

DATED 21st September 2007

AN AGREEMENT

Between

PD TEESPORT LIMITED (1)

CLEVELAND POLICE AUTHORITY (2)

THE CHIEF CONSTABLE OF CLEVELAND POLICE (3)

And

THE INDEPENDENT POLICE COMPLAINTS COMMISSION (4)

AN AGREEMENT made the 21st day of September 2007

BETWEEN

PD TEESPORT LIMITED (Company number 02636007) (1)

CLEVELAND POLICE AUTHORITY (2)

THE CHIEF CONSTABLE OF CLEVELAND POLICE (3)

and

THE INDEPENDENT POLICE COMPLAINTS COMMISSION (4)

WHEREAS

- (1) By virtue of the Tees and Hartlepool Port Authority Act 1966 PD Teesport Limited maintains a police force known as the Tees and Hartlepool Harbour Police.
- (2) It is the intention of the Parties that any matter referred to in paragraph (3) of this preamble that is recorded on or after the date on which this agreement comes into effect in connection with the conduct of officers of the Tees and Hartlepool Harbour Police and other persons employed for the purposes of the Tees and Hartlepool Harbour Police and any resulting investigation or other procedure in relation thereto shall be dealt with in accordance with Part II of, and Schedule 3 to, the Police Reform Act 2002¹ and the regulations and statutory guidance made thereunder and that any disciplinary charges and appeals in relation thereto shall be dealt with in accordance with the provisions of this agreement.
- (3) The matters referred to in paragraph (2) of this preamble are:
 - (i) any complaint made about the conduct of an officer of the Tees and Hartlepool Harbour Police;
 - (ii) any conduct matter coming to the attention of the appropriate authority which is not and has not been the subject of a complaint but in relation to which there is an indication that such a person may have committed a criminal offence or behaved in a way that would justify the bringing of disciplinary proceedings, whether or not that indication arises as a consequence of a civil action brought against PD Teesport Limited or otherwise; and

¹ c.30

(iii) any death or serious injury (as defined in this agreement).

IN PURSUANCE of section 26 of the Police Reform Act 2002 and with the consent of the Secretary of State given under section 26(4) of that Act, the Parties agree as follows:

Citation, commencement and interpretation

1(1) This agreement may be cited as the PD Teesport Limited and the Independent Police Complaints Commission Agreement 2007 and shall come into effect on 21 September 2007

(2) In this agreement:

‘the 1996 Act’ means the Police Act 1996 (as amended from time to time);

‘the 2002 Act’ means the Police Reform Act 2002 (as amended from time to time);

‘Code of Conduct’ means the Code of Conduct set out in Schedule 1 of the Police (Conduct) Regulations 2004² (or any code of conduct or code of professional standards that may replace it);

‘complaint’ shall be construed in accordance with sections 12 and 29 of the 2002 Act;

‘conduct matter’ shall be construed in accordance with sections 12 and 29 of the 2002 Act;

‘death or serious injury’ shall be construed in accordance with 12(2A), (2B), (2C) and (2D) of the 2002 Act (as amended by the Serious Organised Crime and Police Act 2005) but as if the expression ‘an officer’ (as defined in this agreement) were substituted for ‘a person serving with the police’

‘the appropriate authority’, where it appears in the 2002 Act or in the complaints and misconduct regulations, in relation to a senior officer or in relation to any complaint, matter or investigation relating to the conduct of such a person, means the Authority and in relation to any other officer means the chief officer;

‘the Commission’ means the Independent Police Complaints Commission;

‘the chief officer’ means the Chief Officer of the Tees and Hartlepool Harbour Police;

‘disciplinary procedure’ means the disciplinary procedure set out in the Schedule with such amendments as may be agreed between the Parties from time to time;

‘officers’ means constables (including any Chief Constable Deputy Chief Constable and Assistant Chief Constable) and special constables of the Tees and Hartlepool Harbour Police;

‘the Parties’ mean the Commission, the Authority, the Cleveland Police Authority and the Chief Constable of Cleveland Police;

‘the Authority’ means PD Teesport Limited;

² S.I. 2004/645

'senior officer' means an officer holding a rank above that of chief superintendent;
'the complaints and misconduct regulations' means the Police (Complaints and Misconduct) Regulations 2004³ (as amended from time to time).

