

REPORT OF THE GROUP DIRECTOR, FINANCE & CORPORATE RESOURCES

Over / Underpayment Policy and GMP Reconciliation	Classification PUBLIC	APPENDICES Two
	Ward(s) affected	AGENDA ITEM NO.
Pensions Committee 14th January 2021	ALL	6

1. INTRODUCTION

- 1.1 This report provides the Pensions Committee with a draft Policy on the Overpayment and Underpayment of Pension Scheme Benefits and Contributions for approval. It also provides an update on the Guaranteed Minimum Pension (GMP) reconciliation exercise and the proposed treatment of pension payments that have been impacted by the reconciliation exercise.

2. RECOMMENDATIONS

- 2.1 The Pensions Committee is recommended to:

- approve the draft Policy on the Overpayment and Underpayment of Pension Scheme Benefits and Contributions at Appendix 1
- agree the recommendations in relation to the GMP reconciliation project to:
 - ratify that they wish all overpayments to be written off including those relating to deceased pensioners
 - agree that underpaid pension for deceased pensioners will not generally be calculated or paid but will be considered on their own merits at a related individual's request
 - agree that underpaid pensions for dependants will only be calculated in respect of the dependants own benefit and will not take account of the deceased persons potential pensions adjustments
 - agree that adjustments will not be made for any pensions where the change is less than £5 p.a.
 - delegate points of detail in relation to how the changes are implemented to the Pensions Manager to decide.

3. RELATED DECISIONS

- Pensions Committee 18th December 2019 – GMP reconciliation – Update and Urgency Delegation.
- Pension Committee 10th September 2019 – GMP reconciliation exercise
- Pension Committee 20th March 2019 – GMP reconciliation exercise
- Pension Committee 21st March 2018 – GMP reconciliation exercise

- Pension Committee 29th March 2017 – GMP reconciliation exercise
- Pension Board 20th March 2017 – GMP Reconciliations
- Pension Board 26th January 2016 – GMP Reconciliations – Update and training

4. **COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES**

4.1 It is inevitable in the management of such a large pension fund affecting thousands of scheme members that there will be circumstances where over or underpayments of benefits and contributions arise. The attached policy will ensure the timely but appropriate treatment of these payments.

4.2 The report also provides an update on the GMP reconciliation exercise and the estimated figures relating to necessary reductions in pensions (including resulting overpayments of those pensions to date) and increases in pensions (including the arrears due for those underpayments). There will be a financial impact on some pensioners and dependants as outlined in the report. The writing off of the overpayments to date will assist in reducing potential hardship. The Fund's actuary has been consulted on these proposals and does not consider the recommendations will have any material impact on the overall funding position.

5. **COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE**

5.1 There is a legal responsibility on the Hackney Council to ensure the correct benefits are paid to scheme members. Where it becomes apparent that an under or overpayment has taken place, it is critical that the situation is resolved as quickly as possible. This proposed policy will assist in ensuring the proper treatment of these cases in a timely manner and within clear guidelines.

5.2 The reconciliation of GMP values is not a mandatory requirement under the Local Government Pension Scheme Regulations 2013. However, not carrying out this exercise would have resulted in incorrect benefit calculations and pension payments for a number of Hackney Pension Fund members. Now that the reconciliation exercise has identified the cases where there is a difference in GMP, there is a legal responsibility on Hackney Council to make the necessary adjustments.

6. **POLICY ON THE OVERPAYMENT AND UNDERPAYMENT OF PENSION SCHEME BENEFITS AND CONTRIBUTIONS**

6.1 Although Hackney Council is the administering authority for the London Borough of Hackney Pension Fund, the administration of the Fund is partly outsourced to Equiniti. Equiniti carry out the majority of benefit calculations and payments. The amount and entitlement to benefits is defined in the Local Government Pension Scheme (LGPS) Regulations and other relevant legislation and it is not permitted under law for members to be paid anything other than the amounts due under these rules.

6.2 However there are circumstances in which members may be paid more or less than they are due in error and it is important that the Fund has a clear policy on how these situations are managed once the under or overpayments are identified.

Underpayments and overpayments of member and employer contributions can arise due to a number of different reasons, though these are more likely to be related to administrative errors by the member's employer, the administering authority and/or the administrator than any activity relating to the individual member.

