

# **OFFICE OF THE POLICE AND CRIME COMMISSIONER FOR LANCASHIRE**

## **PROCEDURE FOR FORFEITURE OF POLICE PENSIONS**

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### **Background Papers**

Home Office Circular 18/2009

## **1. INTRODUCTION AND GENERAL PRINCIPLES**

Lancashire Constabulary is committed to building trust and confidence in the community and reducing crime and disorder. To achieve this, the integrity of all police officers and police staff is paramount.

Where a police officer or ex-officer has been convicted of a specific crime as described in Sections 1.3 and 1.4 which has been gravely injurious to the interests of the State or liable to lead to serious loss of confidence in the public service, the Police and Crime Commissioner can forfeit a pension entitlement.

This procedure applies to police officers and former police officers.

- 1.1. The Police Pension Regulations 2006 (as amended) provide for forfeiture of police pensions in cases where either a particular offence has been committed or an offence has been committed in connection with the person's service as a member of the Constabulary which is certified by the Home Secretary to be particularly serious. This procedure deals with both situations.
- 1.2. Paragraphs 2.1 to 3.3 and 4.1 to 13.1 are guidelines applicable in all situations.
- 1.3. Paragraphs 4.1 to 4.3 and 10.0 to 13.1 apply in the case of specified offences namely: "(a) an offence of treason, (b) one or more offences under the Official Secrets Act 1911 to 1939 for which the grantee (of the pension) has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years."
- 1.4. Paragraphs 5.1 to 12.1 apply in the case of the grantee "who has been convicted of an offence committed in connection with his (or her) service as a member of a police force which is certified by the Home Secretary 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."
- 1.5. A pension refers to a personal pension (including an ordinary, short service, ill health, injury or deferred pension), a widow's pension, or a dependant's relative's special pension.
- 1.6. The Police and Crime Commissioner has the discretion to restore all or part of a forfeited pension that has been forfeited under this procedure.
- 1.7. The Constabulary's Professional Standards Department will determine a suitable address to send all written correspondence to the police officer/ex-officer. All correspondence will be sent via recorded delivery.

## **2. CRIMINAL PROCEEDINGS**

- 2.1. If an officer (or a former officer) is appearing at court, having been charged with an offence which may fall within the definitions set out at paragraph 1.3 or 1.4 above, the Head of the Professional Standards Department should be present at court and should ensure that arrangements are in place to obtain the instructions of the Chief Constable in respect of the provisions of these guidelines as a matter of urgency, should the need arise.
- 2.2. The Chief Constable will consider whether, in his view, conviction of the offence as charged is likely to result in action under the procedure set out below to consider forfeiture of pension. The Chief Constable will, if he thinks it appropriate, discuss the issue with the Director.
- 2.3. In the event of enquiries being made by the court or by counsel for the prosecution as to whether or not action will be taken to forfeit the pension, the Head of the Professional Standards should, after consultation with the Chief Constable, or the Deputy Chief Constable (as the Appropriate Authority for matters of police conduct), provide information that either (a) the Chief Constable will meet with the Director to discuss the preparation of a report to the Police and Crime Commissioner requesting that the Commissioner consider forfeiture of the pension or (b) the Chief Constable does not propose to bring a report to the Police and Crime Commissioner requesting such forfeiture.
- 2.4. If an enquiry is made by counsel for the defence, the senior officer at court should advise prosecuting counsel of that approach and inform the defence counsel that he or she will then ask enquiries to be made as at paragraph 2.3 above.

## **3. AFTER CONVICTION**

- 3.1. If the officer (or former officer) is convicted, and it appears that forfeiture may be applicable, a meeting will be arranged involving the Chief Constable and the Director (or their representatives) to discuss whether forfeiture may be applicable. Delays should be avoided in taking forward this process. Where an officer (or former officer) has been granted leave to appeal, which can only be on a point of law, the Police and Crime Commissioner must await the outcome of this process before considering issues relating to the forfeiture of pension. (This does not apply, however, where leave to appeal is initially refused by the court and the officer / former officer concerned seeks leave to appeal at a higher court.)
- 3.2 Consideration will be given to the following two factors:-

- Has the officer / ex-officer been convicted in the criminal courts? Forfeiture cannot be applied for in cases where there is no criminal conviction. A term of imprisonment is not essential; however a lesser punishment would tend to suggest that the criminal offence(s) were less severe. Criminal offences committed and convictions received in foreign countries, and convictions that have occurred after the officer has left the employment of the Force, will also be considered for the purpose of forfeiture; and
- If the officer / ex-officer has been convicted in the criminal courts, was the offence committed in connection with his or her service as a member of the police force? The Courts have ruled that the officer/ex-officer 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 or her service.

