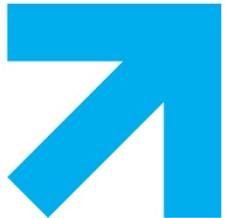


Overpayment & Underpayment of Pension Scheme Benefits Policy



1. Introduction

This is the Overpayment and Underpayment of Pension Scheme Benefits Policy for Gloucestershire Pension Fund (the Fund), which is managed by Gloucestershire County Council (the Administering Authority).

As overpayments and underpayments of pension scheme benefits can occur for a variety of reasons, it is important that the Fund has a clear policy on how over and underpayments are managed once they are identified. The Administering Authority recognises the need to take a pro-active approach to identifying potentially fraudulent activity and seeking recovery of such overpayments where appropriate.

Nothing in this document will cause the Administering Authority's capacity to exercise its discretionary powers to be unlawfully fettered or restricted in anyway.

2. Scope

The policy applies to all members and former members of the Fund, their personal representatives and Executors of the Estates of Fund members.

It does not apply to deceased member's pensions other than in respect of any death grant due and any continual overpayment of pension beyond the date of the member's death.

The Administering Authority has several other discretionary policies in place, and the details set out in this policy are consistent with the approaches set out in those discretionary policies. The Administering Authority reserves the right to apply discretion in any under or overpayment scenario.

3. Policy objectives

The objectives of this policy are to:

- ↗ Ensure a consistent approach to the treatment of overpaid/underpaid members, their dependants or personal representatives and that all affected members identified are treated in a fair and equitable manner as far as is reasonably possible.
- ↗ Ensure all necessary steps are taken to rectify all overpayments with the cooperation of the individual or their personal representatives and to recover overpaid amounts where they occur.
- ↗ Ensure the Fund attempts to reimburse members or their beneficiaries where underpayments have occurred.
- ↗ Ensure the Fund has processes in place to prevent and mitigate potential fraudulent activity.
- ↗ Avoid the need to use the Internal Dispute Resolution Procedure (IDRP), where possible, by managing the identification, rectification and repayments processes effectively.

It is intended to be used as a guide rather than to bind the Administering Authority or Fund to a particular course of action. There may be circumstances where it is appropriate to depart from the policy.

4. Overpayment - background

When considering the actions to be taken in determining whether an overpayment has occurred and whether recovery should be pursued, it is important for the Administering Authority to consider the following:

- ↗ The Administering Authority's obligation to abide by the terms of the scheme and to use the powers it has for the purposes for which they were bestowed and not to exceed those powers.
- ↗ The Finance Act 2004 rules on authorised member payments.
- ↗ The (non-statutory or extra-statutory) policies of HMRC.
- ↗ The duration of which the overpayment has occurred.
- ↗ Whether the recovery of the overpayment would impose 'material hardship'.
- ↗ The proportionality of any available methods of recovery.

If any members are dissatisfied with any decisions made under this policy, or otherwise, they are able to lodge a complaint or follow the Fund's Internal Dispute Resolution Procedure (IDRP).

5. Evidence threshold

Once a pension is in payment, to be able to later conclude that the pension in payment is incorrect, the burden of proof lies with the Fund. Therefore, the Fund must be able to clearly demonstrate that a pension in payment is incorrect and to be able to establish the correct value, before making any change. As such, where doubt exists over what is the correct value of pension, it will be deemed that the amount in payment is the correct value.

6. Different scenarios where overpayments can occur

There are a variety of scenarios where an overpayment of pension can occur. These are set out below, along with the approach that the Administering Authority will take in each case to resolve them.

Scenario A: Death of a scheme member

The notification of a death of a pensioner or dependent member does not always happen immediately, if at all. As a result, an overpayment of pension can occur typically for one of two reasons:

1. There is insufficient time from the notification of the death to carry out the necessary payroll actions in order to cease payment ahead of the next scheduled payroll run (or the death is notified in the month, but the payroll has already been run) – this is a common occurrence;
2. The death occurred in a previous month, where payment had already been made into the deceased's bank or building society account (and not been returned by the bank or building society) but the Fund has not been notified of the death.

Fund's Approach:

Should an overpayment of pension occur as a result of the death of a scheme member, the Fund will seek to recover all overpayments from the Estate or Next of Kin where the amount due is greater than £100 in value.

A value of £100 or less (which is within the HMRC £250 threshold), in the instance of the death of a scheme member, has been deemed uneconomical to pursue in all cases.

All correspondence regarding an overpayment will be handled sensitively in the initial stages due to the circumstances surrounding how the overpayment has occurred.

