

DMPC Decision – PCD 1479

Title: Determine whether Former Police Constable (FPC) Scott Johnson’s pension should be forfeited in whole or in part, permanently or temporarily, or at all

Executive Summary:

Former PC (‘FPC’) Johnson was convicted of an offence committed in connection with his service as a member of the Metropolitan Police Service (“MPS”). The Home Office has granted a certificate of forfeiture on the basis that the conviction was liable to lead to serious loss of confidence in the public service. The next stage is for the Deputy Mayor for Policing and Crime (“DMPC”) to determine whether FPC Johnson’s pension should be forfeited in whole or in part, permanently or temporarily, or at all.

Recommendation:

The Deputy Mayor for Policing and Crime is recommended to agree:

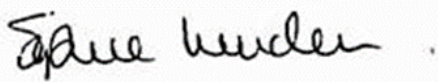
1. FPC Johnson’s pension be forfeited at a level of forfeiture of 65% on a permanent basis.
2. MOPAC publish Part 1 of this decision form.

Deputy Mayor for Policing and Crime

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below.

The above request has my approval.

Signature



Date 24/06/2024

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC

1. Introduction and background

- a. There are three stages to pension forfeiture. The first stage is for the pension supervising authority (in this case, MOPAC), together with the force for which it is responsible (in this case, the MPS), to identify a case where a pension scheme member has been convicted of an offence, or offences, which they consider is in connection with their service as a member of a police force.
- b. MOPAC is satisfied that this is a case where FPC Johnson had been convicted of an offence which was in connection with his service as a member of the MPS. This was determined on 16 June 2022 under MOPAC decision reference 'PCD 1123'.
- c. The second stage is for the Home Secretary to certify whether the offence committed is considered to be gravely injurious to the interests of the State or liable to lead to a serious loss of confidence in the public service. On 22 February 2023, The Minister of State for Crime, Policing and Probation, on behalf of the Home Secretary granted a certificate of forfeiture.
- d. The third, and final, stage is for the DMPC to decide whether to proceed with forfeiture, and if so, to what extent the pension should be forfeited and for what duration.
- e. There are detailed background papers within Part 2 of this report available for consideration by the DMPC when making this decision.

2. Issues for consideration

- a. In summary, FPC Johnson's offending has been regarded as serious given he knowingly engaged in a sexual relationship with a vulnerable victim, the offence was committed by and linked to his service as a serving police officer, and the custodial sentence imposed.
- b. On 10 October 2018, FPC Johnson pleaded guilty to one count of Misconduct in Public Office.
- c. On 6 December 2018 FPC Johnson was sentenced to 2 years' imprisonment and ordered to pay a £140 victim surcharge.
- d. The DMPC has previously determined that FPC Johnson has been convicted of an offence committed in connection with his service as a member of a police force which has been certified, on behalf of the Home Secretary, to be liable to lead to serious loss of confidence in the public services.
- e. The DMPC is recommended to agree that FPC Johnson's pension be forfeited at a level of forfeiture of 65% on a permanent basis. FPC Johnson's pension, with any

forfeiture applied, is a deferred pension and so will be payable in accordance with the terms of the Police Pension Scheme(s) of which he is a member.

- f. In the interests of fairness, FPC Johnson was invited to submit representations on the level and length of any forfeiture. Any representations submitted by FPC Johnson are included with the Part 2 of this decision for the DMPC to consider before arriving at a decision.

The Casey Review & Engage

- a. Baroness Casey's report emphasised the importance of standards of behaviour in policing and building the confidence of communities. When a police officer drops well below those standards and commits a criminal offence in connection with their service it is incumbent on MOPAC to demonstrate to the public that it is taking action to forfeit an officer's pension.

3. Financial Comments

- a. There are no direct financial implications for MOPAC associated with the decision at this stage. Pension forfeiture will 'benefit' the Police Officer Pension Fund which is funded by officer and employer contributions and the Home Office Top Up grant, and any individual pension forfeiture will not materially affect these.