3.3 If, as a result of that meeting, it is decided to pursue the matter, a report will be prepared by the Chief Constable (or their nominated representative) for the Police and Crime Commissioner to determine the matter. This report must contain the Chief Constable's views on whether or not an application for forfeiture should be considered.

3.4 If there is no connection between the offence(s) and the role of a police officer, application will not be made and the process will end at this stage.

3.5 If there is a connection between the offence(s) and the role of a police officer, the following seven Home Office criteria will be applied to the case:-

- Did the officer go to prison?
- Was it an organised conspiracy amongst officers?
- Was there active support for criminals?
- Was it betrayal of trust for personal gain?
- Did it involve corruption or attempted corruption of junior officers?
- Did it involve the perversion of the course of justice?
- The seniority of the officer.

3.6 Consideration will also be given to the following factors:-

- Any compassionate aspects
- The length of time since the offence came to light

#### **4. CONVICTION OF SPECIFIED OFFENCE**

4.1. If the officer (or former officer) is convicted of one of the offences specified at paragraph 1.3 above, the purpose of the report to the Police and Crime Commissioner is to consider whether or not the pension should be forfeited in whole or in part and permanently or temporarily.

Forfeiture in these rare cases is entirely a matter for the Police and Crime Commissioner.

- 4.2. The officer (or former officer) will be provided with a copy of the report in advance of the meeting and will be invited to make written representations within 15 working days. The Chief Constable will then be asked to provide a further written response within 15 working days. The Professional Standards Department will be responsible for collation of the documentation and for provision of all relevant documentation to all parties prior to the meeting.
- 4.3. The officer (or former officer) will be invited to attend the meeting and to make oral representations based upon the representations in writing. He or she can be accompanied by a 'friend' or legal representative if they wish. If it is impractical for the officer to attend (for example where he is in prison) then their 'friend' or legal representative can attend on their behalf. The Chief Constable will be able to respond to those representations., After clarifying any outstanding issues, the Police and Crime Commissioner will then make his or her decision in private with advice from the Director and legal adviser (if appropriate). If the officer (or former officer) is unable to attend the meeting, the meeting will consider the matter on the papers in the absence of representatives of the force.

## **5. SERIOUS OFFENCES COMMITTED IN CONNECTION WITH SERVICE**

- 5.1. In the cases of offences falling within paragraph 1.4, the purpose of the report is to enable the Police and Crime Commissioner to consider whether or not to apply to the Home Office for a Certificate of Forfeiture. The report from the Chief Constable must therefore relate to the question of whether the offence has been committed in connection with the service of the individual as a member of a police force and, if so, whether the offence is of sufficient seriousness to refer the matter to the Home Secretary for the issue of a Certificate stating that the offence either has been gravely injurious to the interest of the state or liable to lead to serious loss of confidence in the police service. A Certificate of Forfeiture can only be granted in these circumstances. The Police and Crime Commissioner must limit his or her consideration of cases at this stage only to the question of whether the application for a Certificate of Forfeiture should be made. The officer / former officer will have the right to disclosure of information and to submit representations at the meeting to consider this question (paragraph 10). (The detailed timetable and procedure for the meeting is set out at Appendix 'I' and 'II'.)
- 5.2. If the Police and Crime Commissioner decides to apply for a Certificate of Forfeiture, then he or she must provide details of their reasons to the Home Office. Such an application would normally include the information set out in Annex 'C' to the Home Office Circular (18/2009).

## **6. LEVELS OF FORFEITURE**

6.1. Home Office Circular 18/2009 specifies that there is no minimum limit of forfeiture, but that pension may be forfeited by no more than 65%, the remainder reflecting a pensioner's own contributions which cannot be forfeited in any case.

## **7. CONSIDERATION OF APPLICATION FOR CERTIFICATE OF FORFEITURE**

7.1. The Police and Crime Commissioner will need to consider the following matters prior to considering whether to refer a case to the Home Secretary, and should include the following information in any application for a Certificate, (Home Office Circular 18/2009 – Annex 'C'):-

- 7.1.1. Whether 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;
- 7.1.2. Full details of the offence(s) and the perceived connection with police service;
- 7.1.3. 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;
- 7.1.4. Details of the punishment imposed by the Court and the Judge's sentencing remarks if known;
- 7.1.5. Details of publicity and media coverage;
- 7.1.6. Brief details of the officer's service, in particular, length of service, and seniority; and
- 7.1.7. Financial implications, including pension details, widower's and/or children's allowances.