Application of the Police Reform Act 2002, the Police Act 1996 and Regulations

- 2(1) A complaint about an officer shall be deemed to be a complaint about a person serving with the police for the purposes of Part II of the 2002 Act and shall be treated as if the Authority were a police authority and the chief officer were a chief officer for the purposes of Part II of the 2002 Act and Part II of the 2002 Act applied to it.
 - (2) A conduct matter in relation to an officer shall be deemed to be a conduct matter in relation to a person serving with the police for the purposes of Part II of the 2002 Act and shall be treated as if the Authority were a police authority and the chief officer were a chief officer for the purposes of Part II of the 2002 Act and Part II of the 2002 Act applied to that matter.
 - (3) A death or serious injury shall be deemed to be a death or serious injury for the purposes of Part II of the 2002 Act and shall be treated as if the Authority were a police authority and the chief officer were a chief officer for the purposes of Part II of the 2002 Act and Part II of the 2002 Act applied to it.
- 3(1) Section 15(3) of the 2002 Act shall be modified in its application to the Authority and to the Tees and Hartlepool Harbour Police so that they shall not be required to comply with a request by the chief officer of any other police force or a request by any other police authority to provide a member of the Tees and Hartlepool Harbour Police for appointment under paragraphs 16, 17 or 18 of Schedule 3 to the 2002 Act to be the investigation officer in relation to a matter to be investigated in the requesting force or authority.
 - (2) No statement made by a person for the purpose of local resolution of a complaint shall be admissible in any subsequent criminal, civil or disciplinary proceedings, provided always that a statement may be admissible if it consists of or includes an admission relating to a matter which does not fall to be resolved locally.
 - (3) The complaints and misconduct regulations shall be construed in accordance with Article 1(2) of this agreement and shall be given effect by the parties as if Part II of the 2002 Act applied to officers.

Responsibilities of the Parties

³ S.I. 2004/643

4. Subject to Article 3(1) of this Agreement, the Authority will ensure that the appropriate authority undertakes the duties and obligations imposed on and exercises the rights and powers granted to the appropriate authority under Part II of the 2002 Act and the regulations and statutory guidance made thereunder, as if the appropriate authority was the appropriate authority to whom the 2002 Act applied and will ensure that the Authority and the chief officer undertake all other duties and obligations imposed on and exercise all other rights and powers granted to the police authority and chief officer under Part II of the 2002 Act and the regulations and statutory guidance made thereunder as if the Authority and the chief officer were respectively a police authority and a chief officer to whom the 2002 Act applied.
5. The Authority may agree with the Cleveland Police Authority that the Cleveland Police Authority or the Chief Constable of Cleveland Police (as the case may be) will on behalf of the Authority or the chief officer carry out some or all of the duties and obligations imposed on, or exercise some or all of the rights granted to, the appropriate authority, the police authority or the chief officer under Part II of the 2002 Act and any action on behalf of the Authority or the chief officer pursuant to such agreement shall for the purposes of this agreement be treated as action by the Authority or the chief officer.
6. Subject to Article 3(1) of this Agreement, the Commission will exercise the functions, duties and rights either imposed on it, or granted to it, under the 2002 Act as if the Tees and Hartlepool Harbour Police was a police force to whom the 2002 Act applies.
7. In discharging their obligations and duties under Part II of the 2002 Act the Authority shall ensure that the appropriate authority and (where acting on behalf of the Authority or chief officer) Cleveland Police Authority and the Chief Constable of Cleveland Police shall have regard to any guidance issued by either the Commission or the Secretary of State under either Act.

Disciplinary Proceedings

8. The Code of Conduct and the disciplinary procedure shall apply with respect to the conduct of officers and the maintenance of discipline, provided that the Authority shall also ensure that the following requirements are met in respect of disciplinary proceedings:
 - (1) Where the Authority decides to investigate a report, complaint or allegation about the conduct of an officer the person investigating shall as soon as is practicable (without prejudicing his own or any other investigation of the matter) cause the officer concerned to be given written notice:

- (a) that there is to be an investigation in to the case;
 - (b) of the nature of the report, complaint or allegation;
 - (c) informing him that he is not obliged to say anything concerning the matter, but that it may harm his defence if he does not mention when questioned or when providing a written response something which he later relies on in any subsequent disciplinary proceedings;
 - (d) informing him that he may, if he so desires, make a written or oral statement concerning the matter to the investigating officer or to the appropriate authority and that if he makes such a statement it may be used in any subsequent disciplinary proceedings;
 - (e) informing him that he has the right to seek advice from any staff association or other body; and
 - (f) informing him that he has the right to be accompanied by a fellow employee, who shall not be an interested party, or trade union representative to any meeting, interview or hearing.
- (2) In any case where the Commission has given a direction under the provisions of paragraph 27(4)(a) of Schedule 3 to the 2002 Act, the Commission may itself present the case at any disciplinary hearing.

(3) If the case concerns:

- (a) a senior officer; or
- (b) an officer other than a senior officer and that officer has given notice that he wishes to be legally represented,

the Commission may instruct an independent solicitor or counsel to present the case.