4. Legal Comments

- a. The Scheme of Delegation sets out that the DMPC makes decisions on whether to forfeit police pensions under the Police Pensions Act 1976, including the level and extent of each forfeiture.
- b. The legislative basis for police officer pension forfeiture is found in regulation K5 of the Police Pensions Regulations 1987 ('the 1987 Regulations'), regulation 55 of the Police Pensions Regulations 2006 ('the 2006 Regulations') and Chapter 5 of Part 13 to the Police Pensions Regulations 2015 ('the 2015 Regulations'). The 2006 Regulations are not relevant for the purposes of this case.

Legal basis for considering forfeiture

- c. Paragraph (4) of Regulation K5 of the 1987 Regulations states that "subject to paragraph (5) a police pension authority responsible for payment to a member of a police force of a pension to which this Regulation applies may determine that the pension be forfeited, in whole or in part and permanently or temporarily as they may specify, if the grantee has been convicted of an offence committed in connection with his service as a member of a police force which is certified by the Secretary of State

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."

- d. Paragraph (5) of Regulation K5 states that "in the case of a pension to which this Regulation applies, other than an injury pension, the police pension authority in determining whether a forfeiture should be permanent or temporary and affect a pension in whole or in part may make different determinations in respect of the secured and unsecured portions of the pension; but the secured portion of such a pension shall not be forfeited permanently and may only be forfeited temporarily for a period expiring before the grantee attains state pensionable age or for which he is imprisoned or otherwise detained in legal custody."
- e. Regulation 211(1) of the 2015 Regulations made under the Public Service Pensions Act 2013 states: "if a member is convicted of a relevant offence, the pension supervising authority may, to the extent the pension supervising authority considers appropriate, require the scheme manager to withhold benefits payable under this scheme to or in respect of the member".
- f. The definition of a "relevant offence" under regulation 211(5) includes "an offence committed in connection with the member's service as a member of a police force and in respect of which the Secretary of State for the Home Department has issued a forfeiture certificate."
- g. The reason the 1987 Regulations refer to a "secured portion" of a pension and an "unsecured portion" derives from the fact that the Police Pension Scheme is a "contracted out" pension scheme. Members of a contracted out scheme pay reduced contributions, but are only entitled to a basic state pension; they are not entitled to the second state pension. If, on ceasing to be a member of a contracted out scheme, an employee's accrued pension was less than the equivalent state pension that he/she would have accrued had he/she not been in a contracted out scheme, the employer was required to make a "payment in lieu of contributions" to the National Insurance Fund to ensure that the employee's state pension was at a "guaranteed minimum" level. In the case of *Harrington v Metropolitan Police Authority* in 2007 it was estimated that the secured portions of a pension would be approximately 15% of the total pension fund. Because of Regulation K5(5), the secured portion of the pension can only be forfeited from the date the officer becomes eligible for his police pension until the state pensionable age.
- h. Upon retirement, an officer is entitled to an ordinary pension if he has at least 25 years' service. This is normally payable when the officer reaches the age of 50. If the officer retires voluntarily before he is entitled to an ordinary pension and he has at least 5

years' service, he will be entitled to a deferred pension, which becomes payable at the age of 60.