7.2. The officer (or former officer) will be provided with a copy of the report in advance of the meeting and will be invited to make written representations within 15 working days. The Chief Constable will then be asked to provide a further written response within 15 working days. The Professional Standards Department will be responsible for collation of the

documentation and for provision of all relevant documentation to all parties prior to the meeting.

- 7.3. The officer (or former officer) will be invited to attend the meeting and to make oral representations based upon the representations in writing. He or she can be accompanied by a 'friend' or legal representative if they wish. If it is impractical for the officer to attend (for example where he is in prison) then their 'friend' or legal representative can attend on their behalf. The Chief Constable will be able to respond to those representations., After clarifying any outstanding issues, the Police and Crime Commissioner will then make his or her decision in private with advice from the Director and legal adviser (if appropriate). If the officer (or former officer) is unable to attend the meeting, the Police and Crime Commissioner will consider the matter on the papers in the absence of representatives of the Force.
- 7.4. If the Police and Crime Commissioner decides to apply for a Certificate of Forfeiture, the Director for the Police and Crime Commissioner will prepare a report and this will be forwarded to the Home Office.
- 7.5. If the Police and Crime Commissioner believes there is no connection between the offence(s) and the role of the police officer, application will not be made and the process will end at this stage.
- 7.6. The Director for the Police and Crime Commissioner will inform the individual in writing of the decision made at the meeting within 5 working days.

## **8. HOME OFFICE CONSIDERATION OF APPLICATION FOR CERTIFICATE OF FORFEITURE**

- 8.1 Upon receipt of the application, the Home Office will decide whether or not to issue a Certificate of Forfeiture.
- 8.2 The Home Office will inform the Police and Crime Commissioner and the individual of their decision, enclosing a Certificate of Forfeiture, where granted. The Police and Crime Commissioner will be responsible for informing the Chief Constable of this decision at the earliest opportunity.
- 8.3 If a Certificate of Forfeiture has been granted, Professional Standards Department will request financial information from the Payroll and Pensions Manager, Finance Department, on the financial impact of the various levels of forfeiture.

## **9. DECISION ON LEVEL OF FORFEITURE**



- 9.1 In the event of the Home Office issuing a Certificate of Forfeiture, the matter will be referred back to the Police and Crime Commissioner to consider whether or not the pension should be forfeited and, if a decision is taken to forfeit, to determine 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.
- 9.2 To inform the Police and Crime Commissioner's consideration of each case, the Chief Constable or their representative must prepare a report for the meeting. While this report may suggest a level of forfeiture, this should in no way be considered binding on the Police and Crime Commissioner and should be regarded simply as a view which should be taken into account (and given due weight) in considering the case. The officer / former officer will have the right to disclosure of information and to submit representations (paragraph 9). The individual (or their representative on their behalf) will also be offered the opportunity to make oral representations to the Police and Crime Commissioner of the meeting based upon the representations in writing.
- 9.3 Should the individual wish to provide written representations to the Chief Constable, this must be submitted within 21 calendar days from receipt of the letter.
- 9.4 Professional Standards Department, on behalf of the Chief Constable, will write a response to the issues raised by the individual.
- 9.5 The following papers will accompany the report to the Police and Crime Commissioner:
- Copy of the Certificate of Forfeiture issued by the Home Office
  - Management Case Paper setting out the brief details of the case, charges, and prison sentence received and containing a synopsis of the comments of the Home Secretary and level of forfeiture to be recommended by the Chief Constable.
  - Details of the incident(s).
  - Table outlining the effect of the application of different levels on the individual's pension.
  - Any correspondence/representation received from the individual or the individual's representation and the response to these issues provided on behalf of the Chief Constable.
- 9.6 Professional Standards Department will provide the individual in advance of the Police and Crime Commissioner meeting with a copy of the report and supporting documents to be discussed.
- 9.7 In making his or her decision as to the level of forfeiture, the Police and Crime Commissioner must take into account the factors set out in the Home Office Circular, 18/2009 – Annex 'B', which include:



- i) the gravity of the individual's offence;
- ii) mitigating circumstances;
- iii) disability in the family;
- iv) illness at the time of the offence;
- v) assistance or information given to the police during the investigation or following conviction.

9.8 The Police and Crime Commissioner must show that he or she has considered the whole range of forfeiture options from 0-65 per cent (notwithstanding that existing Home Office guidance suggests that forfeiture between the range of 35% to 65% should normally be imposed). The Police and Crime Commissioner must also be aware of the financial implications for the officer / former officer of his or her decision. The financial values of the various options open to the Police and Crime Commissioner must therefore be made available to them. (The detailed timetable and procedure for the meeting is set out at Appendix 1 and II).