6.3 It is critical that the approaches to be taken when such a situation arises are documented and understood by all affected parties, to ensure ongoing compliance with legal requirements whilst ensuring an efficient, quality and value for money service is provided to the Fund's scheme members and employers. It is for that reason that this Policy has been drafted and is included in **Appendix 1** for the Committee's approval. The Policy will assist in ensuring:

- all overpayments and underpayments of benefits are treated in a fair and equitable manner
- where appropriate (and practical to do so), the Fund attempts to recover overpayments of benefits that have occurred
- the Fund attempts to reimburse members or their beneficiaries where underpayments have occurred.

6.4 The draft Policy covers a range of situations and processes including:

- Managing overpayments and underpayments of:
 - pensions and retirement lump sums
 - other benefits, such as transfers between pension scheme, refunds of contributions and trivial commutation payments
 - contributions (scheme members and employers)
- The treatment of overpayments and underpayments relating to the GMP reconciliation exercise (see the next section of this report)
- The authorisation process for writing off overpayments (with limits that are in line with the Council's general scheme of delegation for write-offs)
- A brief summary of the various processes in place to minimise the chances of overpayments or underpayments occurring.

6.5 The Pensions Committee are asked to approve the draft Policy on the Overpayment and Underpayment of Pension Scheme Benefits and Contributions.

7. **GUARANTEED MINIMUM PENSION (GMP) RECONCILIATION**

7.1 From 6th April 2016 the government introduced the new State Pension (nSP). This was designed to radically simplify pension provision, removing layers of complexity whilst ensuring security in retirement. Amongst the provisions removed was the Additional State Pension (AP), an earnings-related element of the old system. Defined benefit occupational schemes such as the LGPS were able to 'contract out' of this element, permitting both employee and employer to pay lower National Insurance contributions as a result. In exchange, schemes guaranteed to provide members with a pension at least as high as they would have received had they not been contracted out. This guaranteed amount is called the GMP; it applies to all those who were contracted out between 6 April 1978 and 5 April 1997.

- 7.2 HMRC originally offered a service whereby schemes could check their GMP records against those held by HMRC and resolve any differences. However, HMRC recently withdrew this service. As a result, all schemes were advised to carry out a one-off exercise to ensure that the GMP and contracted-out scheme member records they held reconciled with those held by HMRC. Where schemes have not undertaken a reconciliation of their records, HMRC takes the stance that its own calculations are final; this means those schemes will become responsible for any GMP liabilities which HMRC believe they hold. It is worth noting that the differences in the records can relate to a number of reasons, including forms not being submitted by a pension scheme, forms being lost or not processed by HMRC. In almost all cases it is not possible to determine the actual reason for the mismatch, and often the records date back to when full paper trails were not necessarily retained.
- 7.3 Officers have been working with the pension administrators, Equiniti, on a phased reconciliation project. The project is being undertaken by a specialist team within Equiniti's discontinuance department and is separate from the main administration service provided to the Fund.
- 7.4 The reconciliation of HMRC records against the Fund's records has now been completed. As part of this phase it has been identified that there are a number of records where amendments will need to be made to the GMP on the Fund's records. As some of these relate to pensioner and dependent members, and the amount of annual pensions increase is impacted by the amount of the GMP, this means that some pensioners and dependents have been receiving the incorrect amount of pension. Some pensions have been higher than expected and some lower. This also means some pensioners and dependants have had their pensions overpaid or underpaid for a number of years.
- 7.5 Equiniti are now finalising the calculations in relation to these overpayments and underpayments. It should be noted that the information we have is still estimated and the final numbers of members affected, and the impact on these members, will only be known as each case goes through final verification checks. There are approximately 2,000 pensioners and dependents where their GMP on the Fund's records will change. Of those, there are an estimated 771 where their pension will either increase or decrease.
- 7.6 A summary of the overall impact is shown below and more information is included in the tables and graphs included in **Appendix 2**:

Value of	Total value	Interest	Total + Interest	No. of cases
Overpayments	-£2,571,051.76	N/A	N/A	621
No arrears	£0.00	N/A	N/A	1,246
Underpayments	£173,191.00	£17,255.00	£190,446.00	136
Total				2,003

Change in payoll	Total value	No. of cases
Pensions reducing	-£255,943.69	641
Pensions not changing	£0.00	1,232
Pensions increasing	£35,405.08	130
Net change in payroll p.a.	-£220,538.61	2,003

Pensions decreasing	Amount
Largest decrease in pension p.a. (£)	-£2,604.00
Average decrease in pension p.a. (£)	-£399.29
Largest decrease in pension p.a. (%)	-59.17%
Average decrease in pension p.a. (%)	-6.78%

