



Forfeiture of Pension Procedure

This document is part of North Yorkshire Police policy to which all Chief Constable personnel and the functions provided by the Deputy Mayor for Policing as part of the York & North Yorkshire Combined Authority are required to adhere.

Other Documents:

Police Pension Regulations 1987 K5

Police Pension Regulations 2006 55 part 4

Police Pension Regulations 2015 Part 13 Chapter 5

Home Office circular 018/2009: forfeiture of police pensions - GOV.UK (www.gov.uk)

Process

1.0 Introduction

- 1.1 This procedure details the process the Chief Constable for North Yorkshire Police and the York and North Yorkshire Deputy Mayor for Policing, Fire and Crime (Deputy Mayor) will undertake in order to satisfy their duty in considering the forfeiture of an officer's pension.
- 1.2 Regulation K5 of the Police Pensions Regulations 1987, Regulation 55 Part 4 of the Police Pensions Regulations 2006 and Police Pension Regulations 2015 Part 13 Chapter 5 state that forfeiture of pension may be considered in three circumstances:
 - 1.2.1 Where an Officer/ Ex-Officer has been convicted of treason **OR**
 - 1.2.2 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 ten years **OR**
 - 1.2.3 Where an Officer/Ex-Officer has been **convicted** of an offence committed **in connection with their 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 serious loss of confidence in the public service.

2.0 Role of York and North Yorkshire Deputy Mayor for Policing, Fire and Crime (Deputy Mayor)

- 2.1 The Deputy Mayor has two distinct roles in cases where forfeiture can apply:

- 2.1.1 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**.
- 2.1.2 To decide on the extent of forfeiture to be applied in each case, in whole (in keeping with court rules, the maximum forfeiture is 65%), or part (less than 65%) and also whether this forfeiture is to be permanent or temporary.

3.0 Procedure

3.1 There are three stages to forfeiture of police pensions:

- 3.1.1 The Deputy Mayor identifies a case in line with point 1.2
- 3.1.2 The Home Secretary considers whether to issue a certificate of forfeiture where appropriate
- 3.1.3 The Deputy Mayor decides whether the pension should be forfeited and determines the extent of forfeiture.

The following points cover the three stages in more detail:

- 3.2 If the officer/ex-officer is convicted, a meeting will be arranged involving the Chief Constable and a senior member of the York and North Yorkshire Office for Policing, Fire Crime and Commissioning (OFPC) to discuss whether forfeiture may be applicable.
- 3.3 If the officer/ex-officer has been granted an appeal, the Deputy Mayor will await the outcome of this before considering issues relating to forfeiture of pension.
- 3.4 A senior member of the OFPC and the Chief Constable (or delegated representative) will prepare a report for the Deputy Mayor containing views on whether the application for forfeiture will be considered.
- 3.5 The Deputy Mayor must first consider whether the offence is sufficiently serious to warrant an application to the Home Office. This will be done via a Deputy Mayor's meeting which is established as fit for this purpose. A certificate of forfeiture will only be granted for offences in line with point 1.2, where the offence is gravely injurious to the interests of the state or, more likely, was liable to lead to serious loss of confidence in the public service.
- 3.6 If the Deputy Mayor decides to apply for a Certificate of Forfeiture, then they will provide the following information to the Home Office:
 - 3.6.1 A statement that, in the view of the Deputy Mayor, 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.
 - 3.6.2 Full details of the offence(s) and the perceived connection with the police service.

3.6.3 Details of the circumstances surrounding the offence(s) and investigation. In particular whether the offence involved:

- Organised conspiracy among a number of officers
- Active support for criminals
- Perversion of the administration of justice
- Betrayal of an important position of trust for personal gain
- Corruption or attempted corruption of junior officers

3.6.4 Details of the punishment imposed by the Court and the judge's sentencing remarks (if known).

3.6.5 Details of publicity and media coverage.

3.6.6 Brief details of the Officer's/ Ex-Officer's service, seniority and length of service.

3.6.7 Financial implications, including pension details and dependant's allowances.

3.6.8 Applications are liable to disclosure and care should be taken to provide only relevant information.

4.0 Certificate of Forfeiture

4.1 In the event of the Home Office issuing a certificate of forfeiture, the matter will be referred back to the Deputy Mayor to consider whether the pension should be forfeited in whole or in part, and whether this should be permanently or temporarily applied.

4.2 The Chief Constable (or delegated representative) will prepare a report for the Deputy Mayor suggesting a level of forfeiture. In addition, the Deputy Mayor will be made aware of the financial value of the decisions available to them, and the financial implications for the former officer.

4.3 In making their decision the Deputy Mayor will consider:

- The gravity of the individual's offence
- Any mitigating circumstances
- Any disability in the family
- Any illness at the time of the offence
- Any assistance or information given to the police during the investigation or following conviction.

4.4 The courts have ruled that the pension may be forfeited by no more than 65%, the remainder reflecting an individual's own contributions.

- 4.5 For the purposes of Regulations the pension does not include an allowance, a gratuity, a lump sum or an award by way of repayment of aggregate pension contributions. A commuted lump sum may not be forfeited. But if a pension is forfeited before it becomes payable 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, until a pensioner reaches state pensionable age. After that, it may only be forfeited if the pensioner is in legal custody.
- 4.6 An Officer/ Ex-Officer who is dismissed after completing 25 years' service will not be entitled to an ordinary pension if they are dismissed for a cause for which the pension could be forfeited. In these circumstances, the Officer/ Ex-Officer will only become entitled to a deferred pension at the age of 60 and it will be for the Deputy Mayor to determine whether the deferred pension should be forfeited and to what extent.
- 4.7 If several officers are involved in the offence, the Deputy Mayor may decide to reflect different levels of culpability in the extent of forfeiture for each.
- 4.8 Any delay in making a determination following issue of a certificate could be challenged in the courts.

