



# **Police and Crime Commissioner for Derbyshire**

## **Policy for Pension Forfeiture**

### **EXTERNAL POLICY**

## Control Sheet

### Policy Details

<b>Policy Title</b>	Derbyshire OPCC Policy for Pension Forfeiture
<b>Responsible Officer</b>	OPCC's Head of Governance and Compliance
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## **Pension Forfeiture Background**

Over the past few years, policing has faced a crisis in public trust and confidence, owing to the criminal behaviour of some officers, especially in relation to violence against women and girls. The public are ever-more attuned to reports of officers' poor behaviour, whether reports of gross misconduct hearings or criminal convictions. This both impacts on the legitimacy of policing and overshadows the excellent work most officers and police staff do, day in, day out.

Police and Crime Commissioner's (PCCs) have a key role to play in helping re-build that trust by engaging proactively with the pension forfeiture process. Therefore, it is important the PCC considers or seeks, where appropriate, pension forfeiture for both police officers and police staff.

The reduction of a Pension Scheme Member's pension when convicted of a criminal offence connected to their employment in the police, signals that the PCC and Chief Constable (CC) want to:

- ***Condemn the poor behaviour of officers and staff.***
- ***Understand the public's distaste for this criminal behaviour and are taking the steps within their power to address it.***
- ***Ensure pension amounts obtained from public funds are appropriately protected.***
- ***Want to build a culture of integrity within Derbyshire Constabulary.***

It is important to note that pension forfeiture is an additional penalty to any penalty given by the courts. Therefore, the pension rights of an employee should not be forfeited except in serious circumstances where the case fits the pension forfeiture criteria, and where applicable, is authorised by the Secretary of State/the Secretary of State for Housing Communities and Local Government.

As stated above, pension forfeiture will not be appropriate in every case, but it should always be considered where the offence has led to a conviction and is connected to the Pension Scheme Member's work within the police service.

## **1 - Legislation**

1.1 This document sets out the policy and procedure to be followed for the pension forfeiture of Derbyshire Constabulary (Constabulary) police officer pensions and Derbyshire Constabulary staff pensions by the PCC of Derbyshire.

1.2 Whilst this document aims to reflect and explain the underlying pension forfeiture legislation, the Constabulary and the PCC/Office of the Police and Crime Commissioner (OPCC), may seek separate legal advice on the full effect of the legislation where necessary.

1.3 This policy will apply to all current and former (inc. retired/resigned) Derbyshire Constabulary officers and Derbyshire Constabulary police staff. It should be noted that for the purposes of this policy, where references are made to police staff, this also includes staff employed in the OPCC. All of which will be referred to as Pension Scheme Members in this policy.

1.4 The PCC for Derbyshire is the Pension Service Authority (PSA) for Derbyshire Constabulary; therefore, they are responsible for the submission of pension forfeiture applications to the Secretary of State/the Secretary of State for Housing Communities and Local Government. and determining whether a pension forfeiture is to be undertaken or not, and if so, to what extent.

## **Police Officers**

1.5 For Police Officers the legislative basis for police pension forfeiture is found in regulation K5 of the 1987 Police Pensions Regulations, regulation 55 of the 2006 Regulations and Chapter 5 of Part 13 to the 2015 Regulations. Each of these regulations contain provisions which allow a PCC to determine forfeiture in cases where either;

### **Case 1**

- ***A pension scheme Pension Scheme Member has been convicted of treason or of offences under the Official Secrets Acts 1911 and 1939 and has been sentenced to a term (or terms) of imprisonment of at least ten years. or.***

### **Case 2**

- ***Where a pension scheme Pension Scheme Member has been convicted of an offence committed in connection with his or her service as a Pension Scheme 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 a serious loss of confidence in the public service.***

1.5 The Home Office Guidance sets out that an offence committed in connection with service as a Pension Scheme Member of a police force is considered to be any offence where there is, or could be, public concern about the offender's abuse of position or trust.

1.6 The Regulations (section 55) also details circumstances where the PCC may apply for forfeiture of a police officer's pension from:

- ***A regular police officer or former regular police officer.***
- ***A nominated survivor of such a police officer; and***
- ***A pension credit Pension Scheme Member.***

## **Police Staff**

1.7 For Police Staff the legislative basis for pension forfeiture is found in regulation 91 of the Local Government Pension Scheme Regulations 2013. These regulations contain provisions which allow a PCC to determine forfeiture in cases where:

### **Case 2**

- ***A relevant offence is an offence committed in connection with an employment in which the person convicted is a Pension Scheme Member, and because of which the Pension Scheme Member left the employment.***

1.8 Applications for pension forfeiture in respect of Police Staff will be made under the Local Government Pension Scheme Regulations 2013 and dealt with under the same processes and procedures as Police Officers, except where it is clearly indicated otherwise.

