Overpayment of Pension Policy

2018

Cambridgeshire Pension Fund

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1. Introduction

1.1 This is the Overpayment of Pension Policy for Cambridgeshire Pension Fund, which is managed by Cambridgeshire County Council (the Administering Authority).

1.2 Overpayments of pension can occur for a variety of reasons. It is important that the Fund has a clear policy on how overpayments of pension are managed once they are identified.

1.3 Cambridgeshire Pension Fund recognises the need to take a pro-active approach to identifying potential fraudulent activity and overpayments.

2. Policy objectives

2.1 The policy objectives aim to ensure the Fund:

- Have robust governance arrangements in place, to facilitate informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance.

- Manage the Fund in a fair and equitable manner, having regard to what is in the best interest of the Fund's stakeholders, particularly the scheme members and employers.

- Ensures benefits are paid to, and income collected from, the right people at the right time in the right amount;

- Identifies errors as soon as possible;

- Rectifies overpayments with the cooperation of the individual;

- Encourages individuals to take an active role in checking payslips/payments for obvious errors; and

- Avoids the Internal Dispute Resolution Procedure (IDRP), where possible, by managing the process effectively.

3. Purpose of the policy

3.1 The policy is designed to provide assurance to the Fund's stakeholders that:

- all overpayments are treated in a fair and equitable manner;

- the Fund seeks to recover overpayments that have occurred but acknowledges that there may be legal reasons and/or other circumstances which mean that an overpayment may not, in practice, be able to be recovered (in whole or in part); and

- has steps in place to prevent and also investigate potential fraudulent activity.

4. Effective date and reviews

4.1 This policy was first approved by the Pensions Committee on 31 July 2015 and was effective from 1 August 2015.

4.2 The policy was subject to its first review in December 2017 and became effective from [insert date].

4.3 This policy will be reviewed annually, and if necessary, more frequently to ensure it remains accurate and relevant.

5. Scope

5.1 The policy applies to:

- All members and former members, which in this policy includes survivor and pension credit members of the Cambridgeshire Pension Fund who have received one or more payments from that Fund;
- Executors of the Estates of deceased Cambridgeshire Pension Fund members
- Beneficiaries of Cambridgeshire Pension Fund members where those beneficiaries have received one or more payments from that Fund
- Administrators of the scheme; and
- The Pension Fund Committee.

6. Managing overpayments of pension on the death of a scheme member

6.1 Understandably, notification of a death of a pensioner member of the scheme does not always happen immediately and as such it is not always possible to stop payment of the pension after a point in the payroll month and so an overpayment can occur.

6.2 Should an overpayment of pension occur as a result of the death of a scheme member, the Fund will generally seek to recover overpayments that are greater than £250.00 (gross) in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £250.00 or less in the instance of the death of a scheme member has been deemed by the Fund as uneconomical to pursue. In such circumstances, the Fund's approach will be that the sum written off is treated as a liability against the scheme member's former employer.

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

6.4 An invoice will be raised by the Fund to recover an overpayment which is greater than £250.00 upon the death of a scheme member.

7. Managing overpayments of children's pensions failing to cease at the appropriate time

7.1 An eligible child as defined by the LGPS Regulations 2013, is entitled to receive a pension until such a time as their circumstances change and they are no longer eligible to receive a pension from the Fund.

7.2 In these cases the individual in receipt of the pension is responsible for informing LGSS Pensions of a change in circumstances to ensure the pension is ceased at the appropriate time, failure to do so would result in an overpayment.

7.3 Should an overpayment of pension occur as a result of late notification of change of circumstances, the Fund will generally seek to recover overpayments that are greater than £100.00 (gross) in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100.00 or less has been deemed by the Fund as uneconomical to pursue. In such circumstances, the Fund's approach will be that the sum written off is treated as a liability against the scheme member's former employer.

7.4 An invoice will be raised by the Fund to recover the overpayment which is greater than £100.00 as a result of the late notification of the change in circumstances. The invoice will be sent to the individual whose bank account the child's pension was being paid into.

8. Managing overpayments of pension following incorrect information supplied by the employer in respect of the scheme member

8.1 Should an overpayment of pension occur as a result of inaccurate information provided by the scheme member's employer on retirement, the Fund will generally seek to recover monies that are greater than £100.00 in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100.00 (gross) or less has been deemed by the Fund uneconomical to pursue due to the administrative time involved.

