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# **Pension Forfeiture Policy**

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## 1. Introduction

- 1.1 This document sets out the policy and procedure to be followed for the forfeiture of police officer and police staff (including PCSO) pensions and has been drafted in accordance with guidance set out in the Home Office Circular 18/2009: Forfeiture of Police Pensions (<https://www.gov.uk/government/publications/forfeiture-of-police-pensions>).
- 1.2 This policy will apply to all current and former West Mercia police officers and police staff. The procedure for considering and implementing forfeiture of pension rights for police staff will follow the same procedure as that set out for police officers.
- 1.3 Regulation K5 of the Police Pensions Regulations, 1987 (as amended by the Police Pensions (Amendment) Regulations, 2011), allows the Police and Crime Commissioner (PCC) to determine forfeiture, and extent of forfeiture of police officer pensions in specific cases (see Section 2).
- 1.4 The Regulations (section 55) also detail circumstances where the PCC may apply for forfeiture of a police officer's pension from:
  - A regular police officer or former regular police officer;
  - A survivor of such a police officer; and
  - A pension credit member.
- 1.5 The relevant legislation for police staff is set out under Section 72 of the Local Government Pension Scheme (Administration) Regulations, 2008.
- 1.6 The term 'pensioner' is used throughout the policy and refers to the police officer or member of staff subject to the pension forfeiture proceedings who is in receipt of, or eligible to receive a relevant pension (see Section 8).
- 1.7 The PCC retains the authority to vary this procedure on a case by case basis at their discretion.

## 2 Cases for Forfeiture

- 2.1 Forfeiture cannot be applied for in cases where there is no criminal conviction.
- 2.2 The PCC may determine forfeiture, and the extent of forfeiture where a pensioner (whether they are eligible for an immediate or deferred pension) has been convicted of either:

### Case 1

An offence of treason, or one or more offences under the Official Secrets Acts 1911 – 1939, where the sentence of imprisonment imposed (or aggregate sentence if more than one offence) is at least ten years<sup>1</sup>.

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<sup>1</sup> Para. 2 and 3, Regulation K5 of the Police Pensions Regulations, 1987 (as amended by the Police Pensions (Amendment) Regulations, 2011).

## **Case 2**

A criminal offence committed in connection with a person's service as a member of a police force and the Home Secretary has certified that this was<sup>2</sup>:-

- Gravely injurious to the interests of the State; or
- Liable to lead to serious loss of confidence in public service.

2.3 The pensioner need not have been a serving officer / member of staff at the time of the offence in order to meet the requirement that it must be connected with his / her service e.g. an offence committed after the pensioner has retired<sup>3</sup>.

2.4 The following procedure is directed primarily at Case 2 convictions. Case 1 convictions will follow a similar procedure, but are relatively rare and do not require a Home Secretary's certificate. Consequently, there is no requirement to determine whether the conviction was gravely injurious to the state or liable to lead to the serious loss of confidence in the public service and the PCC can proceed directly to consider forfeiture.

2.5 For Case 1 convictions, the PCC may still require the Chief Constable, or their representative, to prepare a position report including the information set out in Sections 4 and 5.

## **3 Procedure**

3.1 There are four stages to the procedure<sup>4</sup>:-

- Following the conviction of the pensioner, the Chief Constable, or their representative, shall notify the PCC that there may be a case for pension forfeiture and provide the PCC with a position report.
- The PCC shall decide whether to proceed with the forfeiture process by making an application to the Home Secretary for the issue of a certificate of forfeiture.
- Following receipt of the PCC's application, the Home Secretary will consider whether to issue a certificate of forfeiture.
- If a certificate is issued, the PCC shall consider whether to forfeit the pension and if so, to what extent it should be forfeit.

3.2 The timeframes for completion of each stage of the procedure, with the exception of actions undertaken by the Home Secretary, will be determined by the PCC at the start of the process. All parties will be expected to adhere to the deadlines set by the PCC.

