

Policy: Police Pension Forfeiture

Equality Statement

The Office of the Police and Crime Commissioner (OPCC) is committed to the principles of equality and diversity. No member of the public, member of staff, contractor, volunteer or job applicant shall be discriminated against on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

Introduction

1. This policy sets out the procedure that will be followed to consider and implement forfeiture of a police officer's pension.

Background

2. The legislative authority governing pension forfeiture is Regulation K5 of the Police Pensions Regulations 1987, Regulation 55 Part 4 of the Police Pension Regulations 2006 and Part 13 Chapter 5 of the Police Pension Regulations 2015.
3. Forfeiture of pension may be considered in the following circumstances:
 - Where an officer/ex-officer has been convicted of treason, or
 - Where an officer/ex-officer has been convicted of offences under the Official Secrets Act 1911 to 1939 and has been sentenced to a term (or terms) of imprisonment of at least 10 years; or
 - Where an officer/ex-officer has been convicted of an offence **committed in connection with his/her service as a police officer** which is certified by the Secretary of State either to be gravely injurious to the interests of the State or to be liable to lead to a serious loss of confidence in the police service

Guidance in respect of forfeiture of police pensions is contained in Home Office Circular 018/2009 (attached). Annex B to the Home Office Circular explains the three stages to forfeiture:

- (i) The first stage is for the Pension Supervising Authority to identify a case where a convicted officer has committed an offence in connection with his service as a member of a Police Force.
 - (ii) The second stage is for the Home Secretary to consider whether the convicted officer'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.
 - (iii) The third stage follows the issue of certificate and is the decision by the Pension Supervising Authority as to whether or not the pension should be forfeited and the determination of the extent of the forfeiture.
4. By virtue of section 11(2) of the Police Pensions Act 1976, the Police and Crime Commissioner (the Commissioner) is the pension supervising authority.
 5. The pension may be forfeited by no more than 65% (the remaining 35% reflects the individual's own contributions). The Commissioner may determine the residual 65% of pension is forfeited in whole or in part and permanently or temporarily.

6. The officer concerned has a right of appeal to the Crown Court against the decision made by the Commissioner in relation to the extent of forfeiture and against the Secretary of State's Certificate of Forfeiture by way of a Judicial Review.

Pension Forfeiture Advisory Group

7. The Pension Forfeiture Advisory Group consists of:
Police and Crime Commissioner or his nominated representative (Chair)
Chief Executive or their representative
Legal Adviser
(substitute members may be chosen by the Commissioner to represent any of the above).
8. The purpose of the Pension Forfeiture Advisory Group is to consider each case and to provide advice to the Commissioner. The Commissioner will make all decisions on each case, after considering the advice offered by the Pension Forfeiture Advisory Group.
9. Meetings of the Pension Forfeiture Advisory Group shall be held in private. However, the Commissioner may make a public interest assessment and may decide to hold the meeting in public. All pension forfeiture decisions made by the Commissioner shall be formal. Decisions shall be published but may be supported by confidential supporting information which shall not be published.
10. The Police and Crime Commissioner may nominate a person with suitable skills to chair meetings of the Pension Forfeiture Advisory Group and to lead the proceedings on his behalf.
11. If the proceedings are led by a Chair nominated by the Police and Crime Commissioner, recommendations from the nominated Chair or/and from the Pension Forfeiture Advisory Group shall be referred to the Commissioner for final decision.

Process

Stage One

12. The Chief Constable should inform the Chief Executive as soon as practicable in every case where a serving officer is convicted in court of:
 - i. a specified offence (see paragraph 27) or
 - ii. an offence committed in connection with his service as a member of a police force which may have been gravely injurious to the interests of the State or may lead to serious loss of confidence in the public service.
13. The Chief Executive shall then arrange a meeting of the Pension Forfeiture Advisory Group. This meeting should, where possible, take place within six months of the date of the conviction.
14. In appropriate cases (those falling within 12 (ii) above) the Pension Forfeiture Advisory Group shall meet to advise the Commissioner whether an application should be made to the Home Secretary to certify that the pensioner's offence was:
 - Committed in connection with his service as a member of a police force, **and**
 - either gravely injurious to the interests of the State or liable to lead to serious loss of confidence in the public service.