1.9 The Constabulary's Professional Standards Department (PSD) will carry out regular checks to identify any cases where a former Police Officer or Police Staff (who may be a pension scheme Pension Scheme Member) has been convicted of a criminal offence, which may relate to their service to the police force. They will also have regular contact with the PCC, or their representatives, in order to update the PCC of specific cases.

## **2 - Stage 1: Initial Notification from PSD**

2.1 The first stage in the pension forfeiture process is for the PSD to complete a Pension Forfeiture Report as soon as it is identified that a Pension Scheme Member has:

- Received a criminal conviction which they believe is in connection with their Constabulary employment.

2.2 As soon as possible following the conviction date PSD will send the report to the Deputy Chief Constable (DCC) for review and approval. Thereafter, if the report is approved by the DCC, then the PSD will send the report to the PCC for review and a determination to be made about whether the case fits the criteria to be referred to either the Home Secretary for Police Officers, or the Secretary of State for Housing Communities and Local Government (in the case of a Police Staff member) for a pension forfeiture certificate.

**Note** - Although initially approved by the DCC as fitting the criteria for pension forfeiture, it is actually the PCC who would make the final determination on whether a pension forfeiture should be undertaken, not the Constabulary.

2.3 In all instances where the Constabulary are stating that a criminal conviction has been received but is not related to the Pension Scheme Members employment, the PCC should be made aware from an assurance and oversight perspective. Normally, this information will be discussed in the PSD/PCC catch up meetings.

2.4 The Pension Forfeiture Report from the PSD should include at least the following:

- Pension Scheme Members name, rank and DOB.
- Date of joining the Constabulary.
- The nature of the offence with background details.
- The reasons why the Constabulary believes that the offence is either Case 1 or Case 2. For Case 2 details on the connection with the Pension Scheme Pension Scheme Member's service as a police officer or police staff, and why in their view it was either gravely injurious to the interests of the State, or liable to lead to serious loss of confidence in the public service.
- Plea of Pension Scheme Member at court.
- Court name and date of conviction/sentencing.
- The sentence given to the Pension Scheme Member, inc. any Judges sentencing remarks.
- Any relevant information gathered in the course of the investigation.
- Date and Comments at the Accelerated Misconduct Meeting.
- Whether the matter is of public interest/media coverage and details of the public interest/media coverage in the case.
- Vulnerabilities of the victim.
- Aggravating/Mitigating circumstances.

- Vulnerabilities, disabilities, illness in the family or the Pension Scheme Member.
- Assistance of Pension Scheme Member during the police investigation or following conviction from the Pension Scheme Member.
- Relevant pension scheme details.
- Details of persons likely to be affected by any forfeiture of pension
- Any other relevant considerations/information.

2.5 The CC, or their representatives should not make any comments in the report as to whether they believe that a pension forfeiture is appropriate or the level or duration of any forfeiture, as to do so would be usurping the role of the PCC under the pension forfeiture legislation. Ultimately, it will be the PCCs final decision as to whether to make a pension forfeiture or not and if so, the extent and duration, not the Constabulary.

2.6 A copy of a blank PSD Pension Forfeiture Report is attached at Appendix A of this policy for reference.

### **3 - Stage 2: Determining whether a Pension Forfeiture is necessary**

3.1 This policy is directed primarily at Case 2 convictions for both police officers and police staff. However, Case 1 convictions will follow a similar procedure to Case 2 convictions but are relatively rare and do not require a Home Secretary's certificate to be issued before a pension forfeiture can be considered by the PCC. The reason for this, is that with Case 1 convictions there is no requirement to determine whether the conviction was gravely injurious to the state or liable to lead to the serious loss of confidence in the public service, as offences that fall under Case 1 are automatically accepted as being eligible for pension forfeiture due to their serious nature.

Therefore, if a Case 1 conviction is realised, then the PCC will follow all the actions under this policy, apart from applying to the Home Secretary for a pension certificate.

3.2 The Pension Scheme Member need not have been a serving police officer at the time of the offence in order to meet the requirement that it must be connected with their service e.g. an offence committed after the Pension Scheme Member has retired. However, the same does not apply for Police Staff, as they would have to be employed by the Constabulary at the time the offence was committed and have left employment because of it.

