

# BRITISH TRANSPORT POLICE AUTHORITY

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**Report to:** Professional Standards Committee

**Date:** 26<sup>th</sup> January 2009

**Subject:** Police Appeal Tribunals and Non COG Appeals Policy

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**For:** Information and Approval

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## 1. PURPOSE OF PAPER

This paper compares the Police Appeals Tribunal Rules 1999 with the 2008 version that came into effect on 1<sup>st</sup> December 2008. The paper explains the police appeals tribunals process and the role of the Authority in it. The updated Non-COG appeals policy, in light of the Police Appeals Tribunal Rules 2008, is also attached for approval.

## 2. BACKGROUND

Police officers are not covered by employment law as they are not employees in the usual sense but are Officers of the Crown; as such their employment terms and conditions are laid down by the government through a regulatory framework. However, the British Transport Police (BTP) sits outside of this framework, as it is sponsored by the Department for Transport and not the Home Office. Therefore, to ensure that BTP is aligned with Home Office forces, the Authority has mirrored the Home Office regulations for BTP.

Due to the regulatory style police officers have a separate appeal body, the Police Appeals Tribunal, which has its own process laid down in statute. Police officers may only request an Employment Tribunal if their case involves a claim of discrimination.

Following the recent Taylor Reforms, the Police Appeals Tribunals Rules (1999) which govern this process have been redrafted. The updated 2008 Rules tighten the timeframes to speed up the process and bring in various other changes, the most significant of these being a 'gatekeeper role' for the Chair. The Chief Constable's Review has also been abolished.

Under the new Conduct and Performance Regulations police officers can go to a police appeal tribunal for any disciplinary outcome of a gross misconduct hearing, special case hearing or third stage meeting.

The Police Appeals Tribunals Rules (2008) only apply to those cases that have been dealt with under the BTP (Conduct) Regulations 2008 and BTP (Performance)

Regulations 2008. Any cases dealt with under the previous regulations will still be subject to the Police Appeals Tribunals Rules (1999).

### 3. THE AUTHORITY'S ROLE

The Authority administers the process for police appeal tribunals liaising with the respondent and appellant and servicing the panel. Also, for appeals at federated and superintendent ranks an Authority Member is required to sit on the panel.

### 4. THE PROCESS (POLICE APPEALS TRIBUNALS RULES (2008))

On notice of disciplinary outcome the Professional Standards Department inform officers that they have the right to appeal to a police appeals tribunal. There is no longer a Chief Constable's review. The officer now has, under the 2008 Rules, 10 working days to send in their notice of appeal should they wish to do so. The grounds on which an appeal can be made have now been clearly articulated and will need to be met for an appeal to go ahead.

On receipt of the notice the Authority appoints a Chairman, from a list maintained by the Home Office. The Force will then release the transcripts of the original hearing, if they are requested, and the appellant then submits their grounds of appeal and supporting documentation. The Force will then respond to the grounds of appeal and submit all the appropriate paperwork that was available to the original hearing.

Once all the paperwork has been received, in their 'gatekeeper role', the Chairman will review it to determine whether the tribunal will go ahead. Should the Chairman consider there is no real prospect of success for the appeal, and there is no other compelling reason for the appeal to proceed, they will inform the parties and give them 10 working days to submit any written representations, which will then be reviewed before a final decision is reached.

Should the appeal be allowed to continue a full panel will be appointed and a hearing will take place.

### 5. THE PANEL

The panel differs for those of ACPO ranks from that for the federated and superintendent ranks. The ACPO rank panel consists of:

- A person chosen from a list of persons who have a seven year general qualification within the meaning of section 71 of the [1990 c. 41.] Courts and Legal Services Act 1990 and have been nominated by the Lord Chancellor.
- A member of a police authority, other than the relevant police authority.
- A person who:
  - Is (or has within the previous five years been) an Inspector of Constabulary, or
  - has within the previous five years been (and is no longer) the Commissioner of Police of the Metropolis.

The panel for superintendents and federated ranks (the more common of the two) consists of:

- A person chosen from a list of persons who have a seven year general qualification within the meaning of section 71 of the [1990 c. 41.] Courts and Legal Services Act 1990 and have been nominated by the Lord Chancellor.