8.2 Overpayments that are greater than £100.00 in value will be recovered through the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will be reduced to the correct level for the next available monthly pension payment after a 6 week notice period. The scheme member will be notified in writing of the error and the course of action to be taken.

8.3 Where there is no ongoing pension from which to deduct the overpaid amount, an invoice will be arranged by the Fund to recover the overpayment which is greater than £100.00 in value.

9. Managing overpayments of pension as a result of the incorrect rate of pension paid by the Fund and the member can be said to be reasonably aware of the overpayment.

9.1 There are a number of reasons why a pension could be paid at an incorrect higher rate. The most common reasons are detailed in the table below but it should be noted that this is not an exhaustive list.

	Type of overpayment	**How overpayment has occurred**
1	Administration error upon creation of payroll record	Incorrect (overstated) rate of pension inputted onto payroll record but member informed in writing of the correct rate of pension to be paid.
2	Re-employment where abatement affects rate of pension due	Re-employment not notified and within the terms of the Administering Authority policy on the exercise of their discretion relating to abatement, the member's annual pension should have been reduced or suspended due to the level of earnings in the new employment. Identified through NFI exercise or other means.
3	Entitlement to pension ceasing	Non notification that a child's pension is no longer payable as the child aged 18 or above is no longer in full time education or vocational training.
4	Entitlement to current rate of pension ceasing	A Pension Sharing Order or Earmarking Order being received after the implementation date meaning that the pension has been overpaid since that implementation date.
5	Failure to action an alteration to the payroll record/reduction in pension	Failing to implement the change from the higher short term dependents pension to the lower long term rate.
6	Failure to action an alteration to the payroll record/reduction in pension	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).

9.2 If the scheme member has been notified of the correct rate of pension in writing and is receiving a higher amount, it can be said that the member can reasonably be aware that they are being over paid as the scheme member has been notified of the correct rate in writing.

9.3 The Fund will therefore generally seek to recover monies that are greater than £100.00 gross in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100.00 or less has been deemed by the Fund as uneconomical to pursue due to the administrative time involved.

9.4 The amount will be recovered from the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will also be reduced to the correct level for the next available monthly pension payment after a 6 week notice period. and will be notified in writing of the error and the course of action to be taken.

9.5 Where there is no ongoing pension from which to deduct the overpaid amount, an invoice will be arranged by the Fund to recover the overpayment which is greater than £100.00 in value.

10. Managing overpayments of pension following an incorrect rate of pension being paid by the Fund and it can be said that the member cannot have known of the overpayment

10.1 The table below illustrates how an overpayment of a member's pension can occur without the member being aware. It should be noted that the table below is not an exhaustive list;

	Type of overpayment	How overpayment has occurred
1	Administration error upon calculation and notification of benefit entitlement (includes dependants' pensions)	Incorrect (overstated) rate of pension inputted onto payroll record and member informed in writing of the, incorrect, rate of pension to be paid.
2	Incorrect level of Guaranteed Minimum Pension (GMP) being paid	New information from HMRC 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.
3	Pensions Increase	Pensions Increase inaccurately applied to the elements of a pension in payment.

10.2 In these circumstances the Fund will generally seek to recover monies that are greater than £100.00 gross in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100.00 or less has been deemed by the Fund as uneconomical to pursue due to the administrative time involved.

10.3 The amount will be recovered from the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will also be reduced to the correct level for the next available monthly pension payment after a 6 week notice period. The scheme member will be notified in writing of the error and the course of action to be taken.

10.4 Where there is no ongoing pension from which to deduct the overpaid amount, an invoice will be arranged by the Fund to recover the overpayment which is greater than £100.00 in value.

11. Discretion to write off overpayments

11.1 For all scenarios mentioned above, Officers have the ability to exercise discretion in the event of legal reasons and/or exceptional circumstances and to ensure no individual is unfairly treated. If the pursuing recovery of an overpayment was to cause significant distress and/or if there are legal reasons as to why the overpayment may not be recovered (in whole or in part) this would be taken into account as would the cost effectiveness of recovery. All applications made to write off of an overpayment will be investigated on a case by case basis and final decision will be made by the appropriate officer listed in section 16 dependent upon the amount potentially being written off.

11.2 The Cambridgeshire Pension Fund has discretion to write off any amount under £250.00 in line with HM Revenue and Customs authorised payments limits and the analysis of the cost effectiveness of pursuing the claim conducted by the Fund.

