



Police Officer Pension Forfeiture Policy

Policy / Procedure Title	Police Officer Pension Forfeiture Policy
Responsible officer	Chief Executive and Monitoring Officer

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Disclosable under the Freedom of Information Act 2000	Yes

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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 pensions and has been drafted in accordance with the Home Office Police Pension Forfeiture Guidance and Process Map (2021).
- 1.2 Whilst this document aims to reflect and explain the underlying pension forfeiture legislation, West Mercia Police and the Police and Crime Commissioner (PCC) should seek legal advice on the full effect of the legislation and should not rely solely on the local policy or national guidance.
- 1.3 This policy will apply to all current and former West Mercia police officers.
- 1.4 The legislative basis for police pension forfeiture is found in regulation K5 of the Police Pensions Regulations 1987, regulation 55 of the 2006 Regulations and Chapter 5 of Part 13 to the 2015 Regulations which allows the PCC to determine forfeiture, and extent of forfeiture of police officer pensions in specific cases (see Section 2).
- 1.5 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.
- 1.6 The term 'pensioner' is used throughout the policy and refers to the police officer 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 of offences under the Official Secrets Acts 1911 and 1939 and has been sentenced to a term (or terms) of imprisonment of at least ten years;

Or;

Case 2

A criminal offence committed in connection with a person's service as a member of a police force, which has been certified by the relevant Secretary of State either to have been:

- Gravely injurious to the interests of the State; or

- Liable to lead to serious loss of confidence in the public service.

- 2.3 The relevant Secretary of State for police officers is the Secretary of State for the Home Department who is referred to as the Home Secretary throughout this policy.
- 2.4 The relevant case law states that the pensioner need not have been a serving officer 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.
- 2.5 The following policy 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 (see Section 7).
- 2.6 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 six stages to the procedure¹:-
1. 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 (see Section 4).
 2. The PCC shall assess whether the conviction was in connection with the pensioner's service.
 3. Having made an assessment at Stage 2, the PCC will decide whether to proceed with the forfeiture process by making an application to the Home Secretary for the issue of a certificate of forfeiture.
 4. Any application for pension forfeiture must be sent to the Home Office who will review and process the application before seeking a decision from the Home Secretary.
 5. The Home Secretary will consider whether the requirements in the Police Pension Schemes are met in determining whether to issue a certificate of forfeiture.
 6. If a certificate is issued, the PCC shall decide 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 Office and 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.

¹ HO Police Officer Pension Forfeiture Process Map 2021

- 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:
- 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 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 West Mercia Police 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 and should address whether:
- The conviction was in connection with the pensioner's service as a member of the police force; and
 - An application should be made to the Secretary of State for a certificate of forfeiture..
- 4.8 The pensioner should be provided with copies of the information received by the PCC from the Chief Constable unless there is an overriding public interest in specific papers being withheld; for example where a document is protected from disclosure for reasons of public interest immunity.
- 4.9 The Chief Constable, or their representative, should be able to provide a further written response based on the information supplied by the pensioner, for example, if there is a dispute of fact or an issue which the Chief Constable could clarify.

5 Creating and Submitting an Application to the Home Secretary

- 5.1 As soon as practical, on receipt of the Chief Constable's report and any written submissions received from the Pensioner, 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 will not determine whether the pension should be forfeited. The PCC must decide only whether to apply to the Home Secretary for a certificate. The PCC is not required to give any indication as to any amount or proportion or duration of any forfeiture that they might be considering in order to apply for a certificate from the Home Secretary.
- 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 If the decision is made to apply for a certificate, the PCC's application to the Home Secretary must include the following essential information:
- 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 and the reason or reasons for this view;
 - Full details of the offence(s) and the connection with the police service;
 - The date, or dates, of conviction and the details of the conviction. When the pensioner is convicted of more than one offence, the application should highlight which specific offences were committed in connection with the pensioner's service and ensure that correct dates are provided;
 - 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 the course of public justice,
 - Betrayal of an important position of trust for personal gain,
 - Corruption or attempted corruption of junior officers or staff.
 - Any relevant information on the overall behaviour of the pensioner during trial and investigation, including plea, co-operation etc.;
 - Details of punishment imposed by the Court (e.g. length of sentence) and the Judge's sentencing remarks if known;
 - Details of any misconduct proceedings for the pensioner, the outcome (and the outcome of an appeal if there was one) and if the pensioner has been included on the Barred and Advisory List;
 - Details of publicity and media coverage;
 - Details of which pension scheme(s) the pensioner has accrued benefits in. This can be the 1987, 2006 or 2015 Scheme, or multiples thereof. This is essential, as it impacts which regulations the certificate(s) is issued under;
- 5.7 Additional useful information to include in any application:

- Brief details of the pensioner's service including length of service and their seniority;
- The financial implications of any potential forfeiture, including pension details, on widowers or any dependents such as children or family members.

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 Applications in respect of police officer pensions should be submitted electronically to:- Pension.Forfeiture@homeoffice.gov.uk

5.11 Hard copies of applications will be accepted if necessary and should be sent to a named point of contact via recorded delivery to the address below:

Pension Forfeiture
Police Integrity Unit
Crime Policing and Fire Group
6th Floor Fry Building,
2 Marsham Street
London
SW1P 4DF

5.12 The PCC must notify the pensioner of the application to the Home Secretary as soon as possible. The PCC must provide the pensioner with written reasons for the decision and inform the pensioner that he/she will have an opportunity to make submissions on the question of whether his/her pension should be forfeited or not if the Secretary of State issues a certificate of forfeiture.

5.13 The Chief Constable should be informed of the decision to ensure that the pay and pension administrators are notified of the potential forfeiture.

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 The Home Secretary will take into account the information as set out in paragraphs 5.6 and 5.7.

6.3 The PCC will be notified of the Home Secretary's decision and the reasons for the decision. A copy of the certificate, if issued, will also be forwarded. The PCC must inform the pensioner and the Chief Constable of the outcome as soon as possible (see 7.2) and the pensioner should be invited to make written representations as to whether his/her police pension should be forfeited at all, in whole or in part or on a permanent or temporary basis..

6.4 The issuance of a certificate does not oblige the PCC to proceed with forfeiture. Forfeiture is entirely a matter for the PCC as set out in Section 7.

- 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 informed of the outcome of the application and provided with a copy of the following documents as soon as possible and 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 representative.
- 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 by the Home Office (Police Pension Forfeiture Guidance and Process Map (2021)) and Section 8 below should be used to help determine the extent and duration of any forfeiture.

8 Extent and Duration of Forfeiture

- 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, a decision to delay the determination on forfeiture following the issue of a certificate might, in some circumstances, be prejudicial to a successful appeal and liable to challenge. Whether or not to delay the decision will depend on the individual circumstances of each case. Circumstances in which deferment may be appropriate include where the pensioner has lodged an appeal against conviction.
- 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.
- 8.7 In making his / her decision as to the level of forfeiture, the PCC should consider the following factors:
- 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 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, a senior officer may be considered more culpable than a junior officer.

8.9 The PCC should also consider the examples of different percentage reductions provided by West Mercia Police 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 full reasons for the PCC's decision as soon as possible, and in any case 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.

10 Appeals

10.1 The pensioner has a right of appeal against a decision made by the PCC to forfeit their pension as outlined in the Police Pensions Schemes. As a matter of good practice, the Home Office should be informed within 14 days where an individual appeals any aspect of the forfeiture, and the subsequent outcome of any such appeal within 14 days of the decision being made.

10.2 Regulation H6 of the 1987 Regulations provides for a right of appeal to the Crown Court, against the decision by the PCC to forfeit the pension.

10.3 The right of appeal lies after the forfeiture has occurred, even if the cause for aggrievement is whether the offence was committed in connection with his or her service.

10.4 Under the rules of the Crown Court, a notice of appeal should be submitted to the Court and any other party to the appeal within 21 days of the day the individual was notified of the decision. The Court has discretion however, to accept an appeal out of time.