

**OFFICE OF THE POLICE & CRIME COMMISSIONER FOR SURREY
POLICY FOR THE FORFEITURE OF POLICE OFFICER
& POLICE STAFF PENSIONS**

Introduction

1. This policy and procedure will apply to all Surrey Police Officers and Police Staff

[The Police Pension Regulations 1987](#) (regulation K5) as amended by the Police Pensions (Amendment) Regulations 2011, allow a Police and Crime Commissioner (PCC), as the 'pension supervising authority' to determine forfeiture of a police officer's pension in the following circumstances:

- a) Cases where a specified offence has been committed, namely:
 - (i) An offence of **treason**,
 - (ii) One or more offences under the **Official Secrets Acts** 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, and
- b) Cases where an offence has been committed in connection with the person's service as a member of the police force, which is certified by the Secretary of State to be **particularly serious** ([Home Office Circular 18/2009 Forfeiture of Police Pensions](#) refers).

[The Police Pension Regulations 2006](#) (section 55) also details circumstances where the PCC may apply for forfeiture of a police officer's pension from:

- i. A regular police officer or former regular police officer;
- ii. A survivor of such a police officer; and
- iii. A pension credit member.

The circumstances that will trigger forfeiture under the 2006 Regulations are those described in a) (i) & (ii) and 6 a) & b) of this document.

2. This policy deals with any circumstance where forfeiture of the pension of a Police Officer under these Regulations is considered. For the avoidance of doubt, any interpretation of this policy is to be read in accordance with the Police Pensions Regulations and Home Office Circular 18/2009.

3. The procedure for considering and implementing forfeiture of pension rights for Police Staff will follow the same process as that for Police Officers.
4. The legislation from which the Commissioner will act for Police Staff is under is section 72 [The Local Government Pension Scheme \(Administration\) Regulations 2008](#)
5. In this legislation, application for a forfeiture certificate from the Secretary of State may be prompted after conviction of a 'relevant' offence.
6. A relevant offence is one which
 - a) was **gravely injurious to the State**, or
 - b) is liable to lead to **serious loss of confidence in the public service**.

Role of the Police & Crime Commissioner (PCC)

7. The PCC has two distinct roles in these cases:
 - i In cases involving an offence committed in connection with the person's service, to consider whether to apply to the Secretary of State for a Certificate of Pension Forfeiture;
 - ii To decide on the extent of forfeiture to be applied in each case.

Process

8. Where an officer, member of staff, former officer or former member of staff is charged with an offence, the Chief Constable (or his/her representative) should discuss the possibility of making an application for forfeiture with the Chief Executive of the Office of the Police & Crime Commissioner (OPCC) and, if appropriate, seek legal advice. As part of this process, both the staff member and their staff association should be made aware that consideration is being given to forfeiture.
9. If the Chief Executive feels that there is a case for an application to be made, a report should then be prepared so that the PCC can take a preliminary decision on whether to apply for forfeiture following trial. In cases where an application is not considered appropriate, the Chief Executive should be advised.
10. A senior police officer (not below the rank of Superintendent) should be available during the court case to advise the court on whether the Chief Constable, having consulted the Chief Executive of the OPCC, proposes to recommend to the PCC that an application should be made, or that no application of forfeiture would be made.

11. If the member of staff is convicted in court, having been charged with an offence which may fall within the definitions set out at paragraphs 1 or 6 above, the Chief Constable (or their nominated representative), should advise the Chief Executive of the OPCC within 14 days of the conviction. The PCC should await the outcome of an appeal, should the member of staff be granted leave to appeal. This provision does not apply where leave to appeal is initially refused and the officer seeks leave to appeal to a higher court.
12. In each case to which this policy applies, a report should then be prepared by the Chief Constable (or their representative), for the PCC. This report will contain a summary of the circumstances as to why it is felt that the PCC may wish to consider whether forfeiture of the member of staff's pension is appropriate.
13. The report will contain sufficient information to allow the PCC to make an application to the Home Secretary for issue of a Certificate of Pension Forfeiture. It should also include any written representation by the member of staff who will be given 21 days to submit it (the PCC does have the option to require the member of staff to attend in person to make oral representations based on the representations in writing).