Scenario B: Incorrect rate of pension paid by the Fund to a living pensioner (member considered 'reasonably aware')

There are several main reasons why a pension could be paid at an incorrect higher rate as detailed in the table below and where it is considered likely the member would, or should, have been reasonably aware of the overpayment:

Type of overpayment	How overpayment has occurred
Administration error upon creation of payroll record	<p>Incorrect (overstated) rate of pension input onto payroll record but member informed in writing of the correct rate of pension to be paid.</p> <p><i>The Fund's view is that it is reasonable to expect the member to query a material discrepancy.</i></p>
Entitlement to pension ceasing	<p>A member in receipt of a child's pension has had a change in circumstances which means they are no longer entitled to the pension, but they did not notify the Fund in time for the pension to be stopped.</p> <p><i>The conditions and eligibility criteria surrounding a child pension are provided when it is set up.</i></p>
Entitlement to current rate of pension ceasing	<p>A Pension Sharing Order or Earmarking Order being received after the implementation date meaning that the pension has been overpaid since that implementation date.</p>
Failure to action an alteration to the payroll record /reduction in pension	<p>Failing to implement the change from the higher short-term dependant's pension to the lower long-term rate.</p> <p><i>In this case, the dependant would normally have been informed at the point in time of the implementation of the dependant pension of the subsequent change to the lower rate.</i></p>

Fund's Approach:

The scheme member will be notified in writing on the Fund's discovery of an overpayment and the course of action which will be taken, as described below.

Where there is no ongoing pension from which to deduct the overpaid amount (e.g. cessation of a child's pension), an invoice will be issued in order to recover the overpayment (assuming the amount outstanding makes it economic to do so, using the £100 threshold as a general guide for write off although some attempt should be made to recover smaller amounts if there is no dispute/difficulty in doing so).

i) Regular Pension in payment: *The future pension will be adjusted to the correct amount. The Fund will provide two months' notice of the change, in line with Pension Administration Standards Association (PASA) guidance, and then apply the change to the next available monthly pension payroll run.*

Note i: General guidance from Government, suggests that Funds should consider 'value for money' in the way it operates. In this case, this has been inferred as meaning not incurring greater costs in making corrections than the value of the correction over the member's expected remaining lifetime.

Note ii: SAB correspondence recommends the effective date of correction should be the date a case is confirmed as being incorrect.

ii) Arrears: Officers will normally attempt to recover all the overpayment to date in line with the details of section 7 (recovery of an overpayment), over a period of time no longer than the period over which the overpayment itself occurred. In certain cases, this may mean that it is not possible to recover all the overpayment (for example, if the member dies in the meantime). A lower threshold of £100 will apply and, more generally, it will be considered whether it is economical for an overpayment to be recovered. See section 12 for an illustration of this.

Underpayment arrears will be paid back to the member in line with the details of LGPS Regulation 81 (which includes a provision for interest), although again ignoring trivial arrears payments. A £10 lower limit will be used as guideline. Where there is some doubt over the level of part of the underpayment, officers will estimate the amount due with an appropriate level of prudence to assume that the reasonable doubt does not disadvantage the member.

Scenario C: Incorrect rate of pension paid by the Fund to a living pensioner (member considered not reasonable aware)

There are several main reasons why a pension could be paid at an incorrect higher rate as detailed in the table below and where it is considered likely the scheme member would not reasonably be aware of the overpayment:

Type of overpayment	How overpayment has occurred
Administration error upon calculation and notification of benefit entitlement (includes dependants' pensions).	<p>Incorrect (overstated) rate of pension input onto payroll record and member informed in writing of the, incorrect, rate of pension to be paid.</p> <p><i>The root cause of this issue could include the Fund being provided with incorrect information by the employer.</i></p>
Incorrect level of Guaranteed Minimum Pension (GMP) being paid	<p>New information from HMRC, or otherwise determined, leads to a revised rate of GMP to be used which, due to the different way cost of living increases are applied to GMP and the excess over GMP, means that, overall, a lower level of pensions increase should have been paid.</p> <p><i>The way GMP and revaluation legalisation works is complex; it is not expected that any members would have a working understanding of this provision.</i></p>
Pensions Increase (PI) or other revaluation discrepancies	<p>Pensions Increase inaccurately applied to the elements of a pension in payment.</p> <p>Furthermore, other small differences can occur due to roundings, legislative technicalities and system limitations. For example, GMPs must be rounded to multiples of 52p and</p>

