

IN THE CROWN COURT AT HARROW

A/2010/89

**IN THE MATTER OF THE POLICE PENSIONS ACT 1987 AND THE POLICE
PENSIONS REGULATIONS 1987**

**Before
HIS HONOUR JUDGE MOLE QC
And
Mr WINSTON BRANDT
(Magistrate)**

Wednesday 28th July 2010

HYWEL JONES

Appellant

-v-

THE METROPOLITAN POLICE AUTHORITY

Respondent

Mr Stuart Biggs appeared on behalf of the Appellant
Mr Andrew Carnes appeared on behalf of the Respondent

JUDGEMENT

HHJ Mole QC:

1. This is an appeal to the Crown Court under regulation H5(1) of the Police Pensions Regulations 1987 by Mr Hywel Jones against the forfeiture under Regulation K5 by the Metropolitan Police Authority of part of his pension.
2. Under regulation K5 the police authority may determine that a police pension be forfeited in whole or in part, permanently or temporarily, if the grantee has been convicted of an offence committed in connection with his service as a member of a police force of an offence "liable to lead to serious loss of confidence in the public service."
3. Mr Jones pleaded guilty before me to two counts of conspiracy to commit misconduct in public office on the 17th of June 2005 and on the 20th of June 2005 to one count of handling. He was sentenced on the 13th of November 2006 after the trial and conviction of a co-conspirator.
4. In sentencing Mr Jones I recorded that the first count of conspiracy to commit misconduct in public office was to do with providing information retrieved from

the police computer systems, including the criminal intelligence system, to outsiders, usually criminals, who had particular reasons for being interested in it. This went on for a significant period of time, at least a year. It covered a wide variety of information to be delivered to several different people. Some of the inquiries answered were "health checks"; people checking out what the police knew and did not know about their activities. Some of the information was much more serious, including the passing on of information that was categorised as life-threatening. Some of the information was in order to discover the whereabouts of people against whom the inquirers had a grudge. It was sometimes quite obvious that the potential result of these activities might involve serious violence. The information passed on undermined police activities. It included warnings about possible police operations and on one occasion identified an unmarked police car. Mr Jones was plainly doing it for money. The second count of conspiracy related to one specific instance where he provided information to a concerned father about his daughter's unsatisfactory boyfriend. The count of handling related to receiving stolen sat-navs, the proceeds of a burglary.

5. This activity came against the background of a long period of service in the police force during which Mr Jones served with distinction, dedication and courage. He held the police long service and good conduct medal and received a number of commendations. He was trusted as an experienced and able officer. Taking his mitigation and plea of guilty into account he was sentenced to a total of four years and six months imprisonment.
6. On the 1st of October 2007 the Minister of State certified that his convictions were liable to lead to a serious loss of confidence in the public service.
7. The Professional Standards Cases Sub-Committee of the Metropolitan Police Authority sat on the 8th of February 2010 to determine whether or not to forfeit Mr Jones' police pension. This determination had been postponed in January 2009 at Mr Jones's request for the reasons that are set out in the Metropolitan Police Authority's letter of 22 February 2010. The members of the sub-committee felt that the seriousness of Mr Jones' offending was such that forfeiture at the upper end of the scale would be justified and decided to forfeit 50% of his pension permanently and another 15% temporarily for a period of five years.

The Principles

8. Mr. Stuart Biggs counsel for the Appellant and Mr. Andrew Carnes counsel for the MPA have very helpfully referred us to a number of authorities. The relevant guiding principles are becoming well established and may briefly be summarised.
9. In the case of *Whitchelo v Secretary of State for the Home Department* [1997]EWCA Civ 1213, the Lord Chief Justice said of these regulations:

"for my part, it appears to me on the construction of these Regulations that before a police officer or former police officer may be deprived of any part of the pension to which he would otherwise be entitled, three conditions must be fulfilled. The first condition is that he should have been convicted of an offence committed in connection with his service as a member of a police force; the second is that the Secretary of State should have certified that such conviction was either gravely injurious to the interests of the State or liable to lead to a serious loss of confidence in the public service; and the third condition is that the respondent should determine that the whole or some part of the pension should be forfeited either temporarily or permanently so far as the Regulations permit. It is in my judgment clear that Regulation K5 must be construed as a whole. Its overall purpose is to avoid the scandal which would then pursue if a police officer or former police officer who had committed, and been convicted of, criminal offences relating to his police service and gravely injurious to the interests of the State or liable to lead to serious loss of confidence in the public service, were to receive potentially large payments out of public funds by way of pension."