12. Recovery

12.1 The Limitation Act 1980 states that "*An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued*". However, section 32(1) of the Act effectively 'postpones' the date by which an administering authority may make a claim to recover monies in certain circumstances. It states "*the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it*". The potential effect of section 32(1) in relation to any overpayment and its recovery will be considered on a case-by-case basis.

12.2 Therefore the Fund will generally seek to recover overpayments that have been discovered within the last 6 years with the relevant postponement applied if applicable in line with the Limitation Act unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part).

12.3 Examples of limitation periods and how they operate in relation to overpayments are included in appendix 1 of this policy.

12.4 It should be borne in mind that where the Fund seeks to recover overpayments, there may be arguments raised as to why the overpayment should not be recovered (in whole or in part). These will need to be considered on a case-by-case basis and, if successful, may affect the ability of the Fund to recover the overpayment (in whole or in part).

13. Length of time to recover overpayment

13.1 The Fund will allow a pension overpayment to be recovered over the same amount of time as the overpayment occurred. For example, if overpayments were made for a 3 month period, the recovery period to repay the overpayment will be 3 months. In the event that reasonable arguments are advanced that the recovery period should be extended, the Fund can at its discretion allow an extension based on the individual's circumstances; such an extension would generally not exceed a further 50% of the period in which the overpayment occurred with scope for this period to be extended based on the scheme member's circumstances.

14. Claims of inability to repay overpayments

14.1 In cases where it is claimed that an overpayment cannot be repaid officers of the Fund will enter into negotiations with the scheme member/next of kin and an analysis of the cost effectiveness of pursuing the overpayment will be undertaken on a case-by-case basis. For large overpayments, where appropriate the Fund will seek legal advice. This approach will reduce the number of Internal Dispute Resolution Procedures applications and referrals to the Pensions Ombudsman. For any cases that do reach the Pensions Ombudsman, Cambridgeshire Pension Fund would have demonstrated engagement and negotiation with the complainant.

15. Monitoring repayments

15.1 In cases where recovery is not being made through the payroll and an invoice has been raised, the responsibility for chasing the payment rests with the LGSS Debt Recovery Team. If a final reminder is issued, officers are notified and a decision is made by the Head of Pensions as to whether to take legal action, taking into consideration the amount and circumstances against the potential of legal action.

16. Authority to write off overpayments

16.1 In line with the County Council's Scheme of Delegation, the Fund will apply the following levels of authority when writing off overpayments:

Total value of overpayment*/**	Authority to write off overpayment
No more than £250.00 (gross) on death of a pensioner No more than £100.00 (gross) on any other overpayment type	Automatic write off
Up to no more than £5,000.00 (gross)	Head of Pensions (in the absence of the Head of Pensions authority will move to the Director of Finance)
Up to no more than £24,999.99 (gross)	Cambridgeshire County Council Section 151 Officer
£25,000.00+ (gross)	Cambridgeshire Pension Fund Pension Committee
* The value of overpayment occurring within the last 6 years or appropriate period if postponement has been applied.	
** Subject to a full evidence based report produced by Officers of the Fund	

17. Reporting to the HM Revenue and Customs and effects on the Fund and individual

17.1 Administering authorities are obliged to correct any error they discover within a reasonable period of time. To do otherwise would render payments unauthorised under Section 14 of the Registered Pension Scheme (Authorised Payments) Regulations 2009. The HM Revenue and Customs have a clear steer with regards to timing, in so much that "*When a scheme discovers an overpayment it immediately becomes unauthorised and is subject to an unauthorised tax charge*".

17.2 Regulation 13 says that a payment made in error will be an unauthorised payment if the:

- Payment was genuinely intended to represent the pension payable to the person;
- Administering authority believed the recipient was entitled to the payment and;
- Administering authority believed the recipient was entitled to the amount of pension that was paid in error.

17.3 In addition to the above, there is a further exemption where the overpayment is a 'genuine error' and the aggregate overpayment (paid after 5th April 2006) is less than £250. In such circumstances, if the overpayment is not recovered it remains an unauthorised payment but it does not have to be reported to HM Revenue and Customs and HM Revenue and Customs will not seek to collect tax charges on it.

17.4 Examples of HM Revenue and Customs 'genuine errors' are in appendix 2 of this policy.

17.5 The Finance Act 2004 also 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 up to three tax charges applying: 1) an authorised payments charge on the recipient of the payment; 2) an unauthorised payments surcharge on that recipient; and 3) a scheme sanction charge on the scheme.