	<p>Pension figures must be divisible by 12 to pay equal monthly amounts.</p> <p><i>Similarly, the way PI legalisation works is complex; it is not expected that any members would have a working understanding of this provision.</i></p>
Failure to action an alteration to the payroll record/reduction in pension	<p>Failing to implement a reduction to a pension as a result of National Insurance Modification (at State Pension Age for those members who both left the LGPS before 1 April 1998 and had membership before 1 April 1980).</p> <p><i>As above, the legislation surrounding this is complex and it is unreasonable to expect a member to be aware of this provision.</i></p>

Fund's Approach:

The scheme member will be notified in writing of the error and the course of action to be taken, as described below.

i) Regular Pension in payment: *The Fund will provide two months' notice of the change, in line with Pension Administration Standards Association (PASA) guidance, and then apply the change to the next available monthly pension payroll run.*

Note i: General guidance from Government, suggests that Funds should consider 'value for money' in the way it operates. In this case, this has been inferred as meaning not incurring greater costs in making corrections than the value of the correction. In the case of GMPs, HMRC recommends not reconciling GMP values which are less than £104 per year different.

Note ii: SAB correspondence recommends the effective date of correction should be the date a case is confirmed as being incorrect.

ii) Arrears: *If the overpayment relates to a pension which started before 1 April 2016, officers will not normally seek recovery of the payment to date and instead write it off.*

If the overpayment relates to pension which started from 1 April 2016, officers will normally seek recovery of the overpayment in line with the details of section 8 of this policy unless it is uneconomical to do so (including, but not limited to, all cases where the amount due for recovery is less than £100).

The date of 1 April 2016 is used because the Fund assumed responsibility for paying the full revaluation increases for pensioners with a state pension age after this date. It is also a way to differentiate between more recent and historical payment issues.

See section 13 for an illustration of this.

Underpayment arrears will be paid back to the member in line with the details of LGPS Regulation 81.

Scenario D: Overpayment of a Death Grant

It is also possible to overpay a death grant in situations where the deceased member has LGPS pension rights in another LGPS Fund that is greater than that due from the Gloucestershire Fund. In such circumstances and in accordance with the LGPS Regulations the larger death grant takes precedence, and no death grant should be paid from Gloucestershire Pension Fund.

In all instances where a death grant becomes payable from the Fund, administrators must carry out an enquiry via the NI database in order to confirm that no other LGPS entitlements exist that 'exceed' the death grant due from GPF, in order that payment can proceed with being made.

Where the deceased member had entitlements in other LGPS Funds, the Fund will liaise with that Fund/those Funds in order to determine which death grant should be paid and how this should be communicated to next of kin or personal representatives.

Where it is subsequently discovered that a death grant should not have been paid by the Fund it will seek to recover the overpayment from the deceased's next of kin or personal representatives. Where necessary an invoice will be raised in order to recover the overpaid amount.

Scenario E: Overpayment of a lump sum and refund

On rare occasions, it is possible for the Fund to make incorrect payments of refunds or lump sums. These could be due to system or administrative errors being made. Where such an overpayment is identified, the Fund will seek to recover the overpaid money (after considering the cost effectiveness of doing so).

7. Recovery of any overpayment

The Administering Authority will contact the member (recipient) as soon as any recoverable overpayment is discovered and seek to agree steps for repayment subject to any financial hardship grounds. If the member (or the recipient) does not meet the grounds of financial hardship and refuses to engage in a discussion for the Administering Authority will make a formal claim for recovery (in line with the details of section 6).

Overpayments discovered within 6 years

The Limitation Act 1980 sets out that a claim to recover overpayments should usually be made within 6 years of the date when the cause (e.g. error or fraud) was first discovered or could, with reasonable diligence, have first been discovered. Where a claim is made within the 6-year period, all of the overpayment can be recovered. The Fund's approach is to seek full recovery in these circumstances unless there are other factors which need to be taken into account (as explained elsewhere in this policy).

Overpayments discovered after 6 years

Under the Limitation Act 1980, if the claim for recovery is made more than 6 years after the date when the overpayment could, with reasonable diligence, first have been discovered, only overpayments made within the 6 years prior to the date the formal claim for recovery was made are recoverable. Any overpayments that have occurred outside of this period will have the appropriate proportion written off. Based on the outcome of the *Webber v Department for Education* court case there may be circumstances where an overpayment already extends beyond 6 years or there may be reasons to believe the case may drag on. In these

situations, advice should be sought from the Council's legal team as to the desirability of issuing legal proceedings.

a) Length of time to recover overpayment

The Administering Authority will discuss the repayment period with the scheme member or their representatives or next of kin in order to agree a suitable recovery period which, ideally, is mutually agreeable if possible. Ordinarily, however, the administering authority would expect a pension overpayment to be recovered over a period that is no longer than that over which the overpayment occurred.