(4) Where the Commission decides to present the case or to instruct an independent solicitor or counsel under paragraph (3):

(a) it shall notify:

- (i) the appropriate authority or person investigating as the case may be;
- (ii) the complainant; and
- (iii) any interested person under section 21(5) of the 2002 Act,

of its decision and the reasons for that decision;

(b) the appropriate authority or person investigating shall notify the officer concerned of the Commission's participation; and

- (c) neither the appropriate authority or person investigating, nor any solicitor or counsel instructed by either of them, shall present the case.
- (5) Any member of the Commission shall be entitled to attend the disciplinary hearing in the case of a complaint or conduct matter or which arises from a complaint or conduct matter to which the provisions set out in paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act apply.
- (6) Where a case arises from a complaint or conduct matter which has been investigated under the provisions set out in paragraph 19 of Schedule 3 to the 2002 Act and the Commission considers that because of its gravity or other exceptional circumstances it would be in the public interest to do so, the Commission may, having consulted the appropriate authority, the officer concerned, the complainant and any witnesses, direct that the whole or part of the disciplinary hearing will be held in public.
- (7) A direction under subclause (6), together with the reasons for that direction, shall be notified within five days to the persons consulted under that subclause.

General

9. The arrangements set out in this agreement have been approved by the Secretary of State and shall apply to all complaints made or conduct matters recorded after this agreement comes into effect.

SCHEDULE

Disciplinary Procedure

DISCIPLINARY PROCEDURE **(Personal Contract)**

Preamble

1. The generality of this procedure applies to all employees of the Company.
2. The procedure is designed to clarify the rights and responsibilities of management, and staff whenever an employee is charged with misconduct, neglect of duty or other breach of discipline. Its aim is also to combine consistency in the procedure with justice for the individual.

Principles

3. In the operation of the Procedure account is taken of the ACAS guidelines in respect of disciplinary procedures.

4. Heads of Departments will designate a member of their Management Team to investigate all cases of alleged misconduct and, as appropriate, to conduct disciplinary hearings. Such member of the Management Team is fully empowered to act within the provisions of this Disciplinary Procedure.
5. The procedure is designed to work as quickly as possible consistent with the thorough investigation of the circumstances of each case, so the following principles have been included in its formation :-
 - (a) That in the case of minor offences, each individual whose conduct has given cause for dissatisfaction is given the opportunity to improve.
 - (b) The employee shall be given reasonable time to prepare and an opportunity to state his case.
 - (c) That at every formal stage of the procedure, the employee may be represented by a colleague and have the right of appeal to their Head of Department.
 - (d) That the employee and any representative will always be informed in writing of any disciplinary action decided upon, and the reasons for it. They will also be informed if it is decided to take no further action.
 - (e) That where a decision is taken to dismiss an employee, the employee has a right of appeal to a Company Director (or other designated Senior Manager), and, if the employee wishes, the right to be represented by a colleague.
6. The procedure recognises a distinction between relatively minor offences and gross misconduct which may of itself involve a fundamental breach of the individual's contract of employment. The procedure is designed to deal with offences in both of these categories.
7. Any of the following measures may be taken by the Company at any stage of this procedure, depending on the gravity of the offence :
 - (a) Informal Warning
 - (b) First Written Warning
 - (c) Final Written Warning
 - (d) Suspension from Company Sick Pay Arrangements
 - (e) Unpaid Suspension of up to 5 Days (or equivalent shift-work hours)
 - (f) Disciplinary Transfer/Demotion
 - (g) Dismissal with or without Notice
8. The Company reserves the right to impose any or any combination of these penalties for a first offence depending upon the seriousness of the offence. It should be noted that certain acts or omissions constitute gross misconduct for which the penalty is summary dismissal without notice.

Offences other than Serious or Gross Misconduct

9. These offences include absenteeism, lateness, sub-standard work and minor breaches of safety rules. This list is not exhaustive.

Stage 1 - INFORMAL WARNING

10. The informal warning or warnings are perhaps better thought of as advice rather than disciplinary action, and therefore will not be recorded on the individual's record. However, the manager will inform the individual in writing of the date and nature of the offence and make reference to the possibility of the implementation of Stage 2 of the procedure if the misconduct persists or is repeated.

Formal Stages

Stage 2 - FIRST WRITTEN WARNING

11. A designated Departmental Manager will listen to and discuss the matter with the employee and, if requested by the employee, a colleague, assessing any mitigating circumstances, before issuing any **First Written Warning** which will :
 - (a) Contain a clear statement of the complaint against the employee.
 - (b) Be clearly designated as a **First Written Warning**, and that in the event of continued unsatisfactory conduct or a repetition of the events, it will lead to a **Final Written Warning**.
 - (c) Detail any other disciplinary action decided upon as a result of the nature of the offence, e.g. suspension without pay for a maximum of 5 working days or equivalent shift-work hours, or disciplinary transfer, or demotion.
 - (d) State that after six months satisfactory conduct such offences will not be taken into account in the future, except that all warnings for poor timekeeping or absenteeism will last for 12 months.
12. A copy of the **First Written Warning** will be given to any representative involved.
13. Within seven days of the issue of the **First Written Warning** the employee shall have the right to appeal to the Head of Department and if so required, the right to be represented by a colleague. The decision of the Head of Department will be final.