## **4 The Chief Constable's Report**

4.1 As soon as practical following the conviction of the pensioner of a criminal offence as set out in paragraph 2.2, the Chief Constable, or their representative, shall provide the PCC with a position report.

4.2 The report should contain a view, with reasons, on whether or not forfeiture should be considered, based on the requirements in Case 2, namely:

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<sup>2</sup> Para. 4, Regulation K5 of the Police Pensions Regulations, 1987 (as amended by the Police Pensions (Amendment) Regulations, 2011).

<sup>3</sup> Para 2. Annex B, Home Office Circular 18/2009.

<sup>4</sup> Annex B, Home Office Circular 18/2009.

- Whether the criminal offence has been committed in connection with a person's service as a member of a police force; and
- Whether it was gravely injurious to the interests of the state or liable to lead to serious loss of confidence in the public service.

- 4.3 The report should contain as much relevant information as possible, to enable the PCC to consider whether to apply to the Home Secretary for a certificate, to allow the Home Secretary to consider whether to grant a certificate and in order for the PCC to subsequently determine whether a pension should be forfeit, and to what extent.
- 4.4 Further details as to the information required within the report in respect of the pensioner and the circumstances of the offence(s) is outlined in paragraphs 5.6 and 5.7.
- 4.5 The report should also include relevant financial information including pension details and four examples illustrating the effects of different percentage reductions in pensions.
- 4.6 The Force should give consideration to the attendance at the sentencing court of a sufficiently senior police officer or member of staff to record any information that may be relevant to the report.
- 4.7 The PCC, or their representative, will notify the pensioner that consideration is being given to forfeiture and offer the opportunity to make written representations. The pensioner's representations should include all matters that the pensioner would wish to put before the Home Secretary should an application be submitted.
- 4.8 The Chief Constable, or their representative, should be able to provide a further written response based on the information supplied by the pensioner.

## **5 Procedure on receipt of the Chief Constable's Report**

- 5.1 As soon as practical, on receipt of the Chief Constable's report, the PCC's Chief Executive will arrange for the PCC to consider the case for pension forfeiture.
- 5.2 If the pensioner has been granted leave to appeal their conviction, the PCC should await the outcome of the appeal before proceeding. This provision does not apply where leave to appeal is initially refused and the pensioner seeks leave to appeal to a higher court. In those circumstances the PCC should proceed until any leave to appeal is granted.
- 5.3 At this stage, the PCC must decide only whether to apply to the Home Secretary for a certificate.
- 5.4 Forfeiture is an additional penalty to the penalty of a court and pension rights should not be forfeit except in serious circumstances. Forfeiture will not be appropriate in every case, but it should always be considered where the offence was serious and there is, or might be public concern about the pensioner's abuse of their position of trust.
- 5.5 The PCC should specifically consider the requirements in Case 2 (see paragraph 2.2 and 4.2). The PCC should provide a statement in respect of these matters in any application for a certificate (see paragraph 5.6).
- 5.6 The PCC's application to the Home Secretary should include the following information<sup>5</sup>:

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<sup>5</sup> Annex C, Home Office Circular 18/2009.

- A statement that , in the view of the PCC, the offence was committed in connection with service as a member of the police force and was gravely injurious to the interest of the state or liable to lead to serious loss of confidence in public service;
- Full details of the offence(s) and the perceived connection with the police service;
- Details of the circumstances surrounding the offence and investigation and in particular, whether the offence involved;
  - Organised conspiracy amongst a number of officers or staff,
  - Active support for criminals,
  - Perversion of administration of justice,
  - Betrayal of an important position of trust for personal gain,
  - Corruption or attempted corruption of junior officers or staff.
- Details of punishment imposed by the Court and the Judge's sentencing remarks if known;
- Details of publicity and media coverage;
- Brief details of the pensioner's service, in particular, length of service and seniority; and
- Financial implications, including pension details, widower's and / or children's allowances.

