

REQUEST FOR DMPC DECISION – PCD 76

Determine whether an ex-officer's pension should be forfeited in whole or in part, permanently or temporarily, or at all.

Executive Summary:

The ex-officer was convicted of an offence committed in connection with his service as a member of the Metropolitan Police Service. The Home Office has granted a certificate of forfeiture on the basis that the conviction **was liable to lead to a serious loss of confidence in the public service.**

Recommendation

The Deputy Mayor for Policing and Crime is asked to consider the details of the offence for which the former officer was convicted, as set out in Part 2; and determine whether the former officer's pension should be forfeited in whole or in part, permanently or temporarily or at all, as set out in Part 2.

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*Sybil Under***Date***20/10/2016*

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

Decision required – supporting report

1. Introduction and background

See Part 2 of this Decision Form.

2. Issues for consideration

See Part 2 of this Decision Form.

3. Financial Comments

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

Legal basis for considering forfeiture

- 4.1 Paragraph (4) of Regulation K5 of the Police Pensions Regulations 1987 (as amended) ("the 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 services."
- 4.2 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 temporarily 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.**"
- 4.3 The reason the 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 K(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.

4.4 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.

4.5 By virtue of section 11(2) of the Police Pensions Act 1976, the MOPAC is the "pension supervising authority" referred to in the provisions above.

4.6 Guidance in respect of forfeiture of police pensions is contained in Home Office Circular 018/2009 (attached as appendix 1). Annex B to the Home Office Circular 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 consider 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.

(iii) The third stage follows the issue of 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.

4.7 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 affects 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.

4.8 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)).

4.9 The factors influencing the extent of any forfeiture include:

(i) The seriousness with which the court viewed the offence;

(ii) The circumstances surrounding the offence and investigation;

(iii) The seniority of the officer;

(iv) The extent of publicity;

(v) The betrayal of an important position of trust for personal gain;

(vi) Mitigating circumstances;

(vii) Disability in the family.

5. Equality Comments

There are no specific equality issues identified in this decision.

6. Background/supporting papers

See Part 2 Decision Form

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOIA) and other legislation. Part 1 of this form will be made available on the MOPAC website within 1 working day of approval. Any facts/advice/recommendations that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Is the publication of **this** form to be deferred? NO

If yes, for what reason:

Until what date (if known):

Is there a **part 2** form – YES

If yes, for what reason: Confidential information relating to an individual

ORIGINATING OFFICER DECLARATION:

	Tick to confirm statement (✓)
Head of Unit: The Strategic Advisor has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓
Legal Advice: Legal comments are given at section 4 of this report.	✓
Financial Advice: The Strategic Finance and Resource Management Team has been consulted on this proposal.	✓
Equalities Advice: Equality and diversity issues are covered in the body of the report.	✓

OFFICER APPROVAL

Chief Executive

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.

Signature

R. Lawrence

Date 19/10/16