- A member of the authority or, where the authority is the Secretary of State, a person nominated by him/her.
- A person chosen from a list maintained by the Secretary of State of persons who are (or have within the last five years been) chief officers of police, other than a person who is (or has at any time been) the chief officer of police of the force maintained by the relevant police authority.
- A retired officer of appropriate rank.

The Authority uses the list that is maintained by the Home Office for these purposes.

## 6. THE TIME AND COST OF PATs

Appeals under the 1999 rules take on average 6 months to 1 year from receipt of the notice to determination. The introduction of the 2008 rules should mean that this process is speeded up considerably with appeals being completed within 6 months.

Where an appeal is allowed, or is not allowed but deemed to be soundly based and not frivolous or vexatious, the Tribunal has the power to determine that all or any part of the appellant's costs should be met by the police authority. The costs in these cases can vary considerably depending on whether the appellant was legally represented.

The Authority has adopted the Home Office guidance for fees and expenses for sitting on tribunals. The majority of appeals last between half and a full day with reading time and travel and subsistence expenses the Authority on average pays approximately £450 for the second, third and fourth panel members with the Chairman claiming a higher rate, usually around £800.

## 7. THE CURRENT SITUATION

The number of police appeals tribunals that the Authority has been receiving has increased markedly in the past two years. The figures from 2004 to 2008 in the table below demonstrate this:

Year	Number of Appeals
2004	1
2005	1
2006	1
2007	3
2008	4

Two of the appeals for which notice was received in 2008 are currently open; these are being dealt with under the 1999 Rules. The hearing of one is anticipated to take place in March as the final paperwork has recently been received and a date is now being finalised. The other live appeal is relatively new and the grounds of appeal are awaited before this can be progressed further.

The appeals that have taken place to date have largely upheld the decision of the original misconduct panel. However, the first appeal that took place under the BTPA was successful and a more recent appeal resulted in the sanction being reduced from dismissal to requirement to resign. There was also one case in which

an employment tribunal later overturned the decision of the police appeal tribunal to dismiss the case, at significant cost to the Force. All these appeals have taken place under the 1999 Rules.

## 8. A COMPARISON OF THE 1999 AND 2008 POLICE APPEALS TRIBUNALS RULES

	<b>1999 Rules</b>	<b>2008 Rules</b>
Circumstances in which an officer may appeal	These are not clearly defined in the Rules	Sections 4&5 clearly dictate the circumstances in which an officer can make an appeal
Grounds on which an officer may appeal	These are not defined in the Rules	Section 4, paragraph 4 clearly dictates the grounds on which an officer may appeal
Timescales	These range from 21 to 28 days at the various stages	These range from 10 to 20 working days at the various stages
Procedure on notice		Additionally, a witness list should be submitted where the respondent/appellant is permitted witness evidence, and also a statement to confirm if they are happy for the appeal to be determined without a hearing
Extension of time limits	This was at the permission of the police authority with an appeal to the Chair	This is submitted to the police authority but copied to the other party for its consent, should this not be given the appeal is to the Chair
Review of Appeal	No review	Paper review by the Chair once all received and the appeal may be dismissed at this point if the Chair does not see a reasonable chance of success
Power to request disclosure of documents		Parties can now request to the Chair the disclosure of a document from the other party which is relevant to the appeal
Procedure at the hearing	Respondent to give evidence first	Appellant to give evidence first
Verbatim record	To be kept for 7 years	To be kept for 2 years
Attendance at hearing	Complainants could not attend sanction only appeals. Complainants were able to question the appellant where the appellant gave evidence	Complainants can attend finding and sanction hearings but the right to ask questions is no longer included. The IPCC may attend a specified appeal, where the case was supervised, managed or independently investigated by IPCC. The IPCC may also attend as an observer
Disposals available to PAT	Uphold or decrease sanction	Uphold, increase or decrease sanction

**9. NON-COG APPEALS POLICY**

The Non COG Appeals policy has been updated to take cognisance of the Police Appeals Tribunals Rules (2008) and is attached at Appendix A. The Police Appeals Tribunals Rules (2008) are attached at Appendix B for reference.

**10. RECOMMENDATIONS**

The Committee notes this report.

The Committee approves the updated Non COG Appeals Policy.