5.7 Other relevant information for the application may include the effect of the offence on victims and witnesses and information relating to the pensioner's personal circumstances.

5.8 It is expected that the information required under paragraphs 5.6 and 5.7 will be included within the Chief Constable's report.

5.9 Applications are liable to disclosure and care should be taken to provide only relevant information.

5.10 Once the decision has been taken by the PCC to apply for a certificate from the Home Secretary, the pensioner should be notified of the application. Notification should take place as soon as practical.

5.11 Applications should be sent to:-

The Policing Powers and Protection Unit,  
4<sup>th</sup> Floor  
Peel Building  
2 Marsham Street  
London  
SW1P 4DP

Or via email [Pension.forfeiture@homeoffice.gsi.gov.uk](mailto:Pension.forfeiture@homeoffice.gsi.gov.uk)

## **6 Consideration of Application by Home Secretary**

6.1 Once the application has been received, it is for the Home Secretary to consider whether the pensioner's offence was either gravely injurious to the interests of the State or liable to lead to serious loss of confidence in the public service.

- 6.2 In deciding whether to issue a certificate, the Home Secretary attaches greater weight to the words “serious loss of confidence in the public service” than the harm inevitably caused by any police officer / member of staff (or former police officer / member of staff) who commits a crime.
- 6.3 The Home Secretary will take into account the information as set out in paragraphs 5.6 and 5.7.
- 6.4 The PCC and the pensioner will be notified of the Home Secretary’s decision and the reasons for it. A copy of the certificate, if issued, will also be forwarded.
- 6.5 The issue of certificates is solely at the discretion of the Home Secretary and if a certificate is refused, forfeiture cannot proceed. The Home Secretary’s decision can be challenged by Judicial Review, but only if it is unlawful or manifestly unreasonable or irrational.

## **7 Consideration of Forfeiture by the PCC**

- 7.1 Where the Home Secretary determines that it is appropriate to issue a certificate of forfeiture, it is for the PCC to determine whether or not the pension should be forfeited and the extent of forfeiture. This is in terms of both the proportion of pension to be forfeited and the period over which that forfeiture is to take place (see Section 8).
- 7.2 The PCC must ensure that the pensioner has been provided with a copy of the following documents prior to making any decision regarding forfeiture:-
- A copy of the certificate;
  - The Home Secretary’s reasons for granting the certificate; and
  - A copy of the Chief Constable’s report and any documents / materials relied on by the Home Secretary and the PCC. Legal advice should be sought if it is intended to withhold sensitive information from the pensioner.
- 7.3 The pensioner will be informed of the procedure below and will be invited to send written representations for the PCC’s consideration within 14 days of the pensioner’s receipt of the certificate. This time period may be extended by the PCC on receipt of written representations from the pensioner.
- 7.4 The Chief Constable, or their representative, will be invited to submit further written representations in response to the information supplied by the pensioner within 14 days of receipt of the pensioner’s representations.
- 7.5 Following receipt of the representations set out in paragraphs 7.3 and 7.4, the PCC may arrange a private meeting with the pensioner and the Chief Constable, or their representative, to hear oral representations based upon the representations in writing. The pensioner may be assisted at the meeting by a friend or legal adviser.
- 7.6 The PCC shall attempt to agree a suitable date with all parties and will consider an adjournment if there are extenuating circumstances preventing the pensioner attending on the set day.
- 7.7 If the pensioner is unable to attend any meeting (or where practical considerations prevent attendance), the following safeguards should apply:-

- The only individuals present at the meeting should be the PCC and his / her representatives, (e.g. the Chief Executive and legal advisors). Police force representatives should not attend when the pensioner is not present on fairness grounds.
- If at any time during the meeting the PCC decides that a point of detail needs to be clarified, proceedings may be adjourned to clarify the detail required.