Pensions increasing	Amount
Largest increase in pension p.a. (£)	£8,768.58
Average increase in pension p.a. (£)	£272.35
Largest increase in pension p.a. (%)	499.01%
Average increase in pension p.a. (%)	13.94%

Overpayment age	Amount
Oldest overpayment case	98
Average age of overpayment case	78
Youngest overpayment case	49

Underpayment age	Amount
Oldest underpayment case	91
Average age of underpayment case	76
Youngest underpayment case	61

7.7 It should be noted that officers are still following up certain queries with the data extracts and calculations, particularly in respect of the outliers. Members affected will not be contacted with revised calculations until officers are certain that these particular cases are correct.

7.8 There are some key decisions to be made in relation to the treatment of these incorrectly paid pensions which are included in the attached draft Policy (pages 15 to 16):

- *Historical overpayments* – Although the Fund is obliged to correct the pension amounts going forward, they may consider that it is not appropriate to reclaim any overpayments. At the Pensions Committee in December 2019, the Committee expressed their wish for any such overpayments to be written off, given that it is unlikely that any scheme member could have reasonably known about any GMP related overpayment. Based on the information that is now available, the Fund's actuary has confirmed that not reclaiming these overpayments will have minimal impact on the overall funding level, more detail of which is set out below. It is worth noting that it is

estimated that approximately 98% of the total overpayments relate to former scheme members from Hackney Council. The Committee are asked to ratify that they wish all overpayments to be written off including those relating to deceased pensioners.

- *Historical underpayments* – All current pensioners and dependants will receive arrears of underpaid pension, plus interest as calculated in accordance with the LGPS Regulations, although for dependants only their own benefits will be considered. The situation is more complicated for a pensioner who has since died and where a dependant's pension is not in payment as many of the pensioners will have died many years ago, and trying to trace next of kin could be a very labour intensive exercise and not always successful. The Committee are asked to agree that underpaid pension for deceased pensioners will only be considered at an individual's request and will be considered on their own merits.
- *Tolerance in change to pension rate* – It would be inefficient from an administrative point of view and quite likely confusing to adjust small differences to the annual rate of pension. There are expected to be around 21 cases where the difference is less than £5 p.a. (12 due an increase, and 9 due a decrease). There are a further approximately 81 where the difference is less than £25 p.a. (25 due an increase and 56 a decrease). The Committee are asked to agree that adjustments will not be made for any pensions where the change is less than £5 p.a.

7.9 Clearly this exercise will result in some pensioners and dependants receiving upsetting news about reductions in their pension. Officers have considered this matter and there are a number of legal and tax implications if pensions are not reduced. However there may be individual circumstances that could merit alternative treatment, albeit it is expected this would be in exceptional cases. It is therefore intended to treat all scheme members consistently, and deal with any such situations should the pensioner or dependant contact the Fund after receipt of their original letter.

7.10 As set out earlier. advice has been sought from the Fund's actuary as to the impact of the changes in pension and the payment of the arrears of pensions, including interest. The Fund Actuary view as follows:

- *Change to ongoing pensioner payroll* - The resulting small net reduction (c0.4%) in pension payroll will have little impact on the council's liabilities and its ability to meet its obligations in the Fund. The Actuary does not recommend any review of contributions until the next valuation, and even then expects the impact will be immaterial. The vast majority of the changes to pension amounts relate to Hackney Council but should any large under/overpayments apply specifically to small, standalone Fund employers, some further analysis may be required to determine the materiality of such changes.
- *Claiming historic under/overpayments* - The total value of underpayments which will be repaid in 2021 (c£200k including interest) represents a tiny fraction of the Council's asset share (£1.5bn at 31 March 2019) and therefore are likely to have an immaterial impact on its funding position and future contribution requirements. The estimated value of overpayments is much

greater (£2.6m) but still represents a small fraction of the Council's assets (c0.2%). The impact of having overpaid is already built into the Council's funding position so by not reclaiming this amount there is no further detriment (in fact by updating the pensioner payroll as mentioned above the funding position will improve marginally). The small improvement to the funding position from claiming back these overpayments should obviously be weighed against the administrative cost and complexity of reclaiming amounts from hundreds of members. If any smaller employers are affected then this may merit further consideration.

- 7.11 The Committee is asked to consider these matters and agree the overall approach to be taken. There are a number of areas of detail around how these are to be implemented and the Committee is asked to delegate these points of detail to the Pensions Manager to decide.

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