15. Following the meeting, the Chief Executive shall, if required, submit the application to the Home Secretary.
16. The application shall include the information listed at Annex C of the Home Office circular (see page 11). It is not necessary for the convicted officer to submit details of any mitigating circumstances at this stage, because the test carried out by the Secretary of State is an objective test to determine whether either of the conditions set out in paragraph 13 above are met.

Stage Two

Consideration by Home Secretary

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

Stage Three

Decision on the level of forfeiture

18. In circumstances where the Home Secretary determines that it is appropriate to issue a certificate of forfeiture, then upon receipt it is for the Commissioner to consider the extent of forfeiture and whether that forfeiture is to be applied temporarily or permanently.
19. Upon receiving the Certificate, the Chief Executive will arrange for the Pensions Forfeiture Advisory Group to meet again to consider the nature of the forfeiture.
20. The Chief Executive shall write to the convicted officer and
 - inform them that the Home Secretary has issued the certificate.
 - inform them of the process to be followed.
 - provide the date of the meeting of the Pension Advisory Group, providing at least six weeks' notice of the meeting.
 - invite them to submit any written representations they wish to be considered by the Commissioner, including personal mitigation. Written submissions must be received at least 3 weeks in advance of the meeting.
 - provide a copy of this policy document.
 - Invite the convicted officer to attend the meeting to make personal representations, or nominate their representative to attend and make representations in their place. If the convicted officer intends to attend the meeting or for their representative to attend in their place, this must be confirmed in writing at least three weeks in advance of the meeting.
21. The Chief Executive, on behalf of the Commissioner, may call for such further evidence as they view as necessary from the Force. Any such reports, comments and representations from either the Force or the pensioner must be submitted at least two weeks in advance of the meeting.
22. Copies of any further evidence obtained from the Chief Constable will be shared with the convicted officer who will be given opportunity to comment in writing. Any such

written comment must be received by the Chief Executive at least one week in advance of the meeting.

23. If the convicted officer or their representative is attending the meeting they will be invited to make oral representations based upon the representations in writing. The Group will then provide advice to the Chair in private. The decision should take into account the following factors:
- the gravity of the individual's offence;
 - mitigating circumstances;
 - disability in the family;
 - illness at the time of the offence;
 - circumstances surrounding the investigation including assistance or information given to the police during the investigation
 - The betrayal of an important position of trust for personal gain.
24. The decisions to be made are:
- whether or not the pension should be forfeited, and
 - If it is to be forfeited:
 - whether the Forfeiture is permanent.
 - If not permanent, the cessation date.
 - whether or not it will affect Widows, Widowers, civil partnerships, declared partners, children in the event of death of the member.
 - the effective date of the forfeiture.
 - determination of the extent of the forfeiture – both in terms of the proportion of the pension to be forfeited and the period over which that forfeiture is to take place.
25. The Group must consider the whole range of forfeiture options from 0-65 per cent and must specifically consider Police Pension Regulations 1987 (Regulation K5), Regulation 55 Part 4 of the Police Pension Regulations 2006 and Part 13 Chapter 5 of the Police Pension Regulations 2015, Home Office Circulars 26/2006 and 18/2209 and the judgement from *Harrington v Metropolitan Police Authority*, 2007 together with other advice and guidance as appropriate.

Conviction of specified offence

26. If the former officer is convicted of one of the specified offences listed in Annex A (treason or offences under the Official Secrets Acts 1911 to 1939 and sentenced to a term (or terms) of imprisonment of at least ten years), a slightly different procedure should be applied. In particular, there is no need to apply to the Secretary of State for a Certificate of Forfeiture. The Pensions Forfeiture Advisory Group therefore considers straight away the question of the extent of forfeiture.

Disclosure of information

27. Any concerns that full disclosure of papers to the former officer may cause, for example in relation to data protection or confidentiality issues, should be dealt with on a case-by-case basis. If sections of documents need to be redacted for reasons of confidentiality then the Group should also only see the altered documents. In exceptional circumstances the Group may see paperwork that would not be made available to the former officer this should take place only when justified by an overriding public interest.

Attendance by a former officer at meetings of the Pension Advisory Group

28. If the convicted officer (or his or her representative) is unable to attend (or where practical considerations prevent attendance), the following safeguard should apply:

- if at any time during the meeting the Advisory Group decides that it needs a point of detail clarified it may adjourn proceedings and seek the required clarification.