- 7.8 The PCC may adjourn the meeting if necessary to assist with the consideration of a decision or to consider a final determination.
- 7.9 The PCC shall as soon as practical determine whether a forfeiture is to take place, and if so to what extent (see Section 8). The PCC will make this decision in private with advice from the Chief Executive and legal advisors as appropriate.
- 7.10 The information submitted by all parties at each stage of the process should be considered by the PCC when determining whether the pension shall be forfeited. The guidance set out in Home Office Circular (18/2009) and Section 8 below should be used to determine the extent and duration of any forfeiture.

## **8 Extent and Duration of Forfeiture<sup>6</sup>**

- 8.1 For the purpose of these procedures, pension does not include allowance, a gratuity, a lump sum, or an award by way of repayment of aggregate pension contributions. It means a personal pension, a widow's pension, or a dependent relative's special pension. A commuted lump sum may not be forfeited but if a pension is forfeited before it becomes payable (e.g. an ordinary pension before the age of 50 or a deferred pension before the age of 60), there will be little or no pension left to commute for a lump sum.
- 8.2 The secured portion of a pension can only be forfeited temporarily, that is, until a pensioner reaches state pensionable age. After that, it may only be forfeited if the pensioner is in legal custody.
- 8.3 A pensioner who is dismissed after completing 25 years' service will not be entitled to an ordinary pension if he / she was dismissed for a cause for which the pension could be forfeited. In these circumstances, the pensioner will only become entitled to a deferred pension at the age of 60 and it will be for the PCC to determine whether the deferred pension should be forfeited and to what extent.
- 8.4 If the pension is a deferred one, the PCC may decide (once a certificate has been issued) to keep the question of forfeiture under review. However, delay in making a determination following the issue of a certificate could be challenged in the courts. Whether or not to delay the decision will depend on the individual circumstances of each case.
- 8.5 Paragraph 4 of the Regulations provides that forfeiture may be applied permanently or temporarily. While temporary forfeiture could be considered in certain limited cases, its application is rare and permanent forfeiture is the usual practice.
- 8.6 The courts have ruled that a police officer's pension may be forfeited by no more than 65%, the remainder reflecting the pensioner's own contributions which cannot be forfeited. Likewise, police staff will retain their level of contributions in any forfeiture.
- 8.7 In making his / her decision as to the level of forfeiture, the PCC should consider the following factors:

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<sup>6</sup> Para 7 -12, Annex B, Home Office Circular 18/2009.

- Those listed in paragraphs 5.6 and 5.7 above which reflect the gravity of the pensioner's conduct;
- The pensioner's conduct of defence of the charges;
- Mitigating circumstances;
- Disability in the family;
- Illness at the time of the offence; and
- Assistance or information given to the police by the pensioner during the investigation or following conviction.

8.8 If several officers and staff were involved in the commission of the offence, the PCC might decide to reflect different levels of culpability in the extent of forfeiture for each. For example, officers or staff of a senior rank may be more culpable than junior officers and staff.

8.9 The PCC should also consider the examples of different percentage reductions provided by the Force as set out in paragraph 4.5.

## **9 Procedure following PCC Decision**

9.1 If a forfeiture is to take place, the pensioner shall be informed in writing of the decision, the extent of forfeiture and the reasons for the PCC's decision within 14 days of the decision being made.

9.2 The Chief Executive will inform the Home Office of the final outcome of the case, whether the pension was forfeited and the extent of forfeiture. The decision and rationale for the decision will be published on the PCC and West Mercia Police websites.

9.3 The pensioner has a right of appeal to the Crown Court against the PCC's decision to forfeit their pension and / or the extent of forfeiture<sup>7</sup>. An Appellant should service Notice of Appeal on the PCC and the Crown Court within 14 days of being informed of the decision. The Force solicitor should be informed of receipt of an Appeal Notice for consideration of a response.

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<sup>7</sup> Regulation H5 of the Police Pensions Regulations, 1987 (as amended by the Police Pensions (Amendment) Regulations, 2011).