b) Scheme member is financially unable to return overpayment

In cases where a scheme member is unable to return the overpayment the Administering Authority, will enter into negotiations with the scheme member and, where appropriate, will seek expert legal advice. Section 8 discusses financial hardship in greater detail.

c) Scheme member refuses to engage in any correspondence with regards to overpayment

In cases where the Scheme member is unwilling to return the overpayment or refuses to engage in any correspondence, the Administering Authority will suspend the pension after three written attempts to contact or resolve the issue within three months. It is anticipated this will prompt the scheme member to engage with us and allow for appropriate discussions to take place. Where appropriate the Fund will seek expert legal advice.

d) Monitoring repayments

Where recovery of any overpayment is being carried out via payroll deductions the Administering Authority will ensure the necessary payroll entries are made to collect the debt. This will also include ensuring the deductions cease at the point the debt is settled by setting up a future dated workflow task.

In cases where recovery is not being made via payroll deductions and an invoice has been raised, the responsibility for monitoring the debt repayment will fall to the Administering Authority's Debt Recovery Team. Where a final reminder is issued, pending legal action being taken, the Head of Pensions will be informed and required to decide whether to take legal action, taking into consideration the amount of the overpayment, the circumstances of each individual case and need to show appropriate sensitivity.

8. Identifying and assessing the likelihood of causing financial hardship

In line with the guidance set out in the HM Treasury document "Managing Public Money" (May 2023, www.gov.uk/government/publications/managing-public-money), where the member has demonstrated that the recovery of an overpayment would cause hardship, the Administering Authority will consider whether to waive the recovery of the payment. Any such pleas of hardship must be supported by reasonable evidence that the recovery of the overpayment would be detrimental to the welfare (financial or mental) of the individual or their family.

Causing financial hardship is broadly defined, for the purpose of this policy, as the negative financial impact that reducing pension payments could have on a member's ability to live a 'basic' lifestyle. For example, their financial ability to make essential purchases such as buy food and day to day provisions, pay rent/a mortgage and other household bills where these were possible previously. Causing financial hardship does not include a reduction in pension payments which may affect a member's discretionary spending ability (e.g. fewer holidays).

The Fund's approach to assessing financial hardship shall be to ask a member to complete a questionnaire and, where appropriate, to ask for some evidence related to the statements made. The Fund may consider other evidence as it sees fit to validate or consider a claim. Consideration should then be made as to whether the member is already in financial hardship or if the changes to the pension payments are likely to cause financial hardship.

The outcome of the assessment should then determine one of the following three options:

- a) Clear financial hardship: Do not recover any money from the member (but future payments must still be adjusted).
- b) Some financial hardship is possible: To recover some of the money in instalments, including setting the repayment period in such a way that could mean that the full amount is never repaid (because the member dies in the meantime).
- c) No financial hardship: Seek to recover the full amount in the member's lifetime, either as a lump sum or in instalments.

When considering instalments, the member's likely remaining life expectancy needs to be taken into account. This could mean that an older member may be treated differently to a younger member with identical financial circumstances.

Although issues of financial hardship are most likely to be relevant to circumstances whereby the Fund is seeking to recover the overpayments to date, there may be occasions where a member is able to establish a legal right ('Change of position' or 'Estoppel') to continued higher payments (for example, if they are able to show they have changed their position (by acting in reliance on the overpayment) in such a way that it would be grossly unfair for the higher payments to cease). In such circumstances, this is likely to be the result of a Pensions Ombudsman determination or Court ruling.

9. Authority to write off overpayments

The Fund will consider write off of overpayments in line with the Council/Fund's write off policy.

10. Unauthorised payments and reporting to HMRC

There are three situations in relation to overpayments where an unauthorised payment may appear to have occurred but could be ignored where certain factors apply. These are:

1. Overpayment is made, spotted and then recovered. Therefore, no unauthorised payment has occurred.
2. Overpayment is made, spotted, not recovered and is over £250. In this case there is, on the face of it, an unauthorised payment but it may be that under regulation 13 of The Registered Pension Schemes (Authorised Payments) Regulations 2009 if it qualifies as a “genuine error” and no unauthorised payment has occurred.
3. Overpayment is made, spotted, not recovered and is less than £250. This is an unauthorised payment but HMRC will not take action to collect the tax.

The Finance Act 2004 sets out a list of the payments which a registered pension scheme is authorised to make to members. Payments which do not fall within the list will become unauthorised payments and could result in any of three tax charges applying:

1. an authorised payments charge on the recipient of the payment.
2. an unauthorised payments surcharge on that recipient.
3. a scheme sanction charge on the Fund.