17.6 Payments made in the period between notifying the member of an overpayment and the point at which the correction to the right level of pension is made will be regarded under the above legislation as an unauthorised payment. If the total amount of pension paid at the incorrect rate from point of notification to date of reduction to the correct rate is greater than £250 (gross) it would be subject to tax charges 1) and 3) and possibly 2 as set out in section 17.5.

18. Prevention

18.1 The Fund has in place processes in order to minimise the risk of overpayments occurring.

18.2 The National Fraud Initiative is conducted every two years; it compares files of pensioners with the Department for Work and Pensions database of the deceased and highlights matches for investigation. Cambridgeshire Pension Fund actively participates in this initiative.

18.3 Cambridgeshire Pension Fund participates in overseas life existence checks to ensure only legitimate pensions are being paid and to reduce the likelihood of fraudulent activity.

18.4 A report is run periodically on the pension administration system to identify individuals in receipt of a child's pension, further investigations are then carried out for children that are identified as over the age of 18 to ensure they are still entitled to receive a pension.

18.5 Cambridgeshire Pension Fund includes reminders in its correspondence that the Fund must be advised of changes in circumstances or the death of a scheme member. The Fund 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.

18.6 Fund officers have 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 and timely manner. This would be in circumstances such as a change from a short term dependant's pension to a long term pension.

Appendix 1 – Limitation Period Examples

Scenario	Limitation Period	Overpayment Period which can be claimed*
• Overpayments began in April 2008 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2010 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made for period between April 2008 and August 2010 • Formal claim** for recovery made in January 2015 (the Cut Off Date as referred to in *Webber v Department for Education*)	• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6 year period after the Discovery Date • Claims are therefore valid and should proceed	• Overpayments back to when they began in April 2008 until August 2010 may be claimed
• Overpayments began in April 2003 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in November 2009 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made from April 2003 to November 2009 • Formal claim for recovery made in December 2011 (the Cut Off Date as referred to in *Webber*)	• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6 year period after the Discovery Date • Claims are therefore valid and should proceed	• Overpayments back to when they began in April 2003 until November 2009 may be claimed
• Overpayments began in January 1999 (the first Mistake Date) • Overpayments discovered or could have been discovered with reasonable due diligence in September 2016 (when the date was received from HM Treasury in relation to the GMP equalisation exercise) (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made for the period from January 1999 to September 2016 • Formal claim for recovery made in February 2017 (the Cut Off Date as referred to in *Webber*)	• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6 year period after the Discovery Date • Claims are therefore valid and should proceed	• Overpayments back to when they began in January 1999 until September 2016 may be claimed

Scenario	Limitation Period	Overpayment Period which can be claimed*
• Overpayments began in April 2006 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2009 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made for period between April 2006 and August 2009 • Formal claim for recovery made in January 2017 (the Cut Off Date as referred to in Webber)	• Issue with the Limitation Period as formal claim for recovery commenced more than 6 years after the Discovery Date • Claims are therefore out of time and should not proceed	• Overpayments cannot be claimed back as the formal claim for recovery was made more than 6 years after the Discovery Date
• Overpayments began in April 2006 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2009 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made for period between April 2006 and August 2016 • Formal claim for recovery made in January 2017 (the Cut Off Date as referred to in *Webber*)	• Issue with the Limitation Period as formal claim for recovery commenced more than 6 years after the Discovery Date • Claims for overpayments between April 2006 and January 2011 are therefore out of time and should not proceed • However, as each monthly overpayment is a separate overpayment, the effect of the Webber case is that overpayments made in the 6 years prior to the Cut Off Date (i.e. the overpayments made in February 2011 to August 2016) can be recovered	• Overpayments for the period April 2006 to January 2011 cannot be claimed back as the formal claim for recovery was made more than 6 years after the Discovery Date • Overpayments for the period February 2011 to August 2016 may be reclaimed.

* while this refers to the period which can be claimed, this is not the same as the period which will definitely be recovered in light of the other defences which are available to scheme members who face such claims for repayments of overpayment.

** reference to formal claim in this appendix means the commencement of formal proceedings to recover the overpayment.

Appendix 2 - Examples of HM Revenue and Customs ‘genuine errors’

Genuine error - example 1

Apart from the case of pensions continuing under a ‘term certain’ guarantee, pensions are supposed to stop accruing on the death of the pensioner. If payments that accrued inappropriately after the death continue to be made, they will be unauthorised unless they fall within the limited conditions of regulation 15 of The Registered Pension Schemes (Authorised Payments) Regulations. The main feature of those conditions is that instalments can be paid within 6 months of the member’s death providing the payer was reasonably unaware the pensioner had died.

