

## **APA GUIDELINES FOR CASES INVOLVING FORFEITURE OF POLICE PENSIONS – A FRAMEWORK FOR POLICE AUTHORITIES**

### **Introduction**

1. This good practice guidance was commissioned by the APA's Personnel and Human Resources Policy Group. It provides a framework of good practice guidance for police authorities in dealing with cases involving forfeiture of an officer's pension, and has been endorsed by the Police Conduct and Complaints Section of the Home Office and the full APA Plenary.

2. This guidance is not intended to be prescriptive or to replace existing procedures where these are working well locally. However, police authorities may wish to consider their existing procedures against these guidelines and discuss with their chief officer team whether devising or revising local policies on forfeiture in line with the guidelines would result in added value.

### **Background**

3. Under the Police Pension Regulations 1987, police authorities are responsible for considering cases concerning the forfeiture of pension entitlement. The Regulations provide for forfeiture of pensions in two circumstances:

- i. rare cases where a specified offence has been committed, namely:
    - (a) an offence of treason,
    - (b) 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
  - ii. 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 26/2006 refers). *[see appendix C]*.
4. These guidelines deal with both situations.

### **Role of Police Authorities**

5. Police authorities have two distinct roles in these cases:

- firstly, 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 forfeiture;
- secondly, to decide on the extent of forfeiture to be applied in each case.

### **Process**

6. The following paragraphs provide detailed guidance and advice on each stage of the process:

- Action by the force during the trial;
- Action after conviction;
- Application for a certificate of forfeiture;
- Decision on the level of forfeiture;
- Conviction of specified offence;
- Disclosure of information;
- Attendance by a former officer at authority meetings;
- Implementing the decision.

### **Criminal Proceedings - Action by the force during the trial**

7. If a former officer is convicted in court, having been charged with an offence which may fall within the definitions set out at paragraph 3 above, a senior police officer should be available

when sentence is being considered to advise the court on matters relating to the possible forfeiture of pension entitlement. That officer should be aware of the provisions in these guidelines and should ensure that arrangements are in place to obtain the instructions of the Chief Constable as a matter of urgency, should the need arise.

8. In each case, the Chief Constable should consider whether, in his view, conviction of the offence as charged would be likely to result in action under the procedure set out below relating to the forfeiture of pension. The Chief Constable should, if he thinks it appropriate, discuss the issue with the Chief Executive to the Police Authority and seek legal advice.

9. 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 senior officer should, after consultation with the Chief Constable, or in his absence an officer not below the rank of Superintendent, provide information that either:

- the Chief Constable will meet with the Chief Executive to the Police Authority to discuss the preparation of a report to the Police Authority requesting that the Authority consider forfeiture of the pension;
- the Chief Constable proposes to recommend to the Police Authority that forfeiture is not applicable.

10. If an enquiry is made by counsel for the defence, the senior police officer at court should advise prosecuting counsel of that approach and inform the defence counsel that he will discuss the issue with prosecuting counsel. Prosecuting counsel may then ask enquiries to be made as at paragraph 9 above.

#### **Considering Each Case: Action after conviction**

11. If the former officer is convicted, a meeting should be arranged involving the Chief Constable and Chief Executive (or their representatives) to discuss whether forfeiture may be applicable. Delays should be avoided in taking forward this process. Where a former officer has been granted leave to appeal, which can only be on a point of law, the police authority should await the outcome of this process before considering issues relating to the forfeiture of pension. However, this does not apply where leave to appeal is initially refused by the court and the officer concerned seeks leave to appeal at a higher court.

12. In each case to which the circumstances set out at paragraph 3 may apply, a report should be prepared by the Chief Constable (or his/her nominated representative), for the relevant committee of the police authority. This report will contain the Chief Constable's views on whether or not an application for forfeiture should be considered.

#### **Police Authority Consideration: Application for a Certificate of Forfeiture**

13. In cases where an offence has been committed in connection with the person's service as a member of the police force, the police authority must first consider whether the offence is sufficiently serious to warrant an application to the Home Office for a Certificate of Forfeiture. The report from the Chief Constable should 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 has been either **gravely injurious to the interests of the state or, more likely, was liable to lead to serious loss of confidence in the public service**. A Certificate of Forfeiture can only be granted in these circumstances. Police authorities should limit their consideration of cases at this stage only to the question of whether the application for a Certificate of Forfeiture should be made.

14. If the police authority decides to apply for a Certificate of Forfeiture then they should 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 (26/2006) [see appendix C].