**Note – Important!** For Police Staff, a pension forfeiture needs to be submitted to the Home Office within three months of the criminal conviction being issued. Whereas, for police officers there is no deadline for when a pension forfeiture can be submitted.

3.3 It is important to note that pension forfeiture cannot be applied for in cases where there is no criminal conviction given to the Pension Scheme Member by the courts.

3.4 It is for the PCC to determine from the PSD Pension Forfeiture Report whether the given conviction/s meet the requirements for a pension forfeiture application to be submitted to the Home Secretary.

The requirements being:

#### **Case 1 Convictions – Police Officers**

***An offence of treason, or of offences under the Official Secrets Acts 1911 and 1939 and has been sentenced to a term (or terms) of imprisonment of at least ten years.***

***Or.***

#### **Case 2 Convictions – Police Officers**

***A criminal offence committed in connection with a Pension Scheme Member's service in the police force, which has been certified by the relevant Secretary of State either to have been:***

- ***Gravely injurious to the interests of the State; or***
- ***Liable to lead to serious loss of confidence in the public service.***

#### **Case 2 Convictions – Police Staff**

***A relevant offence is an offence committed in connection with an employment in which the person convicted is a Pension Scheme Member, and because of which the Pension Scheme Member left the employment.***

**Note:** Police staff participate in the separate pension scheme to police officers, therefore it is possible for a PCC to apply for pension forfeiture in respect of a Derbyshire Constabulary police staff Pension Scheme Member, under [the Local Government Pension Scheme \(LGPS\) Regulations 2013, \(the Regulations\)](#).

3.5 Under regulation 93 of the [Local Government Pension Scheme Regulations 2013](#) (the Regulations), the PCC can apply to the relevant Pension Administrator to recover or retain money owed in the following circumstances:

- ***The Pension Scheme Member is entitled to benefits from the Scheme***

- ***The Pension Scheme Member has committed an act of grave misconduct or a criminal, negligent or fraudulent act or omission.***
- ***The Pension Scheme Member has, in consequence of that act, left the employment through which they were a Pension Scheme Member.***
- ***The Pension Scheme Member owes money in consequence of their misconduct, act or omission to their former scheme employer.***

3.6 The PCC can recover that money or, if less, the value of all the employee's pension benefits (subject to a few exceptions). The PCC must give at least three months' notice of the amount it intends to recover and show how this is calculated.

3.7 Under regulation 91 of the Regulations the PCC can also apply to the Secretary of State for Housing Communities and Local Government for consideration be given to the Pension Scheme Member's pension being forfeited where:

- ***The Pension Scheme Member has been convicted of an offence.***
- ***The offence was committed in connection with the employment through which the person is a Pension Scheme Member of the LGPS.***
- ***The Pension Scheme Member has left employment because of that offence.***
- ***The offence was "gravely injurious" to the State or is liable to lead a to serious loss of confidence in the public service; and***
- ***Where the former employer suffered loss, it is not able to recover that loss in another way (including under regulation 93), except after an unreasonable delay or at a disproportionate cost.***

3.8 The PCC will not have made a final determination on whether the pension should be forfeited or not, or the amount or duration of the forfeiture.

At this stage the PCC will only be determining the following –

- ***Whether the details of the Pension Scheme Member's conviction fit within Case 1, based on the details presented in the Constabulary's Pension Forfeiture Report, or;***
- ***Whether the details of the Pension Scheme Member's conviction fit within a Case 2, based on the details presented in the Constabulary's Pension Forfeiture Report, and;***

- ***Whether the conviction/s are in connection with the Pension Scheme Member's service in the police force.***

3.9 When determining if the offence was committed in connection with the Pension Scheme Member's service, PCCs should consider if they used their skills and knowledge from being employed by the Constabulary, abused their position of trust or utilised Constabulary equipment or information to commit the offence/s.

**Note** - The offence/s do not have to have been committed whilst the Pension Scheme Member was on duty to count.

3.10 The baseline position in principle is that Pension Scheme Members rights (i.e. a pension) once earned, will only be forfeited in serious circumstances. Rights to a police pension are part of the remuneration package to which their service in the police has entitled them, and a conviction will not always automatically result in a pension forfeiture being undertaken.