Stage 3 - FINAL WRITTEN WARNING

14. The repetition of minor offences within a six month or 12 month period as the case may be, will be dealt with by a **Final Written Warning**, issued by the designated Departmental Manager. More serious first offences may also warrant a **Final Written Warning**.
15. A designated Departmental Manager and a member of the Personnel Department will listen to and discuss the matter with the employee, and representative, assessing any mitigating circumstances before issuing any **Final Written Warning** which will:
 - (a) Contain a clear statement of the complaint against the employee and detail the improvement in conduct which is necessary.

- (b) Be clearly designated as a **Final Written Warning** and that any recurrence of the offence or continued unsatisfactory conduct will lead to the employee's dismissal.
 - (c) Detail any other disciplinary action decided upon as a result of the nature of the offence, e.g. suspension without pay for a maximum of 5 working days or equivalent shift-work hours, or disciplinary transfer, or demotion.
 - (d) State that after 12 months satisfactory conduct such offences will not be taken into account in the future.
16. A copy of the **Final Written Warning** will be given to any representative involved.
17. Within seven days of the issue of the **Final Written Warning** the employee shall have the right to appeal to the Head of Department and if so required, the right to be represented by a colleague. The decision of the Head of Department will be final.

Stage 4 - SERIOUS MISCONDUCT

18. It will be regarded as serious misconduct if, after Stage 3 of this procedure, there is no improvement in conduct or a further offence is committed at any time within the next 12 months.
19. An investigation of the circumstances of all cases of serious misconduct will be conducted by the designated Departmental Manager and a member of the Personnel Department.
20. The procedure for Gross Misconduct will be applied to cases of serious misconduct.

Stage 5 - GROSS MISCONDUCT

21. Gross misconduct may be taken to include theft, computer-related fraud, wilful damage, sleeping on the job, drunkenness, assault, fighting, indecent conduct, major breach of safety, absenting from place of work, wilful refusal to carry out reasonable instructions, discrimination against or harassment of fellow employees, breach of confidentiality, etc. This list is not exhaustive, nor does it imply that the Company will not take action in accordance with its rights and duties under criminal law.
22. It may be necessary for a manager to place an employee on precautionary suspension with pay if a gross breach of conduct occurs when the Head of Department is not available and the continued presence of the individual in the Company might, in the opinion of the manager, prove detrimental to discipline. This action will only be taken under exceptional circumstances.
23. An investigation of the circumstances of all cases of gross or serious misconduct will be conducted by the designated Departmental Manager and a member of the Personnel Department and it may be necessary to suspend an employee with pay whilst enquiries are pursued.

24. No disciplinary penalty shall be imposed until a Disciplinary Hearing has been conducted and the individual has been interviewed in the presence of a colleague, by the designated Departmental Manager and the Personnel Department representative.
25. The penalty may take the form of dismissal, and/or suspension for a maximum of five working days or equivalent shift-work hours, or disciplinary transfer or demotion. If disciplinary action other than dismissal is taken, the individual will be informed in writing that any repetition of the offence or any other action or further gross or serious misconduct will result in dismissal.

Such warnings and disciplinary action imposed will be taken into account at any time in the future.

26. If it is decided to take disciplinary action other than dismissal, the results will be communicated in writing to the individual and any representative involved, by the designated Departmental Manager, and the individual shall, within seven days, have the right of appeal to their Head of Department and the right to be represented by a colleague. The decision of the Head of Department will be final.

Dismissal

27. If it is decided to dismiss, this will be communicated in writing to the individual and any representative involved, by the designated Departmental Manager, and the individual shall, within seven days have the right of appeal to a Company Director (or other Senior Manager designated by the Company) and the right to attend and make representations to the hearing and to be represented by a colleague.
28. An Appeal Hearing will be arranged as quickly as possible, and the Personnel Manager will normally assist the Company Director at the Hearing.
29. The results of the Appeal Hearing will be final and will be communicated in writing to the individual and their representative.

Criminal Offence outside Employment

30. Whilst disciplinary action will normally concern matters connected with employment, there may be occasions when incidents occurring outside of working hours or away from Company premises will attract disciplinary action.
31. Such cases may involve criminal offences, custody or prison sentences and will be dealt with on merit according to the circumstances, the main consideration being whether the employee concerned is a fit and proper person to continue to be employed by the Company.

Signed by
On behalf of PD Teesport Limited

Signed by
On behalf of the Independent Police Complaints Commission

Signed by
On behalf of the Cleveland Police Authority

Signed by
On behalf of the Chief Constable of Cleveland Police