Police & Crime Commissioner considerations: Application for a Certificate of Forfeiture

14. Upon receipt of the Chief Constable's report, the Chief Executive of the OPCC will arrange for the PCC to consider the case for a pension forfeiture application within 28 days.
15. The PCC will consider the question of whether the application for a Certificate of Forfeiture should be made to the Home Secretary. Specific consideration should be given to the 'Guiding Principles' at appendix A, the Police Pensions Regulations and Home Office Circular 18/2009 which provides guidance as to the factors that the PCC should consider and that the Home Secretary will take into account when deciding on an application for a Certificate of Forfeiture.
16. If the PCC decides to apply for a Certificate of Forfeiture, he will then need to provide details of his reasons to the Home Office. Such an application must include the information set out in [Annex C](#) of the Home Office Circular (18/2009)
17. Once the decision has been taken by the PCC to apply for a Certificate from the Home Secretary, the member of staff involved should also be informed of the application within 7 days.
18. The administration arrangements for the application will be dealt with from within the OPCC Secretariat.

Consideration by Home Secretary

19. Once the application has been received, it is for the Home Secretary to consider whether the member of staff'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.
20. The PCC and the member of staff 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.

PCC Consideration: Decision on the level of forfeiture

21. In circumstances where the Home Secretary determines that it is appropriate to issue a certificate of forfeiture, then upon receipt, it is for the PCC to consider the extent of forfeiture and whether that forfeiture is to be applied temporarily or permanently.
22. Upon receiving the Certificate, the Chief Executive will arrange for the PCC to consider the level of the forfeiture within 28 days.
23. To inform the PCC's consideration of each case, he may call for any further evidence he regards as necessary from the Police Service. Whilst any reports, comments and representations from either the Police Service or the member of staff may be considered, these are not binding on the PCC and he should determine the case based on his view of the evidence. Guidance in relation to the decision that needs to be taken is contained within Home Office Circular (18/2009).
24. In making his decision as to the level of forfeiture, the factors which might influence the PCC in determining the extent of forfeiture are:
 - the gravity of the individual's offence;
 - mitigating circumstances;
 - disability in the family;
 - illness at the time of the offence;
 - assistance or information given to the police during the investigation or following conviction.
24. The PCC must consider the whole range of forfeiture options and specifically consider the Home Office Circular 18/2009. The courts have ruled that a Police Officer's pension may be forfeited by no more than 65%, the remainder reflecting an officer's own contributions which cannot be forfeited. Likewise, a member of police staff will retain their level of contributions in any forfeiture.

Conviction of specified offence

25. If the member of staff is convicted of one of the offences specified at point 1 a) (i) or (ii) above, 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 PCC therefore considers straight away the question of the extent of forfeiture.
26. In such cases, the PCC may call for the Chief Constable (or her representative) to prepare a report providing a summary of the circumstances as to why it is felt that the PCC may wish to consider whether forfeiture of the member of staff's pension under Reg. K5 is appropriate. Again, this report should contain sufficient information to allow the PCC to determine matters in accordance with the Police Pensions Regulations 1987 and Home Office Circular 18/2009.

Disclosure of information

27. In considering each case, the PCC must, at each stage, give the member of staff concerned the ability to submit representations, which should then be considered in any determination. A copy of any reports submitted by the Chief Constable and full copies of any other relevant papers should be provided to the member of staff in advance of the date on which the PCC is due to make his decision. The member of staff will also be invited to give written representations within a specified timescale, normally 21 days.
28. Representations should include all matters that the member of staff would wish to put before the Home Secretary if an application was submitted. The Chief Constable should also be able to provide a further written response based on the information supplied by the member of staff within a specified time period.
29. Prior to the PCC making his decision, a full set of the documentation to be considered should be sent to the Chief Constable and the member of staff.
30. Any concerns that full disclosure of papers to the member of staff may cause, for example, data protection or confidentiality issues, should be considered on a case-by-case basis. If sections of documents need to be redacted for reasons of confidentiality then the PCC should also only see the altered documents. In exceptional circumstances the PCC may see paperwork that would not be made available to the member of staff but this should take place only when justified by an overriding public interest.