3.11 If the Pension Scheme Member has been granted leave to appeal their conviction, the PCC should await the outcome of the appeal before proceeding with a forfeiture application. This provision does not apply where leave to appeal is initially refused, and the Pension Scheme Member seeks leave to appeal to a higher court. In those circumstances the PCC should proceed until any leave to appeal to a higher court is granted.

3.12 If the PCC determines that a pension forfeiture should not be applied for because the relevant thresholds above are not met, then the PCC or their representative, will record their rationale for this determination, and a copy will be sent to the PSD for reference. As no further action will be taken regarding a pension forfeiture in this instance, the Pension Scheme Member need not be notified that a pension forfeiture was being considered.

3.13 If the PCC determines that a pension forfeiture should be applied for, then the PCC, or their representative, will notify the Pension Scheme Member that consideration is being given to a pension forfeiture, and that an application will be submitted to the Home Secretary for consideration. The Pension Scheme Member should also be informed that they will be contacted by the OPCC to provide any representations they have, if the Home Secretary approves a pension forfeiture certificate.

**Note** - The PCC should take care to ensure only essential and relevant information is provided in the pension forfeiture submission to the Home Secretary, as applications or details contained within them may be disclosed by the Home Office at a later date.

3.14 The Pension Administrator should also be notified at this time that a pension forfeiture application has been submitted to the Home Secretary for consideration. No specific pension amounts etc. will be collated or discussed at this point, unless a certificate is approved.

3.15 The PCC should give as much information relating to the pension forfeiture as is requested by the Home Secretary on the [Home Office Pension Forfeiture Application Form](#).

3.16 A blank Home Office Pension Forfeiture Application Form is attached at Appendix C of this policy for reference.

### 3.17 **Police Officers**

All applications in respect of police officers should be submitted electronically to: [Pension.Forfeiture@homeoffice.gov.uk](mailto:Pension.Forfeiture@homeoffice.gov.uk) for consideration by the Home Secretary.

Hard copies of applications will also be accepted by the Home Office and should be sent recorded delivery to the address below:

Pension Forfeiture,

Police Integrity Unit

2 Marsham Street

London

SW1P 4DF

### 3.18 **Police Staff**

All applications in respect of police staff should be submitted electronically to: [Pension.Forfeiture@homeoffice.gov.uk](mailto:Pension.Forfeiture@homeoffice.gov.uk)

Hard copies of applications will also be accepted by the Home Office and should be sent recorded delivery to the address below:

The Secretary of State for Housing, Communities and Local Government.

2 Marsham Street,

London,

SW1P 4DF

3.19 The PCC can seek further information relating to police staff pension forfeitures from: [LGPensions@communities.gov.uk](mailto:LGPensions@communities.gov.uk)

## **4 - Home Secretary Determination**

4.1 The Home Secretary/Secretary of State for Housing, Communities and Local Government will consider the PCC's pension forfeiture application and make a determination as to whether the requirements for a pension forfeiture are met, and thereafter, whether a certificate of pension forfeiture should be approved or not.

4.2 The Home Secretary/Secretary of State for Housing, Communities and Local Government will send their determination back to the PCC.

4.3 As soon as possible, once the Home Secretary/Secretary of State for Housing, Communities and Local Government determination is known, the PCC must inform the Pension Scheme Member, the CC or their representatives, and the relevant Pension Administrator of the outcome.

## **5 - Final Determination made by PCC**

### **Certificate Declined**

5.1 If the Home Secretary does not approve a pension forfeiture certificate, then a pension forfeiture cannot be undertaken by the PCC. The PCC, or their representative, will record that the certificate has not been approved and any rationale given from the Home Secretary/Secretary of State for Housing, Communities and Local Government. No further action will be taken regarding a pension forfeiture in this instance.

5.2 The PCC, or their representative, will inform the Pension Scheme Member, the PSD and the Pension Administrator of the determination made by the Home Secretary/Secretary of State for Housing, Communities and Local Government., and that no further action will be taken regarding a pension forfeiture.

**Note** - The Home Secretary/Secretary of State for Housing, Communities and Local Government determination can be challenged by the PCC through the courts under the Judicial Review process, but only if the determination made by the Home Secretary is believed to be unlawful, irrational, manifestly unreasonable or made on the wrong grounds. Legal advice should be obtained by the PCC at this point if they are considering pursuing this course of action.

### **Certificate Issued**

5.3 If the Home Secretary approves a pension forfeiture certificate, then the PCC, or their representative, will notify the Pension Scheme Member, the PSD and the Pension Administrator, that a pension forfeiture certificate has been approved.