Implementing the Decision

29. The decisions of the Commissioner should be conveyed to the convicted officer in writing as soon as practicable.
30. The Chief Executive should inform the Home Office of the final outcome of the case, whether the pension has been forfeited and the extent of the forfeiture
31. The Chief Executive should inform pensions of the final outcome of the case, whether the pension has been forfeited and the extent of the forfeiture, and the effective date of forfeiture.
32. The former officer has a right of appeal within 21 days to the Crown Court against the decision of the Commissioner to forfeit their pension. The appeal can relate to both the decision to forfeit the pension and the extent of forfeiture.
33. In the event of a successful appeal against the criminal conviction the Pension Forfeiture Advisory Group shall meet and advise the Commissioner on whether or not the forfeiture should be reviewed.

Version No	Date	Author	Post	Reason for issue	Date agreed by PCC	Review Schedule
1.0	Jun 2018	Andrea Gabbitas	Head of Business Services	New policy		Annual

Appendix A: Home Office circular 018/2009: forfeiture of police pensions

- **Broad subject:** Police Service
- **Issue date:** Wed Nov 04 15:15:38 GMT 2009
- **From:**
Crime Reduction and Community Safety Group (CRCSG), Policing Powers and Protection Unit
- **Sub category:** Police discipline
- **Implementation date:** Wed Nov 04 15:15:38 GMT 2009

This circular replaces circular 26 / 2006: forfeiture of police pensions and replaces circular 056/1998: forfeiture of police pensions.

The purpose of this circular is to draw attention to an update to our previous guidance issued in Circular 26/2006. Paragraph 8 of Annex B has been amended in order to clarify that there is no minimum limit on forfeiture, only a maximum of 65%.

For ease of reference, the relevant annexes are attached below and include an updated annex B. In addition, at annex D we have included a transcript of the judgement in the case of *Harrington v Metropolitan Police Authority*, which Police Authorities may find useful when assessing whether a case merits an application for a pension forfeiture certificate:

- annex A describes the legislation
- annex B explains the procedures
- annex C provides guidance on what should be included in an application to the Home Secretary for a certificate
- annex D is a transcript of the *Harrington* judgement.

Applications for certificates should be addressed to:

Pension.forfeiture@homeoffice.gsi.gov.uk

ANNEX A: LEGISLATION

The relevant legislation can be found in Regulation K5 of the Police Pensions Regulations 1987. Paragraphs 2 and 3 allow a police authority to determine forfeiture in cases where a pensioner has been convicted of treason or of offences under the Official Secrets Acts 1911 to 1939 and has been sentenced to a term (or terms) of imprisonment of at least ten years. Forfeiture in these rare cases is entirely a matter for the police authority concerned.

Paragraph 4 allows a police authority to determine forfeiture where a member of a police force has been convicted of an offence committed in connection with his/her service as a member of a police force which is certified by the Secretary of State either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

Paragraph 5 allows a police authority to determine the extent to which the pension should be forfeited. This may be permanent or temporary and may affect the whole or part of the pension.

Regulation H5 of the Police Pensions Regulations provides a right of appeal to the Crown Court against the police authority's role in the decision to forfeit the pension. Regulation H6 provides a right of appeal to a tribunal appointed by the Secretary of State, as police authority, if the pensioner was a central police officer.

ANNEX B: THE PROCEDURES

There are three stages to forfeiture.

The first stage is for the police authority to identify a case where a pensioner¹, (whether he or she is eligible for an immediate or a deferred pension) has committed an offence in connection with his/her service as a member of a police force. The Courts have ruled 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. For instance, the offence may have been committed after the pensioner retired but he or she may have used police knowledge or police systems or police contacts in the commission of the offence. However, pension rights, once earned, should not be forfeited except in serious circumstances. Forfeiture will therefore not be appropriate in every case where a pensioner has committed a criminal offence, 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 his/her position of trust.

Where a case has been identified, (and without prejudice to the final decision by the police authority on whether to forfeit a pension), the police authority should apply to the Home Secretary for the issue of a certificate. The authority should provide the basis for the application, including the reasons for the police authority's view that the pensioner's offence was committed in connection with his/her police service and, in their opinion, was either gravely injurious to the interests of the State or, more likely, was liable to lead to a serious loss of confidence in the public service. Applications should include as much detail as possible (see Annex C) and should be addressed to the Policing Powers and Protection Unit, 4th floor, Peel Building, 2 Marsham Street, London SW1P 4DF. The Unit welcomes telephone inquiries from forces and police authorities for advice as to whether a particular case is one on which a certificate might be issued. The authority should also notify the pensioner of the application. Applications are liable to disclosure and care should be taken to provide only relevant information.