Clearly then, once the 6 month time limit has passed, the tax rules will regard any future instalments as unauthorised member payments, and the fact the payer might remain unaware of the member’s death does not change the essential character of any payment made. When the death comes to light the payer can see that the payments made more than 6 months after death were made in error.

Genuine error - example 2

The tax rules normally require that a pension being paid to a dependent who is child of a deceased member must stop when the recipient reaches age 23. If the recipient does not qualify for any of the exceptions that would allow for the continuation of their pension after that time, for example because of a disability, then the payer must make adequate arrangements to stop the pension in time. To this end they may give a clear and timely warning to the bank to stop payments from the necessary date but it can happen that the bank fails to act on those instructions and payments continue to be made in error.

In both of these examples, if the error was spotted and rectified (pension overpayments were repaid) as soon as reasonably possible, the inadvertent pension instalments (in the case of Example 1, only in respect of the instalments paid after the 6 month limit where the conditions otherwise apply) would not be unauthorised member payments.

However, there would be an unauthorised member payment if, despite the error being spotted, it is decided the repayment of the inadvertently overpaid pension instalments will not be pursued or the scheme does attempt recovery (in the case of Example 1, only in respect of the instalments paid after the 6 month limit where the conditions otherwise apply) but is unsuccessful and eventually decides to write off the overpayment (even though the decision might be taken on administration costs grounds or out of sensitivity). The exception to this will be if - as may often be the case - one of the categories of authorised payments introduced by the Registered Pension Schemes (Authorised Payments) Regulations 2009 can then be looked to in relation to payments made in genuine error but left in place.

The date of the unauthorised payment for the purpose of having to make a report of that payment would be the date that the decision is made not to seek recovery of the overpayment or the date the decision is taken to no longer seek recovery of the overpayment, as the case may be. Where the overpayment is not pursued or, otherwise, not successfully pursued and the total of such overpaid pension instalments paid after 5 April 2006 (overpaid instalments paid before 6 April 2006 do not count for this purpose) to, or in respect of, a particular member does not exceed £250:

- for its own reasons of cost administration, under its Collection and Management powers, HM Revenue & Customs will not seek to collect the tax that, in strictness, is due in respect of the unauthorised payment (although the payment remains an unauthorised payment), and

- the scheme administrator does not have to report the unauthorised payment to HM Revenue & Customs, and

- the unauthorised payment does not have to be returned on the recipient's Self-Assessment tax return or, otherwise, be notified to HM Revenue & Customs.

If the aggregate overpayment exceeds £250, then all of the overpayment is chargeable as an unauthorised payment (i.e. one cannot deduct £250 as if it were an allowance, which it is not).

For this purpose, the £250 threshold applies to the aggregate of the overpayments actually received by, or in respect of, the member.

Where the conditions would otherwise apply in respect of pension instalments paid later than 6 months after the death of a pensioner except that the pension instalments have been paid later than 6 months after the pensioner's death, the £250 threshold applies in respect of the aggregate of the pension instalments paid after the expiry of the 6 month time limit only. The pension instalments paid up to the 6 month time limit would not be.

Overpayment of lump sums

The conditions described above apply equally where an overpayment of a lump sum occurs, such as a pension commencement lump sum or serious ill-health lump sum. So the limit of £250 will apply, but any lump sum in excess of that amount, where recovery cannot be made, will be an unauthorised payment to the extent that the amount is not an authorised payment.

For example, a pension commencement lump sum of £100,000 is due to be paid under the scheme rules, but £105,000 is paid in error. The scheme administrator is unable to affect a recovery of the excess. Under the tax rules, the pension commencement lump sum of £100,000 is the permitted maximum, so the whole excess of £5,000 is an unauthorised payment (i.e. one cannot deduct £250 as if it were an allowance, which it is not).

Note that a payment of a lump that is intended to be a pension commencement lump sum but ends up exceeding the permitted maximum may still be an authorised member payment if certain conditions are met.

Example

A pension commencement lump sum must be paid within an 18 month period starting 6 months before and ending 12 months after the member becomes entitled to the lump sum and linked pension. However, due to an error within the administration department of the pension scheme, the lump sum payment is not made by that deadline. If the lump sum is paid after the deadline it will not be a pension commencement lump sum and (unless it falls within the definition of one of the other authorised lump sums) will be an unauthorised member payment.