#### **Police Authority Consideration: Decision on the level of forfeiture**

15. In the event of the Home Office issuing a Certificate of Forfeiture, the matter will be referred back to the relevant police authority to consider whether the pension should be forfeited in whole or in part, and whether this should be permanently or temporarily applied. At this stage, the only issue for the police authority will be the extent of forfeiture.

16. To inform the police authority's consideration of each case, the Chief Constable or his/her representative should 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 authority and should be regarded simply as a view which should be taken into account (and given due weight) in considering the case.

17. In making its decision as to the level of forfeiture, the factors the police authority should take into account include:

- 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.

18. Members must show that they have considered the whole range of forfeiture options from 0-75 per cent (notwithstanding that existing Home Office guidance suggests that forfeiture between the range of 30% to 75% should normally be imposed). It is also important that the police authority is aware of the financial implications for the former officer of their decision. The financial value of the various options open to the police authority should therefore be made available to them.

#### **Conviction of specified offence**

19. If the former officer is convicted of one of the offences specified at the first point in paragraph 3 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 police authority therefore considers straight away the question of the extent of forfeiture.

20. In such cases, the Chief Constable should prepare a report to the police authority setting out his view of whether or not the pension should be forfeited in whole or in part and permanently or temporarily.

#### **Disclosure of information**

21. In considering each case, the police authority should, at each stage, give the former officer concerned the ability to submit representations, which it should then take into account. A copy of the Chief Constable's report and full copies of any other relevant papers should be provided to the former officer in advance of each meeting of the police authority on this subject. The former officer will also be invited to give written representations within a specified timescale. In the case of a meeting to discuss applying for a certificate of forfeiture, these representations should include all matters that the former officer would wish to put before the Secretary of State 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 former officer within a specified time period.

22. Prior to an authority meeting, a full set of the documentation to be considered by the authority should be sent to the Chief Constable and the former officer.

23. 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 deleted for reasons of confidentiality then the police authority

should also only see the altered documents. In exceptional circumstances the police authority may see paperwork that would not be made available to the former officer but this should take place only when justified by an overriding public interest.

#### **Attendance by a former officer at authority meetings**

24. It is recommended that the former officer be invited to attend the relevant meetings and to make oral representations based upon the representations in writing. The Chief Constable or his/her representative will be able to respond to those representations. The police authority will then make its decision in private with advice from the Chief Executive or other legal advisers, as appropriate.

25. If the former officer (or his or her representative) is- unable to attend (or where practical considerations prevent attendance), the following safeguards should apply:

- the only people present at the meeting should be the members of the police authority and police authority staff such as the Chief Executive (i.e. force representatives should not attend when the officer is not present on fairness grounds);
- if at any time during the meeting the police authority decides that it needs a point of detail clarified it should adjourn proceedings and seek the former officer's views;
- if the former officer 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 officer or representative could be present if circumstances allowed though it would not confer an entitlement to speak beyond the authority's normal policy in these cases.

26. If a police authority decides as a matter of policy that officers/former officers should not attend meetings in order to make oral representations (for example due to practical considerations relating to the handling and administration of police authority meetings) it is strongly advised that the authority should put into place the safeguards outlined in paragraph 25 above. In addition, the police authority should retain the ability on a case by case basis to vary this procedure at its discretion and provide a right to allow the former officer to be present (if this is possible) if they feel this would assist them in making a fair decision in a particular case.

#### **Implementing the Decision**

27. The decisions of the police authority should be conveyed to the former officer in writing as soon as possible following the meeting.

28. If the decisions was taken by a committee of the police authority, it should be reported to the full Police Authority by the Chief Executive for information. 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 the forfeiture.

29. The former officer has a right of appeal to the Crown Court against the decision of the police authority to forfeit their pension. The appeal can relate to both the decision to forfeit the pensions and the extent of forfeiture.

#### **Process Review**

30. All police authorities are advised periodically to review the procedures they have in place locally to consider these cases to ensure they are operating fairly and effectively.

31. As set out above it is recommended that the police authority receive a report in each case where an officer is convicted of an offence that might fall within the definitions set out at paragraph 3. However, if this procedure is not adopted police authorities may nevertheless wish to receive an annual report setting out the cases within their force area which might fall within the categories outlined in paragraph 3 in order to be satisfied that the force is referring. all appropriate cases to the police authority for consideration of forfeiture of pension. It is

recommended that such a report should include brief details of why cases were not referred to the police authority.

APA Secretariat  
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