Where an unauthorised payment has occurred the Administering Authority must report this to HMRC on its annual Event Report. Given the rules governing unauthorised payments and the various tax charges are complex the Administering Authority will liaise directly with HMRC in all cases where uncertainty exists.

For underpayments, paying the arrears relating to many years in one year could mean that the member is taxed more highly, therefore officers will explore ways to avoid this outcome (which could lead to complaints), through discussion with HMRC if necessary.

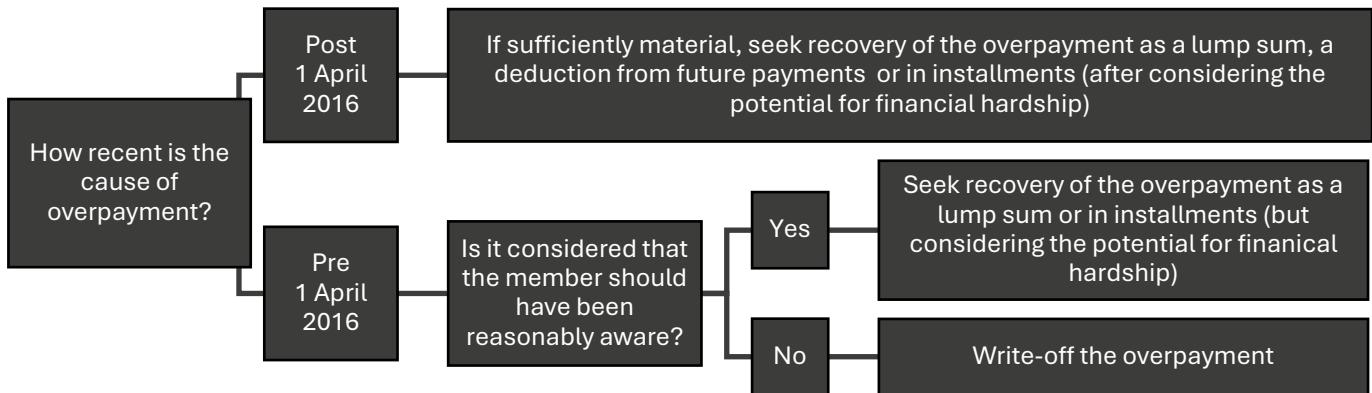
11. The Pension Regulatory (tPR) Breach Reporting

The Fund will consider all over and underpayment cases against its legal requirements to pay the correct pension and determine how to record any such cases on the Fund’s breaches log and, if deemed sufficiently material, onwards to the Pension Regulator.

12. Guidelines on the approach to recovery for individual cases

As per this policy’s objectives, the intention is to always treat two members with very similar circumstances in the same way. However, in practice, member circumstances will vary, and some degree of subjectivity and discretion is unavoidable.

The following chart aims to illustrate the standard approach for Gloucestershire County Council officers to follow:



Definition of terms

Reasonably aware: Section 6, scenarios B & C give a number of examples of where a member could be considered to be, or not to be, reasonably aware of an overpayment.

Financial hardship: See section 9.

13. Prevention

The Fund has in place processes in order to prevent or minimise the risk of overpayments occurring. The key ones are set out below:

- ↗ The Tell Us Once service has been adopted whereby deaths are notified through a central system accessible by the Administering Authority. This increases the likelihood of the scheme receiving notification of the death of scheme members and therefore minimises potential overpayments.
- ↗ Mortality screening from Target, which takes an annual cut of membership data and checks against death records monthly.
- ↗ Life existence checking for overseas pensioners carried out approximately every two years.
- ↗ Quarterly reconciliations of new pensioners (which offers an opportunity to spot an error at the earliest opportunity).
- ↗ The National Fraud Initiative (NFI) is conducted by the Audit Commission every two years, comparing files of pensioners and deferred members with the Department for Work and Pensions database of the deceased and highlighting matches for further investigation.
- ↗ The Administering Authority also includes reminders in its correspondence that it must be advised of changes in circumstances or the death of a scheme member. The Administering Authority also

investigates any returned pensioner payslips and pension payments returned by banks and building societies to ensure the welfare of the scheme member and to protect payment of the Fund's money.

- ☛ The Administering Authority has a robust system in place for identifying changes to the payroll that need to be processed for a particular payroll month. The process incorporates payroll deadlines and ensures changes are made in a correct timely manner.

Version	Reason for change and approval
1.0	New version created, approved by Gloucestershire Pension Fund Committee on 19 Sept 2024