The second stage 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.

A person's rights to a police pension are part of the remuneration to which his/her service has entitled him/her and it is not axiomatic that a certificate will be issued. Forfeiture is an additional penalty which should not be added automatically to whatever sentence the Court has imposed. In deciding whether to issue a certificate therefore, the Home Secretary attaches a greater weight to the words "serious loss of confidence in the public service" than the harm inevitably caused by any police officer or former police officer who commits a crime. The Home Secretary will take into account:

- The seriousness with which the Court viewed the offence (as demonstrated by the punishment imposed and the sentencing remarks);
- the circumstances surrounding the offence and investigation;
- the seniority of the officer or former officer (the more senior, the greater the loss of credibility and confidence);
- the extent of publicity and media coverage; and
- whether the offence involved:
 - an organised conspiracy amongst a number of officers,
 - active support for criminals,
 - the perversion of the course of public justice,
 - the betrayal of an important position of trust for personal gain, and/or
 - the corruption or attempted corruption of junior officers.

The police authority 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.

The third stage follows the issue of a certificate. This is the decision by the police authority whether or not the pension should be forfeited and the determination of the extent of forfeiture, both in terms of the proportion of the pension to be forfeited and the period over which that forfeiture is to take place. If the pension is a deferred one, the police authority 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.

On the question of the amount which can be forfeited, paragraph 4 of the Regulations provides that forfeiture may be applied permanently or temporarily. The courts have ruled that the pension may be forfeited by no more than 65%, the remainder reflecting a pensioner's own contributions which cannot be forfeited. Certificates are likely to be issued only in serious cases.

For the purposes of these Regulations, pension does not include an allowance, a gratuity, a lump sum, or an award by way of repayment of aggregate pension contributions. It means a personal pension (including an ordinary, short service, ill health, injury or deferred 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 (eg 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. 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.

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 police authority to determine whether the deferred pension should be forfeited and to what extent.

Other factors which might influence the extent of forfeiture are:

- those listed above (paragraph 5) which reflect the gravity of the officer's conduct;
- mitigating circumstances;
- disability in the family;
- illness at the time of the offence; and
- assistance or information given to the police during the investigation or following conviction.
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If several officers were involved in the commission of the offence, the police authority might decide to reflect different levels of culpability in the extent of forfeiture for each. For example, officers of a senior rank may be more culpable than junior ones.

The police authority should inform the Home Office of the final outcome of the case, whether the pension has been forfeited and the extent of forfeiture.

Right of appeal

Regulation H5 gives a pensioner the right of appeal to the Crown Court (the Sheriff Court in Scotland) against the police authority's role in the decision to forfeit the pension. An officer may appeal against the police authority's decision that there was a connection between the offence and the pensioner's membership of a police force and against the extent of the forfeiture. The right of appeal lies after the forfeiture has occurred, even if the cause for

aggravement is that the offence was committed in connection with his/her service. A decision to delay the determination as to forfeiture following the issue of a certificate might, in some circumstances, be prejudicial to a successful appeal and liable to challenge. 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 decision was notified. The Court has discretion, however, to accept an appeal out of time.

Regulation H6 provides a right of appeal to a tribunal appointed by the Secretary of State as police authority against the first and third stages of forfeiture where the pensioner was a central police officer.

Identification of cases

You should ensure, in cooperation with your police force that systems are in place to identify cases to which the forfeiture provisions apply so that appropriate action may be taken to meet the provisions of this circular.

ANNEX C: FORFEITURE OF POLICE PENSIONS: APPLICATIONS FOR A CERTIFICATE

Police authorities should include the following information in any application for a certificate:

- a statement that, in the view of the authority, the offence was committed in connection with service as a member of the police force and is liable to lead to serious loss of confidence in the public service;
- full details of the offence(s) and the perceived connection with police service;
- details of the circumstances surrounding the offence and investigation; In particular, whether the offence involved
 - organised conspiracy amongst a number of officers,
 - active support for criminals,
 - perversion of the administration of justice,
 - betrayal of an important position of trust for personal gain, and/or
 - corruption or attempted corruption of junior officers;
- details of the punishment imposed by the Court and the Judge's sentencing remarks if known;
- details of publicity and media coverage;
- brief details of the officer's service, in particular, length of service, and seniority; and
- financial implications, including pension details, widower's and/or children's allowances.