5.4 The PCC will then ask for any written representations that the Pension Scheme Member has to be submitted back to the PCC within 21 days for their consideration, before making a final determination on whether to undertake a pension forfeiture, or not.

**Note –** It is important to note, that the PCC cannot re-investigate the original crime or look to overturn the conviction/s awarded by the court. Representations from the Pension Scheme Member can detail their view on the percentage of their pension to be deducted and/or the duration of the pension forfeiture, alongside any health, family, or other considerations that the Pension Scheme Member believes the PCC should be aware of. Reasonable adjustments will be considered, if the Pension Scheme Member cannot submit a written submission.

5.5 The PCC will ensure that the Pension Scheme Member is provided with a copy of the following documents at the time of asking for any written representations:

- ***A copy of the pension forfeiture certificate issued by the Home Secretary.***
- ***The Home Secretary/Secretary of State for Housing, Communities and Local Government rationale for granting the certificate; and***
- ***A copy of the CC's pension forfeiture report and any documents / information relied on by the Home Secretary from the PCC/Constabulary.***

**Note -** Legal advice should be sought if it is intended to withhold sensitive information from the Pension Scheme Member, and depending on the circumstances the Pension Scheme Member may need to be informed with the rationale why certain information has been excluded from disclosure (unless to reveal the rationale would undermine the reason for exclusion).

5.6 Thereafter, the PCC, or their representative, will ask the PSD to provide a written response to any representations made by the Pension Scheme Member.

5.7 The PCC or their representative, will consider all representations made by the Pension Scheme Member, the PSD, and any other relevant sources, before making a final determination on whether to undertake a pension forfeiture or not.

### **Not Proceeding with a pension forfeiture**

5.8 If the PCC's determination thereafter is to not proceed with a pension forfeiture, then the rationale for this decision will be recorded and a copy will be sent to the Pension Scheme Member, the CC and/or their representative, and the Pension Administrator for reference. No further action will be taken regarding a pension forfeiture in this instance.

**Note:** The approval of a pension forfeiture certificate by the Home Secretary/Secretary of State for Housing, Communities and Local Government does not automatically mean that the PCC has to proceed with a pension forfeiture. However, what it does signify is that on the information see, they believe that the case is eligible for a pension forfeiture.

## **Proceeding with a pension forfeiture**

5.9 If the PCC's determination thereafter is to proceed with a pension forfeiture, then a Pension Forfeiture Panel will be convened to determine the extent to which the pension should be forfeited.

The Panel will normally consist of the following:

- The Police and Crime Commissioner
- The OPCC Chief Operating Officer
- The OPCC Monitoring Officer
- The OPCC Deputy Chief Executive
- Legal Representation for the PCC if applicable

**Note:** Substitute Panel members may be chosen by the PCC to represent any of the above. Where this is the case, a rationale for this decision will be recorded. For clarity, all pension forfeitures amounts will be determined by the PCC, however, for Police Staff the PCC will ensure that the CC is consulted on the initial determination, as the CC is the relevant body for determining Police Staff pension forfeitures, although the administration has been delegated to the PCC to undertake in line with the Police Officer pension forfeiture process.

5.10 The rationale (inc. extent and duration of forfeiture) for the PCC's final determination will be recorded and a copy will be sent to the Pension Scheme Member, the CC and/or their representative, the Home Secretary/Secretary of State for Housing, Communities and Local Government, and the Pension Administrator, for reference. Additionally, the PCC shall also inform the Pension Scheme Member of the next steps in the process.

**Note:** A decision to delay a determination on pension forfeiture following the issue of a pension certificate might, in some circumstances, be prejudicial to a successful appeal and liable to challenge.

5:12 Effective notes/rationales should always be recorded by the PCC/OPCC, so that the PCC can evidence their decision-making process and demonstrate that all evidence and representations were considered thoroughly, and all elements of the case were reviewed when reaching a final pension forfeiture determination.

## **6 - Amount and Duration of Pension Forfeiture**

6.1 Paragraph 4 of the Police Pension Regulations provides that pension forfeiture may be applied in total or partial, permanently or temporarily. While temporary forfeiture could be considered in certain limited cases, its application is rare, and permanent forfeiture is the usual practice.

6.2 The Courts have determined that a Police Officers pension may be forfeited by **no more than 65%**, (i.e. only contributions that have been made by the police force). The remainder reflects a Pension Scheme Member's own contributions which cannot be forfeited. There is no minimum forfeiture amount or proportion.