- i. By virtue of section 11(2) of the Police Pensions Act 1976, MOPAC is the "pension supervising authority" referred to in the provisions above.
- j. Guidance in respect of forfeiture of police pensions is contained in Home Office Police Pension Forfeiture Guidance ('the Guidance') (attached as Appendix 9). This Guidance explains the three stages to forfeiture:
 - (i) The first stage is for the pension supervising authority to identify a case where a pensioner has committed an offence in connection with his service as a member of a police force;
 - (ii) The second stage is for the Home Secretary to determine whether the pensioner's offence was either gravely injurious to the interests of the State or liable to lead to serious loss of confidence in the public service and if so to issue a certificate to this effect;
 - (iii) The third stage follows the issue of the certificate and is the decision by the pension supervising authority as to whether or not the pension should be forfeited and the determination of the extent of the forfeiture.
- k. The decision in this report is a third stage decision. The courts have ruled that the pension may be forfeited by no more than 65%. The remainder reflects the pensioner's own contributions which cannot be forfeited. The pensioner's own contributions are in fact simply deferred pay and not a reward conferred upon a faithful employee by a grateful employer in return for long service.
- l. The secure portion of the pension can only be forfeited until a pensioner reaches state pensionable age unless the pensioner is in legal custody (K5(5)).
- m. Paragraph 3.15 of the Guidance, which refers back to paragraph 3.4, sets out a non-exhaustive list of factors which MOPAC may take into account when determining what proportion, if any, of a pension should be forfeited and the period over which forfeiture should take place. The Guidance also includes, at Annex A, a transcript of the judgment in the case of *Harrington v Metropolitan Police Authority* (2007), which had previously set out some of the factors relevant to forfeiture considerations.
- n. The exempt part (Part 2) of this decision provides further detail on the considerations made for each of the factors listed within the guidance.

Decision Publication

- o. Legal advice has been provided on the approach to naming former officers within the Stage 3 decision.
- p. Any pension forfeiture is likely to have an impact not only on the officer concerned but on his immediate family and any dependents. This means that Article 8 of the European Convention on Human Rights (“ECHR”) may be relevant.
- q. Pension rights may be said to be a possession within the meaning of Article 1 of the First Protocol of the ECHR. Interference with this provision will only be justified if it is a proportionate response to the officer’s actions.
- r. It is also recognised that any decision to forfeit would clearly engage Article 6(1) of the Convention (right to a fair trial). In this instance, the officer has had an opportunity to make representations on the publication of any decision on the level and length of any forfeiture.
- s. The Mayor is committed within the Police and Crime Plan to develop a better police service for London and to increase public confidence in the MPS. MOPAC has published this decision to achieve increased transparency, to raise public confidence in the MPS, and for this decision to act as a deterrent to other officers from committing crimes, given the possibility of forfeiture.

5. GDPR and Data Privacy

- a. MOPAC has a legal basis for considering forfeiture under the Police Pensions Act 1976. This involves the processing of the individual’s personal data which we will do under the lawful basis of public task under GDPR. The processing of personal data has been minimised within the decision and is held in full within the confidential Part 2 of this Decision Form.

6. Equality Comments

- a. No specific equality considerations have been identified with regards to the proposed forfeiture.

7. Background/supporting papers

- Home Office Police Pension Forfeiture Guidance
- Refer to part 2 of the report for full background and supporting papers

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOIA) and will be made available on the MOPAC website following approval.

If immediate publication risks compromising the implementation of the decision it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? YES

If yes, for what reason: until after the appeal period has passed (i.e. 21 days from issue of DMPC's decision to the officer)

Until what date: Confirm with Professional Standards Officer

Part 2 Confidentiality: Only the facts or advice considered as likely to be exempt from disclosure under the FOIA should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a **Part 2** form – YES

ORIGINATING OFFICER DECLARATION

Tick to confirm statement (✓)

Financial Advice:

The Strategic Finance and Resource Management Team has been consulted on this proposal.

yes

Legal Advice:

The legal implications of this decision has been included within the reports. TfL legal advice has been provided on the approach to publication.

yes

Equalities Advice:

The Workforce Development Officer has been consulted on the equalities and diversity issues within this report.

yes

Commercial Issues

Commercial issues are not applicable

yes

GDPR/Data Privacy

- GDPR compliance issues are covered in the body of the report and the Data Protection Officer has been consulted on the GDPR issues within this report.
- DPIA is not required.

yes

Drafting Officer

The Professional Standards Officer has drafted this report in accordance with MOPAC procedures.

yes

Director/Head of Service:

The Head of MPS Oversight – Workforce and Professionalism has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.

yes

Chief Executive Officer

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

SignatureA handwritten signature in dark ink, appearing to be 'JBL'.

(Delegated CEO authority)

Date 24/06/2024