

London Borough of Hackney Pension Fund

Policy on the Overpayment and Underpayment of Pension Scheme Benefits and Contributions



Contents

1. Introduction	4
2. Policy adoption and review	4
2. Regulations	5
3. Policy objectives	5
4. Purpose of the policy	6
5. Scope	7
6. Managing overpayments of pensions and lump sums	8
6.1 Overpayments to an individual of an aggregate amount of less than £100	10
6.2 Overpayments discovered within 6 years	10
6.3 Overpayments discovered after 6 years	10
6.4 Recovery period	10
6.5 Recovery of overpaid pension on the death of a Scheme member	11
6.6 Recovery of overpayments of pension due to incorrect amounts being paid by the Administering Authority	12
6.7 Recovery of Pension Commencement Lump Sum overpayments	14
6.8 Recovery of overpayments of pension or lump sum due to incorrect information supplied by the employer	15
6.9 Overpayments due to Fraud or Corruption	16
6.10 Overpayments to an individual where recovery will cause hardship	16
7. Managing underpayments of benefits	17
7.1 General principles for repayment of underpaid pension or pension commencement lump sum payments	17
7.2 Underpayment of pension resulting from incorrect information supplied by the employer	18
7.3 Underpayment of pension or death grant discovered following the death of a Scheme member	18
8. Underpayments and Overpayments of Guaranteed Minimum Pensions(GMP) and other ad-hoc bulk situations	19
9 Underpayments due to the McCloud judgment	19
10 Underpayments and Overpayments of other benefit settlement amounts	20
10.1 Transfer values	20
10.2 Trivial Commutation and "de minimis" lump sum payments	20
10.3 Refund of contributions	21
11 Authorisation	21

12	Unauthorised payments.....	22
13	Managing overpayment and underpayment of contributions.....	23
13.1	Employee contributions	23
13.2	Employer contributions	24
14	Prevention	25
14.1	Benefit payments.....	25
14.2	Contributions	26
15	Policy adoption and review	26
16	Further Information	26

1. Introduction

This is the Overpayment and Underpayment of Pension Scheme Benefits and Contributions Policy for the London Borough of Hackney Pension Fund ('the Fund'), which is managed by Hackney Council ('the Administering Authority'). The administration of the Fund is partly outsourced to Equiniti and partly carried out by Hackney Council staff.

Underpayments and Overpayments of benefits can occur for a variety of reasons. Members' benefits are specified 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.

However, there are circumstances in which members may be paid more or less than they are due 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 also arise due to a number of different reasons, though these are more likely to be related to administrative errors by the member's employer and/or the Administering Authority than any activity relating to the individual member. For example, there are several challenges in relation to gathering, paying and checking the accuracy of contributions under the Career Average Revalued Earnings benefits structure implemented with effect from April 2014.

Hackney Council is committed to having effective processes in place which minimise the risk of underpayments and overpayments, and which identify such cases so that they can be resolved quickly in the interest of all affected parties.

2. Policy adoption and review

~~This Overpayment and Underpayment of Pension Scheme Benefits and Contributions Policy was approved by the Pensions Committee on 14th January 2021 and is effective from 1st February 2021.~~

~~Hackney Council will review this policy as required in the light of future changes to LGPS or other relevant legislation. It will also be formally reviewed triennially and updated as necessary, with a 'light touch' review annually by officers to ensure the policy remains appropriate. Significant updates will be approved by the Pensions Committee and the revised policy published as a public document following approval.~~

~~When undertaking a review of this policy the Council will have regard to the current legislation and the extent to which the exercise of the policy could lead to a serious loss of confidence in the public service.~~

~~Hackney Council retains the right to change this policy at any time as long as it republishes the amended policy at least one month in advance of the change(s) being~~

~~introduced coming into effect.~~

2. Regulations

This policy is formulated under the Local Government Pension Scheme Regulations 2013(as amended) - "LGPS Regulations" and related legislation.

Hackney Council will also implement this policy in line with the provisions of the various other LGPS Regulations and other legislation, including but not limited to:

- Registered Pension Scheme (Authorised Payments) Regulations 2009
- The Limitation Act 1980
- The Pensions Act 1995
- The Finance Act 2004
- The principles of Law of Equity including the doctrine of equitable recoupment

Nothing within this policy can overwrite the legal requirements within those provisions.

3. Policy objectives

The Fund's ~~administration and communication~~ objectives ~~are:~~ ~~in relation to~~ ~~administration is to deliver an efficient, quality and value for money service to its~~ ~~scheme employers and scheme members.~~

- Deliver an efficient, quality and value for money service to its scheme employers and scheme members.
- Ensure payment of accurate benefits and collect the correct contributions from the right people in a timely manner.
- Ensure the Fund's employers are aware of and understand their role and responsibilities under the LGPS regulations and in the delivery of the administration function.
- Maintain accurate records and communicate all information and data accurately, and in a timely and secure manner.
- Set out clear roles and responsibilities for the Council and Equiniti and work together to provide a seamless service to scheme employers and scheme members.
- Continuously review and improve the service provided

The roles and responsibilities of the Administering Authority and the quality and performance standards expected of the Fund are set out in the Pension Administration Strategy.