For Police Staff, the legislation stipulates that the amount forfeited must not deprive an individual of a guaranteed minimum pension (with the exception of Case 1 offences).

6.3 If several officers/police staff were involved in the commission of the offence/s, the PCC might decide to reflect different levels of culpability in the extent of pension forfeiture for each individual. For example, a senior officer may be considered more culpable than a junior officer, therefore this may then influence the percentage and duration of the pension forfeiture that is deducted for this individual compared to a more junior Pension Scheme Member of staff. However, this will need to be considered on a case by case basis.

6.4 The PCC should take into account the Offence Scale percentages according to conviction type, to ensure that decision relating to percentage deductions are consistent. Ideally, comparable convictions should result in similar percentage levels being forfeited. However, the percentage forfeited will always be determined on a case by case basis.

## **7 - Offence Scale**

7.1 The PCC will need to consider where on the below Offence Scale the Pension Scheme Member's conviction/s sits. This will depend on the details of the actual criminal case, alongside the criminal conviction given by the courts and any other mitigating or aggravating factors.

7.2 The Offence Scale is applicable to both police officers and police staff. The scale also gives an indication of the percentages that could be considered by the PCC for deduction from the pension. However, the exact percentage deducted will be a decision for the PCC to make. As such, the Offence Scale serves as a rough guide for the PCC to base their determination on, which also ensures that when the PCC applies a pension forfeiture they are undertaken in a fair and consistent manner.

7.3

### **OFFENCE SCALE**

<b>Offence</b>	<b>Forfeiture Amount</b>
Common assault	10-20%
Computer Misuse	20%
ABH	25%
Theft	25-35%
Corruption	55%
Misconduct in public office*	20-65%
Perverting the course of justice/attempting to*	50-65%

Rape/Sex Offences (adult)	50-65%
Child Sex Offences (not IIOC)	60-65%

**Note** - \*Both offences of Misconduct in Public Office, and Perverting the Course of Justice, can cover an extremely broad set of circumstances. Therefore, the percentage amounts forfeited from a Pension Scheme Member's pension may vary significantly, depending on the details of the actual case.

## **8 - Mitigating/Aggravating Factors**

8.1 It is important to note that before a final determination is made on the amount of pension to forfeit and the duration, both aggravating and mitigating factors may need to be considered carefully by the PCC. This ensures that a fair and balanced pension forfeiture determination is reached, which will stand up to scrutiny if challenged at a later date.

8.2 An aggravating circumstance is something that may increase the pension forfeiture amount deducted, such as –

- ***The gravity of the offence/s.***
- ***The scale of the offence/s committed.***
- ***The duration of the offence/s.***
- ***The victims involved.***
- ***The seriousness with which the court viewed the offence (sentence given etc).***
- ***Any media or national coverage associated with the offence/s.***
- ***Assistance or information given to the police by the Pension Scheme Member during the investigation or following conviction.***
- ***Seniority of the Pension Scheme Member.***
- ***Length of service of the Pension Scheme Member.***

Whereas a mitigating circumstance is something that may reduce the pension forfeiture amount deducted, such as –

- ***Health of the Pension Scheme Member or immediate family Pension Scheme Members.***
- ***Health issues that have affected the Pension Scheme Member's behaviour.***
- ***Assistance or information given to the police by the Pension Scheme Member during the investigation or following conviction.***
- ***Vulnerabilities of the Pension Scheme Member.***
- ***Adverse impact on the Pension Scheme Members family/dependents.***

## **9 - Types of pension that can be forfeited**

9.1 It is important to note that for the purpose of these procedures, pension does not include allowance, a gratuity, a lump sum, or an award by way of repayment of aggregate pension contributions. It means a personal 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 (e.g., 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.

9.2 The secured portion of a pension can only be forfeited temporarily, that is, until a Pension Scheme Member reaches state pensionable age. After that, it may only be forfeited if the Pension Scheme Member is in legal custody.

9.3 A Pension Scheme Member who is dismissed after completing 25 years' service will not be entitled to an ordinary pension if they were dismissed for a cause for which the pension could be forfeited. In these circumstances, the Pension Scheme Member will only become entitled to a deferred pension at the age of 60 and it will be for the PCC to determine whether the deferred pension should be forfeited and to what extent.