Attendance by a former member of staff

31. The PCC will afford the former member of staff a meeting to hear oral representations. The former member of staff can be accompanied by a

'friend' if they wish. This friend will be a serving member of Surrey Police and both will be given the opportunity to make oral representations to the PCC based upon the representations in writing. The Chief Constable or his/her representative will be able to respond to those representations. The PCC will then make his decision in private with advice from the Chief Executive or other legal advisers, as appropriate.

32. If the former member of staff (or their representative) is unable to attend any meeting (or where practical considerations prevent attendance), the following safeguards should apply:
- The only people present at the meeting should be the PCC and his relevant staff such as the Chief Executive (i.e. force representatives should not attend when the member of staff is not present on fairness grounds);
 - If at any time during the meeting the PCC decides that he needs a point of detail clarified he should adjourn proceedings and seek the former member of staff's views in writing;
 - If the former member of staff makes a specific request for the meeting to be held in public then this should be accommodated where possible. This would, in effect, mean that the former member of staff or representative could be present if circumstances allowed though it would not confer an entitlement to speak beyond normal policy in these cases.

The PCC should retain the ability on a case by case basis to vary this procedure at his discretion and provide a right to allow the former officer to be present (if possible) if they feel this would assist them in making a fair decision in a particular case.

Implementing the Decision

33. The decisions of the PCC should be conveyed to the former member of staff in writing within 7 days following the meeting.
34. The decision will be formally recorded by the PCC. 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.
35. The former member of staff has a right of appeal to the Crown Court against the decision of the PCC to forfeit their pension. The appeal can relate to both the decision to forfeit the pensions and the extent of forfeiture.

Version No.	1	Review Date:	01 March 2015
Policy author:	Chief Executive OPCC Legal Review: Force solicitor	Policy owner:	Chief Executive OPCC
Created on:	1 March 2013	Ratified on:	13 March 2013
Last reviewed on:		Applicable to:	Office of the Police and Crime Commissioner and Surrey Police
Equality Impact Assessed on:	At the time of ratifying this procedure and at the time of all subsequent reviews, the author and the owner of this procedure are satisfied that this document complied with relevant legislation.		

Guiding Principles for the Police & Crime Commissioner when considering Forfeiture of Police Pension issues

1. The Offence

- What was it?
- How serious was it?
- Did it involve corruption in public office?
- Did it involve dishonesty leading to a loss or misappropriation of public money?
- Did the member of staff directly benefit from the loss or misappropriation of public money, and if so to what extent?
- Was any of the money recovered through the use of powers in the Proceeds of Crime Act?
- Was the offence a deliberate act, or committed through neglect or accident?
- How many offences did the person commit?
- What was the sentence?
- What was the judgement e.g. what observations were made when the sentence was passed?

2. The individual

- What did the member of staff do?
- What was the rank / position of the member of staff?
- Was the offence linked to the post the individual held whilst in the employ of the organisation?
- Did the member of staff admit their part in the offence, and/or cooperate with the investigation?
- Did the member of staff resign prior to conviction?
- What did the judgement say about the member of staff in the summing up?

3. The Community Impact

- How much publicity did the case generate?
- What was the tone of the publicity, i.e. did it contribute to the undermining of confidence in the police service?
- What was the internal impact of the offence? Did it lead to a loss of confidence in management?

Taking all the above into account-should the PCC recommend the forfeiture of part or all of the member of staff's pension?