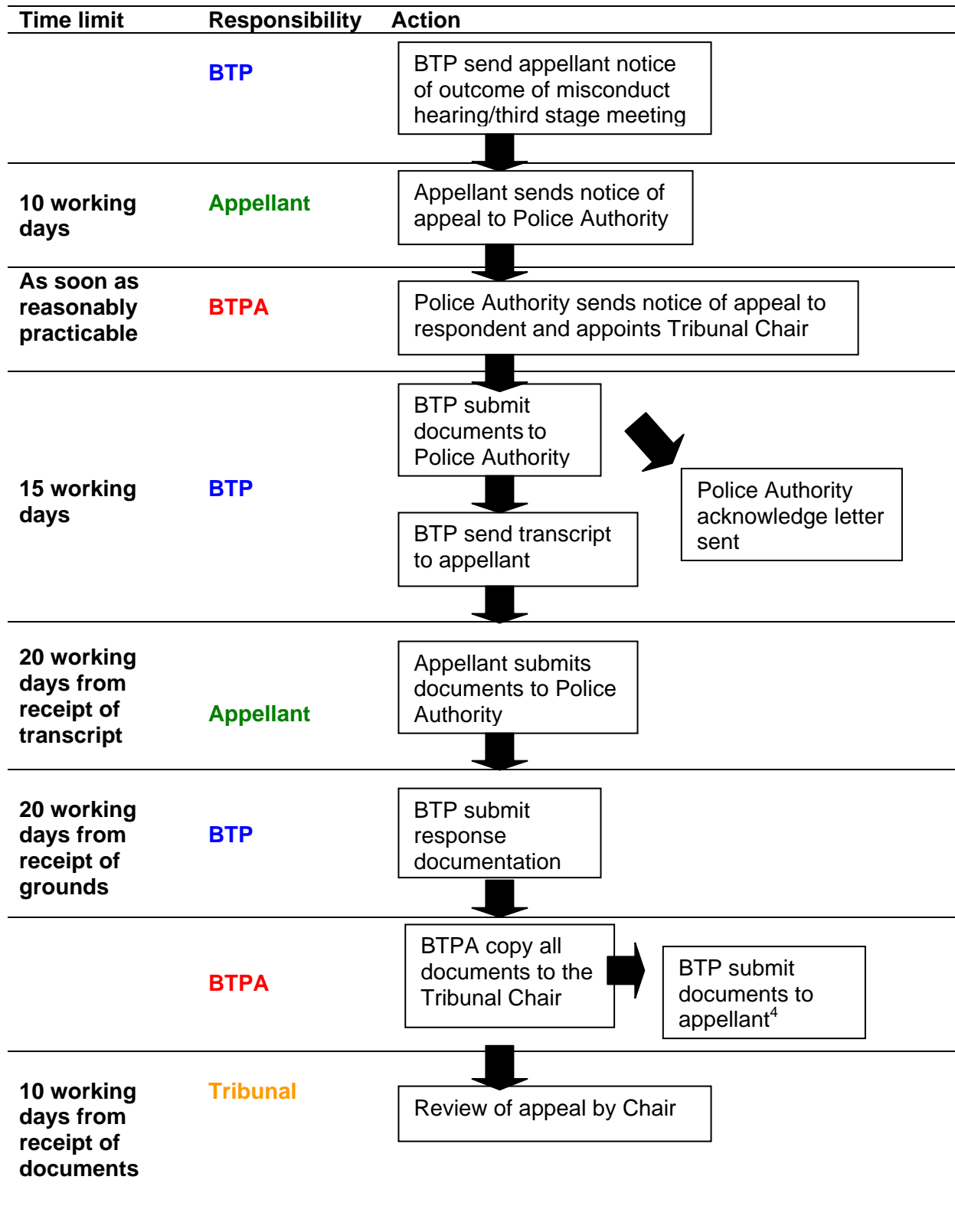
3. Meeting the costs of the Tribunal

Where the appeal is allowed, or is not allowed but deemed to be soundly based and not frivolous or vexatious, the Tribunal may determine that all or any part of the appellant's costs will be met by the police authority. The police authority will meet the proportion of the appellant's costs as decided by the Tribunal and will meet in full any remuneration expenses for Tribunal members as per the Home Office guidance as attached to this policy at Appendix B.

³ Where an independent investigation was carried out by the IPCC following an assessment of the seriousness of the case.

FLOW CHARTS SHOWING APPEALS PROCESS

STAGE 1 – NOTICE OF APPEAL - REVIEW OF APPEAL



REVIEW STAGE – DISMISSAL OF APPEAL

Time limit	Responsibility	Action
10 working days from receipt of documents	Tribunal	Preliminary view to dismiss appeal given by Chair
10 working days from receipt of notice of preliminary view	Appellant & BTP	Appellant and BTP have the opportunity to make written representations for the Chair to consider before making their final decision
10 working days from receipt of written reps	Tribunal	Tribunal chair will inform appellant, BTP and BTPA of their final decision including their reasons should they dismiss the appeal