5.0 Disclosure of information

- 5.1 In considering its case, the Deputy Mayor will give the Officer/ Ex-officer the ability to submit representations, which will be taken into account. A copy of the Chief Constable's report and other relevant papers will be provided to the Officer/ Ex-officer in advance of each meeting. The Officer/ Ex-officer will be invited to give written representations within 14 days of receipt of the Chief Constable's report and other relevant papers. In the case of a meeting to discuss applying for a certificate of forfeiture, these representations should include all matters that the Officer/ Ex-officer would wish to put before the Secretary of State if an application was submitted. The Chief Constable (or delegated representative) will provide a further written response based on the information supplied by the Officer/ Ex-officer within 14 days of receipt of the Officer/ Ex-Officer's information.
- 5.2 Any concerns that a full disclosure of papers to the Officer/ Ex-officer may breach data protection or confidentiality issues should be dealt with on a case-by-case basis. Should sections of documents need to be deleted for reasons of confidentiality then the Deputy Mayor should only see the altered documents. Should the Deputy Mayor need to see a full copy of the documents this should only be done when justified by an overriding public interest.
- 5.3 Prior to a meeting the documents will be supplied to the Deputy Mayor, the Chief Constable (or delegated representative) and the Officer/ Ex-officer.

6.0 Attendance at Deputy Mayor's Meetings

6.1 It is recommended that the Officer/ Ex-officer be invited to attend the relevant meetings and to make oral representations based upon the submitted written documents. The Deputy Mayor will allow a representative to attend with the Officer/Ex-Officer in order that they effectively make their case. In this case 'representative' does **not** imply an advocate as in court proceedings. The Deputy Mayor must be informed if the Officer/Ex-Officer intends to be accompanied by a representative in advance of the meeting. The Chief Constable (or delegated representative) will be able to respond to those representations. The Deputy Mayor will then make its decision in private with advice from a senior member of the OFPCC, or other legal advisers, as appropriate.

6.2 If the Officer/ Ex-officer (or their representative) is unable to attend (or where practical considerations prevent attendance e.g. imprisonment), the following safeguards should apply:

- the Officer/ Ex-Officer may elect a representative to attend the meeting on their behalf and present their case should they be unable to attend the meeting for some substantial reason. As detailed above, the word 'representative' does **not** imply an advocate as in court proceedings.
- if at any time during the meeting the Deputy Mayor decides that it needs a point of detail clarified they should adjourn proceedings and seek the former officer's views

6.3 Arising from the appeal decision re: Michael Terrence Newson -v- Dorset Police Authority (Crown Court at Dorchester No: A20040020) the Deputy Mayor must give adequate consideration to the issue of double punishment when making its decision on forfeiture and must record the fact that it has done so.

7.0 Implementing the Decision

7.1 The decisions of the Deputy Mayor will be conveyed to the Officer/ Ex-Officer in writing within 10 working days of the decision.

7.2 The Deputy Mayor will inform the Home Office of the final outcome of the case, whether the pension has been forfeited and the extent of the forfeiture.

7.3 The Officer/ Ex-Officer has a right of appeal to the Crown Court against the decision of the Deputy Mayor to forfeit their pension. The Officer/ Ex-Officer has 21 days to appeal to the Crown Court. The appeal can relate to both the decision to forfeit the pensions and the extent of forfeiture.

7.4 It is recommended that the Deputy Mayor receive a report in each case where an officer is convicted of an offence that might fall within the definitions set out at paragraph 1.2 and record the decision and rationale as to whether or not to apply for forfeiture.

8.0 Process Review

- 8.1 The procedures in place to consider these cases outlined in point 1.2 will periodically be reviewed to ensure they are operating fairly and effectively.

Responsibilities

Officer / Ex-Officer – Will abide by the requirements of this, and associated, procedures.

People Services / Professional Standards Department – Must ensure that this procedure is adhered to and will provide advice as necessary on its interpretation and implementation.

Police Federation / Superintendents Association – Will provide representatives, advice and support to members as requested by the members. Will liaise with the relevant People Services representatives to ensure fairness in the use of this procedure.

Chief Constable – Consideration of case to request decision to request certificate of forfeiture by the Deputy Mayor. Provision of information to the Deputy Mayor to enable full consideration of case.

Senior member of the York and North Yorkshire Office for Policing, Fire Crime and Commissioning (OFPC) – Consideration of case to request decision to request certificate of forfeiture by the Deputy Mayor. Provision of information to the Deputy Mayor to enable full consideration of case.

York and North Yorkshire Deputy Mayor for Policing, Fire and Crime (Deputy Mayor) – Decision regarding request for certificate of forfeiture and percentage of forfeiture, as appropriate.

Home Office – Decision as to whether to issue certificate of forfeiture.

Definition of Special Terms

North Yorkshire Police – collectively the Police, Fire and Crime Commissioner and the Chief Constable in their respective corporate capacities as the employer of staff (or, in the case of the Chief Constable in so far as Police Officers are concerned, deemed or de jure employer).

North Yorkshire Police Personnel – Collectively, Police Service Personnel and Commissioner Staff as defined below.

Police Service Personnel – Police Officers under the direction and control of the Chief Constable and Police Staff in the employment of the Chief Constable.

Commissioner Staff – All staff in the employment of the Police, Fire and Crime Commissioner.