9.9 The Police and Crime Commissioner will decide if forfeiture will be applied and, if so, the level of forfeiture and whether this is temporary or permanent. Guidance will be taken from the Association of Police Authorities' 'Guidelines for Cases Involving Forfeiture of Police Pensions'.

9.10 If several officers were involved in the execution of the offence, the Police and Crime Commissioner might decide to reflect different levels of culpability in the extent of forfeiture each. For example, officers of a senior rank may be more culpable than junior ones.

## **10. DISCLOSURE OF INFORMATION**

10.1 In considering each case, the Police and Crime Commissioner must, at each stage, give the officer / former officer concerned the ability to submit representations, which he or she will then take into account. A copy of the Chief Constable's report and full copies of any other relevant papers must be provided to the officer / former officer in advance of each meeting of the Police and Crime Commissioner on this subject. The officer / former officer will also be invited to give written representations within 21 days upon receipt of the report. In the case of a meeting to discuss applying for a certificate of forfeiture, these representations should include all matters that the officer / former officer would wish to put before the Secretary of State if an application was submitted. The Chief Constable will also be able to provide a further written response based on the information supplied by the officer / former officer within 21 days from his receipt of the response.

- 10.2 Prior to the meeting of the Police and Crime Commissioner, a full set of documentation to be considered by the Police and Crime Commissioner will be sent to the Chief Constable and the officer / former officer by the Director to the Police and Crime Commissioner. The Director to the Police and Crime Commissioner is also responsible for the collation of the documentation.
- 10.3 Any concerns that full disclosure of papers to the officer / former officer may breach data protection legislation or confidentiality, will be dealt with on a case-by-case basis. If sections of documents need to be deleted for reasons of confidentiality, then the Police and Crime Commissioner will also only see the altered documents. In exceptional circumstances the Police and Crime Commissioner may see paperwork that would not be available to the officer / former officer, but this will take place only when justified by an overriding public interest. (The detailed timetable for disclosure is set out in Appendix I).

## **11. ATTENDANCE BY AN OFFICER / FORMER OFFICER AT MEETINGS OF THE POLICE AND CRIME COMMISSIONER**

- 11.1 The officer / former officer will be invited to attend the relevant meetings and to make oral representations based upon their representations in writing. In setting the meeting date, the Police and Crime Commissioner will attempt to agree a suitable date with all parties. Consideration will be given to an adjournment if there are extenuating circumstances preventing the officer / former officer from attending on the set day. The officer / former officer can be represented by a 'friend' or legal adviser. The Chief Constable or their representative will be able to respond to those representations at the meeting. The Police and Crime Commissioner will then make his or her decision in private with advice from the Director and legal advisers, as appropriate.
- 11.2 If the officer / former office (or their representative) is unable to attend (or where practical considerations prevent attendance), the following safeguards will apply:
- a) the only people present at the meeting will be the Police and Crime Commissioner and Police and Crime Commissioner staff such as the Director (i.e. force representatives will not attend when the officer / former officer is not present on fairness grounds);
  - b) if at any time during the meeting the Police and Crime Commissioner decides that he or she needs a point of detail clarified, he or she will adjourn proceedings and seek the officer / former officers views;
  - c) if the officer / former officer makes a specific request for the meeting to be held in public, then this will be accommodated where possible. This will, however, not confer an entitlement to speak

beyond the Police and Crime Commissioner's normal policy in these cases.

## **12. IMPLEMENTING THE DECISION**

- 12.1 The decision of the Police and Crime Commissioner will be conveyed to the officer / former officer in writing as soon as possible following the meeting and no later than 14 days from the date of the meeting. The Professional Standards Department will implement any decisions taken.
- 12.2 Professional Standards Department will inform the Payroll and Pensions Manager, Finance Department, of the forfeiture to be applied so the appropriate arrangements can be made.
- 12.3 The Police and Crime Commissioner will inform the Home Office of the final outcome of the case, e.g. whether the pension has been forfeited and the extent of the forfeiture.

## **13 RIGHT OF APPEAL**

- 13.1 When the decision of the Police and Crime Commissioner is communicated to the officer (or former officer), he or she will also be advised of their right of appeal to the Crown Court within 21 days of the date that they were notified of the decision. The appeal can relate to both the decision to forfeit the pension and the extent of forfeiture.

## **14. PROCESS REVIEW**

- 14.1 The Chief Constable will provide an annual report to the Police and Crime Commissioner setting out the cases within the force area, which might fall within the categories outlined in paragraph 1. Such a report will include brief details of why cases were not referred to the Police and Crime Commissioner.