9.4 If the pension is a deferred one, the PCC may decide (once a pension forfeiture certificate has been issued by the Home Secretary) to keep the question of pension forfeiture under review. However, a decision to delay the determination on pension forfeiture following the issue of a certificate might, in some circumstances, be prejudicial to a successful appeal and liable to challenge. Whether or not to delay the determination will depend on the individual circumstances of each case.

Circumstances in which deferment may be appropriate include where the Pension Scheme Member has lodged an appeal against the conviction/s issued by the courts and the outcome of that appeal is needed before a pension forfeiture can be considered by the PCC.

## **10 Procedure following PCC Determination**

10.1 If a pension forfeiture is to take place, the Pension Scheme Member, the Home Secretary, the CC or their representatives, and the Pensions Administrator, shall be informed in writing of the PCC's determination at the earliest opportunity, which should also include the following information:

- Percentage of pension forfeited.
- The duration of the pension forfeiture (temporarily/permanent).
- The effective date of the pension forfeiture.

- Next steps in the process (inc. appeals information).

## **11 – Pension Forfeiture Publicity**

11.1 The PCC may need to consider whether to communicate more widely that a pension forfeiture has been made. However, any internal communication should be in conjunction with the PSD, the Constabulary's Communications Department, the CC directly and the OPCC's Communication Officers.

11.2 Any external communications (websites/social media platforms/local/national press) should also be in conjunction with the Constabulary's Communications Department and the CC directly, as well as the OPCC's Communications Officers.

11.3 The PCC may also wish to inform the Police and Crime Panel (PCP), of any pension forfeiture that are undertaken.

11.4 Any communication that a pension forfeiture has been made is supposed to serve as a deterrent to officers and police staff and illustrate to the wider public the PCC's and CC's ongoing commitment to ensuring that officers and police staff adhere to the highest levels of integrity and standards of behaviour at all times.

## **12 – Decision Notice**

12.1 The PCC, or their representatives, must complete a Decision Notice when a pension forfeiture has been applied, in line with the PCC's Decision Notice Process. When the determination is made by the PCC and a pension forfeiture is applied this will be classed as a significant decision. All *significant* decisions should be publicised on the PCC's website for transparency reasons, unless they are exempt from disclosure.

## **13 - Pension Forfeiture Appeals**

13.1 The Pension Scheme Member has a right of appeal to the Crown Court against the pension forfeiture determination made by the PCC within 21 days from when the determination was communicated to the Pension Scheme Member (Regulation H6 of the 1987 Regulations and the Police Pensions Schemes).

13.2 As a matter of good practice, the Home Office, the CC, or their representatives, and the Pension Administrator should all be informed where a Pension Scheme Member appeals any aspect of the forfeiture within 14 days of receiving a notice of an appeal from the Pension Scheme Member, and the subsequent outcome of any such appeal within 14 days of the determination being made by the Crown Court.

13.3 The Pension Scheme Member may appeal against the PCC's determination that the case fell within scope of the relevant regulations, and/or against the extent of the forfeiture.

## **14 - Supporting Information**

### 14.1 Police Officers

Home Office Police pension forfeiture guidance - [Police pension forfeiture - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/police-pension-forfeiture)

### 14.2 Police Staff

[The Local Government Pension Scheme \(LGPS\) Regulations 2013, \(the Regulations\).](#)

## **15 - Policy Review Details**

15.1 This policy will be reviewed every three years but will be reviewed earlier if any relevant laws, legislation, guidance or process changes occur.

# **APPENDICIES**

## APPENDIX A - DERBYSHIRE CONSTABULARY PENSION FORFEITURE REPORT



### Pension Forfeiture Report

Pension forfeiture applications can be made by the Pension Supervising Authority (PSA) where they consider that the requirements in the Police Pensions Schemes are met, namely, where a police officer, or former police officer who is, or was, a Pension Scheme Member of a police pension scheme has:

- a) been convicted of a criminal offence committed in connection with their service as a Pension Scheme Member of a police force, and*
- b) the offence has been certified by the Secretary of State/the Secretary of State for Housing Communities and Local Government as either
  - i. liable to lead to a serious loss of confidence in the public service; or*
  - ii. gravely injurious to the interests of the State**

Regulation K5 of the Police Pensions Regulations 1987, Regulation 55 of the Police Pensions Regulations 2006 and Chapter 5 of Part 13 to the Police Pensions Regulations 2015.

For Derbyshire, the PSA is the Office of the Police and Crime Commissioner (OPCC).

The purpose of this form is to bring cases which may be suitable for Pension Forfeiture to the attention of the PSA (the OPCC).