10. He continued:

"The test propounded by the Regulations is in my judgment a simple and straightforward one derived from the language used. It is necessary to ask: is there a connection between the crimes of which the police officer has been convicted and his service as a member of the relevant police force? "

11. In the case of *Paul Banfield v Cambridgeshire Police Authority*, A20020062, in which judgment was delivered by the Recorder of Leeds, HHJ Norman Jones QC on the 4th of June 2003, it was recognised that a police officer's pension is partly contributory but substantially publicly funded. The Court accepted that the portion that represents the officer's in-service contributions cannot properly be forfeited and heard evidence as to the proportionate value of the officer's contributions. The court determined that the officer's proportion was to be taken as 35%, giving a maximum publicly funded proportion of 65%. 65% has been accepted in the subsequent cases as being the maximum forfeiture.

Consideration

12. We are to deal with this case on its own facts and "make such order in the matter as appears to (us) to be just". (The Police Pensions Regulations 1987, reg H5(1).)

13. The focus must be on the offences committed and the degree to which they are liable to lead to serious loss of confidence in the public service. We underline the word 'liable' in order to stress that we put little or no weight on how much publicity was actually given to the offences. Whether a particular officer's offending got wide and sensational reporting or minimal coverage might have been a matter of chance depending much more on what was competing for the attention of the media at the time than on its real potential to lead to loss of

confidence. The potential for loss of confidence might be serious although the actual loss of confidence, due to limited publicity, might be very small. Equally a comparatively limited degree of offending might have been reported in an hysterical and exaggerated way that created a greater loss of confidence than was justified. We agree with what was said by the Crown Court at Snaresbrook in *Harrington v MPA*, case A2006/7706, 8th January 2007, at paragraphs 57-59.

14. We take also into account the criteria mentioned in Home Office Circular 26/2006, although there is an element of overlap in them. In addition to the matters we have already mentioned, the issues "whether the offences involved active support for criminals" and "whether the offences involved with the betrayal of an important position of trust for personal gain" are relevant to the circumstances of Mr Jones's offending.
15. That having been said, we bear in mind the need to strike a fair balance between the demands of the community and the protection of confidence in the public service on the one hand and on the other the protection of the individual appellant's fundamental rights in circumstances where his sentence, disgrace and dismissal from the police force will have left him vulnerable.
16. We have no doubt that Mr Jones's offending was very serious, for the reasons that have already been set out. Releasing information from CRIMINT computer records seems to us to strike at public confidence in the police service more seriously than, to take other recent cases (*Kingston* and *Reynolds*) as an example, the selling of confiscated drugs. It raises the fear that Police intelligence systems may be insecure and makes the public less inclined to trust them by passing on information or accepting the protection of the police. The offences plainly involved the betrayal of an important position of trust for personal gain and actively supported criminals. We accept Mr Carnes' submission that this is a serious case towards the top of the range. But we do not think it is actually at the top. The circumstances in *Banfield* and *Hanrahan*, to take concrete examples, are significantly worse and were marked by much longer sentences. We accept that there is a powerful argument for consistency between the decisions of the Crown Court in these matters, although they are not binding on us. We consider that the cases do show a reasonable correlation between the seriousness of the sentence and the pension forfeiture. (This was well demonstrated by the table on pages 4 and 5 of Mr Bigg's skeleton submissions.)

Conclusion

17. The calculation of pension forfeiture is not capable of scientific measurement. Taking into account the matters we have set out above, we are confident that a total forfeiture of 50% of pension strikes the right balance in Mr Jones's circumstances and would sufficiently mark the seriousness of his offences. It follows that we do not consider that the forfeiture of an extra 15% for 5 years is necessary. In any event we have considerable reservations about that extra 15%

for the first five years. This would front-load the penalty. How much of a percentage the total forfeiture amounted to would depend upon Mr Jones's longevity. If unhappily he were to be struck by sudden illness and have only 5 years to live, the deduction would amount to the maximum of 65%. If he were to live a long and healthy life the overall deduction would be 53% or less. We find this a strange and possibly oppressive result. In our judgment the most consistent and just conclusion is a total forfeiture of 50%.

18. This means the appeal succeeds and the appellant is entitled to his costs. We are told that the agreed total figure including VAT is £5,463.75.