REVIEW STAGE – CONTINUANCE OF APPEAL

Time Limit	Responsibility	Action
10 working days from receipt of documents	Tribunal	The Chair determines the appeal may go forward and whether a hearing is required.
As soon as reasonably practicable	BTPA	BTPA appoints the tribunal panel and deals with all the administrative points
20 working days prior to hearing	Tribunal	If the appeal is to be dealt with at a hearing the Tribunal will give 20 working days notice to the appellant and respondent
3 working days after hearing	Tribunal	The Tribunal Chair will within 3 working days of determining the tribunal give written notice to the appellant of the tribunal's decision

REVISED GUIDANCE FOR MEMBERS OF POLICE MISCONDUCT APPEALS TRIBUNALS ON THE CLAIMING OF FEES AND EXPENSES (APRIL 2006)

FEES

1. Fees may be claimed at the following rates;

	Chair (QC)	Chair (Non-QC)	Member
Full day i.e. sittings of more than 4 hours (excluding meal breaks)	£466	£364	£210
Half day i.e. sittings of 4 hours or less (excluding meal breaks)	£233	£180	£104

The “fees” rates may be claimed for all meetings of the tribunal.

It is recognised that a sitting of less than 4 hours plus travel **on the same day**, may cause a member to give up a whole day for a half day’s session. Wherever possible we will, therefore, seek to appoint those members closest to where the hearing will take place. Where this is not possible, members may claim for a full day’s sitting where the sitting is less than 4 hours (excluding meal breaks) and where travel on the same day as the sitting together total over 7 hours.

LONG SITTINGS

2. Where the length of the tribunal sitting exceeds 7 hours (excluding meal breaks) a claim can be made for a long sitting. The allowance payable is;

For Chairs (QC and Non-QC) - 1/7 of the normal daily rate for each hour, or part thereof, in excess of 7 hours.

For Members - 1/14 of the normal daily rate for each hour, or part thereof, in excess of 7 hours.

PREPARATION AND REPORT WRITING FEES

3. A fee may be claimed at the following rates for each hour necessarily spent in preparatory work or report writing;

Chair (QC)	£66
Chair (Non-QC)	£52
Member	£15

This fee may, however, only be claimed where it is necessary for the work undertaken on a day other than the day on which the tribunal sitting takes place, (except that a fee may be claimed even in these circumstances if the tribunal fee is paid at the half-day rate).

TRAVELLING EXPENSES

4. Chairmen and members may be paid their travelling expenses between residence and place of duty. Any necessary travel to a tribunal sitting may be undertaken by first class train travel. If claiming reimbursement of rail fares you must either provide a receipt or enter on the claim the rail ticket number and date and place of issue.

For journeys up to 10,000 miles, travel by car may be claimed at the following rates;

Cars with engine capacity up to 1500cc	40 pence per mile
Cars with engine capacity of 1501 -2000cc	40 pence per mile
Cars with engine capacity over 2000 cc	40 pence per mile

Incidental travelling expenses e.g. bus/tube fares, may also be claimed. Taxi fares may be reimbursed only in the following circumstances: for journeys for which there is no other suitable method of public transport, or where heavy luggage has to be transported to or from the place of departure or arrival. A receipt for travel by taxi must be provided and full reasons must be given in writing and included or attached to the claim form. Full details for each step of the journey should be shown. Travelling allowances are designed to meet expenses incurred and are in no sense a

form of remuneration. Please note that no liability can be accepted in the event of any accident, damage, injury or death.

There is no provision for payment of travelling time to chairmen or members.

NIGHT SUBSISTENCE

5. A night subsistence allowance may be claimed if you are absent from your normal place of residence for a period of 24 hours or more and necessarily incur expenditure on accommodation, meals and incidental travel (see above) which is additional to what would have been incurred at home. This allowance is therefore intended to cover the hotel costs plus all meals and incidental expense for a period of 24 hours from the time of departure from home.

The rate payable is **£96.00**

This rate has been made up as follows;

- Actual receipted bed and breakfast expenditure up to a limit of £70.00
- **Plus** a flat rate allowance of **£26.00**. This allowance is intended to cover dinner, lunch and local travel (for example between your hotel and the place of hearing) and also to cover miscellaneous personal expenses. **No additional amount is payable.**

Members who stay free of charge with friends or relatives may claim the flat rate of **£24** to cover dinner, lunch and local travel.

DAY SUBSISTENCE

6. Where, as in most cases, an overnight stay is not necessary, an allowance may be claimed for the necessary costs spent on meals (day subsistence). The allowance is based on the period during which the member is absent from home (or normal place of office). The rates are;

Absence of <u>more than</u> 5 hours and less than 10	£4.25
Absence of <u>more than</u> 10 hours	£9.30

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

Day subsistence allowances will not be paid concurrently with night subsistence allowances. However, a member who necessarily stays overnight for the purposes of a hearing may attract a day subsistence when he is absent from home for ore than 5 hours or more than 10 hours after a complete period of 24 hours attracting night subsistence allowance has expired.

The sole purpose of subsistence allowances is the reimbursement of extra expenditure necessarily incurred and they are in no sense a payment for services. The rates shown for both night and day subsistence, together with rates for travel expenses, are taken from the pates payable to the most senior officers within the Civil Service.

MISCELLANEOUS EXPENSES

7. Postage and telephone calls etc necessarily dispensed in respect of the determination of the appeal may be claimed. Where it is necessary for papers to be dispatched, normal postage (and not courier) service should be used.

VAT

8. VAT may be claimed by those members registered for the purposes of VAT. In these cases the VAT registration number should be shown.