## **Pension Forfeiture Report**

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*Regulation K5 of the Police Pensions Regulations 1987, Regulation 55 of the Police Pensions Regulations 2006 and Chapter 5 of Part 13 to the Police Pensions Regulations 2015.*

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The purpose of this form is to bring cases which may be suitable for Pension Forfeiture to the attention of the PSA (the OPCC).

<b>Case Reference:</b>		<b>Investigating Officer:</b>	
<b>Subject Name:</b>		<b>Collar Number:</b>	
<b>Division/Department:</b>		<b>Rank:</b>	
<b>Location Occurred:</b>		<b>Date Occurred:</b>	

<b>Circumstances of the offence:</b>
<b>Sentence Received and Judge's Sentencing Remarks</b> (to include any indication of the seriousness with which the court viewed the offence):
<b>The Seniority of The Staff Member</b> (to include length of service, supervisory or other responsibilities and dates these responsibilities have been held):

**The Extent of Publicity and Media Coverage** (please reference specific articles and provide links where available):

--

**Did the offence involve any of the following** (please provide details):

An organised conspiracy amongst a number of officers

Details:

--

Active support for criminals

Details:

--

The perversion of the course of public justice

Details:

--

The betrayal of an important position of trust for personal gain

Details:

--

The corruption or attempted corruption of junior officers

Details:

--

**Once complete, please send to AA (Dept HoD in first instance)**

**AA:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Comments:

**Once endorsed, report to be sent to Exec by endorsing AA**

**Exec:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Comments:

**Once endorsed, report to be sent to OPCC by endorsing Exec**

## **APPENDIX B - PCC CONSIDERATIONS CHECKLIST**

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

## **APPENDIX C – HOME OFFICE PENSION FORFEITURE APPLICATION FORM**

Details of Pension Scheme Pension Scheme Member	
Surname	
Given name	
Middle name(s)	
Rank	
Force	
Date of Birth	
Date the officer joined the force	

Pension Schemes	
<b>Police Pension Scheme (PPS) 1987</b>	
Date from:	Date to:
<b>New Police Pension Scheme (NPPS) 2006</b>	
Date from:	Date to:
<b>Police Pension Scheme 2015 Career Average Revalued Earning (CARE)</b>	
Date from:	Date to:
<b>Is the pension scheme Pension Scheme Member currently in receipt of their pension? (tick if yes)</b>	

Detailed case summary	

<b>Offence conviction</b>	Choose an item.
<b>Title of offence</b>	
<b>Statute</b>	
<b>Offence wording</b>	

<b>Plea</b>	Choose an item.
<b>Court convicting</b>	
<b>Date of conviction</b>	Click or tap to enter a date.
<b>Date of sentencing</b>	Click or tap to enter a date.
<b>Sentence</b>	
<b>Committed in connection with service</b>	Choose an item.

<b>Details of the circumstances surrounding the offence and investigation</b>	
<b>Tick if any of the following apply</b>	
1. Organised conspiracy amongst several officers (scheme Pension Scheme Members)	<input type="checkbox"/>
2. Active support for criminals	<input type="checkbox"/>
3. Perversion of the administration of justice	<input type="checkbox"/>
4. Betrayal of an important position of trust for personal gain	<input type="checkbox"/>
5. Corruption or attempted corruption of junior officers	<input type="checkbox"/>
<i>Enter details here</i>	
<b>Overall behaviour of the scheme Pension Scheme Member during trial and investigation</b>	
<i>Enter details here (e.g. extent of cooperation)</i>	

<b>Judge's sentencing remarks (if known)</b>
Name of Judge
Enter details here

<b>Details of media and publicity</b>
Enter details here

<b>Pension Supervising Authority</b>
<b>Statement from the Pension Supervising Authority</b>
Enter the reasons why, in the view of the Pension Supervising Authority, the offence(s) in question: a) was committed in connection with the pension scheme Pension Scheme Member's service as a Pension Scheme Member of the police force; and b) is liable to lead to a serious loss of confidence in the public service (and, in the case of the 2015 Regulations, a serious loss of confidence in service by Pension Scheme Members of police forces in England and Wales) or is gravely injurious to the interests of the State.

<b>Misconduct hearing/fast track date</b>	
<b>Misconduct hearing/fast track outcome</b>	
<b>Misconduct hearing/fast track chair and any relevant comments</b>	

<b>Any other relevant information</b>
Enter details here