~~The Pension Administration Strategy sets out that for the Administering Authority, effective administration means:~~

- ~~It can fulfil its obligations under the regulations for administering the pension~~

scheme

- Lower costs, improved use of resources
- Easier and swifter provision of services to employers and scheme members
- Improved communication between Administering Authority, employers and schememembers
- Improved monitoring of performance
- Clean data enabling faster and more accurate monitoring of the Fund by the Fundactuaries
- Improved decision making in relation to policies and investments

For Employing Authorities, effective administration means:

- Greater understanding of the Fund and its impact upon them as an employer
- Lower costs
- Improved communication
- Employee satisfaction
- Improved decision making for budgeting
- Fulfilling its obligations as an Employing Authority under the LGPS

regulationsFor Scheme members, efficient administration means:

- Accurate records of their pension benefits
- Earlier issuance of annual benefit statements
- Faster responses to their pension record queries
- Faster access to benefits at retirement
- Improved communications
- Enhanced understanding of the pension scheme and the benefits of being a member

Having a policy setting out what approach will be taken when a member has been underpaid or overpaid compared to the benefits due under the LGPS Regulations, or where an employer and/ or member has underpaid the contributions required to meet the cost of the members' benefits is integral to the Administering Authority achieving these objectives.

4. Purpose of the policy

The purpose of this policy is to ensure that the relevant objectives as set out above are met, and the administration of the Fund is carried out in line with the governance objectives of the Fund. In particular, it aims to ensure that:

- all overpayments and underpayments of benefits are treated in a fair and equitable manner;
- where appropriate (and practical to do so), the Administering Authority attempts to recover overpayments of benefits that have occurred;
- the Administering Authority attempts to reimburse members

- or their beneficiaries where underpayments have occurred;
- the Administering Authority receives the correct contributions from employers and members as required by the Regulations and the Fund's Rates and Adjustments certificate, in order that the benefits are adequately funded; and
- the Administering Authority has processes in place to prevent and mitigate potential fraudulent activity.

More specifically, this policy aims to ensure that:

- The correct amount of benefits are paid to the right people at the right time;
- The Administering Authority maintains accurate records and ensures data is protected and has authorised use only;
- Errors are identified as soon as possible;
- Overpayments are recovered with the cooperation of the individual and/or employee **but acknowledging 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);**
- Underpayments are reimbursed with the cooperation of the individual;
- Individuals understand the importance of checking their payslips/payments for any reasonably identifiable errors; and
- The Administering Authority manages any over or underpayment effectively, such that the Internal Dispute Resolution Procedure (IDRP) is not seen as a necessary course of action by any individual.

5. Scope

The policy applies to:

- All members and former members of the London Borough of Hackney Pension Fund, and their dependants, including members who left pensionable service prior to 1 April 2014, councillor members and pension credit members;
- Executors of the Estates **and personal representatives of deceased** of London Borough of Hackney Pension Fund members/dependants;
- **Any person who has a right to make an application under the LGPS internal disputes resolution policy under regulation 74 of the LGPS Regulations 2013;**
- Administrators of the scheme;
- Employers participating in the scheme; and
- The Hackney Council Pension Committee ("the Committee").

This policy does not give, nor shall it be deemed to give, any ~~contractual~~ rights **whether contractual or legally enforceable or otherwise**, to any member of the Fund, or to any other person whatsoever. Nothing in this document will cause the Administering Authority's capacity to exercise its discretionary powers to be unlawfully fettered or restricted in any way.

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.

6. Managing overpayments of pensions and lump sums

Under Regulation 14 of the Registered Pension Scheme (Authorised Payments) Regulations 2009 the Administering Authority is obliged to correct any overpayment they discover within a reasonable period of time **in order to avoid tax consequences.** **The Pensions Regulator recognises that there is a legal obligation for pension fund managers to have in place appropriate controls to ensure the scheme is managed in accordance with the scheme regulations. In practice, that means we must ensure the correct benefits are paid and where that is not the case, that we need to recover any past overpayments as well as correcting the benefit payments for the future.**

There are circumstances in which an overpayment ~~will~~ **may** not be recovered from the member and ~~will~~ **may** be written off by the Administering Authority. Whether and how the overpayment is recovered depends on the following circumstances:

- How long after the overpayment first occurred that it was discovered
- Whether the member could reasonably have been aware that they were being or had been overpaid
- Whether the member died before the overpayment was discovered
- The size of the aggregate amount of the overpayment
- The cost of recovering the overpayment
- Whether the overpayment was the result of a criminal act
- Whether the recovery of the overpayment would result in "hardship" for the member.

Where a member claims that they are not able to repay any overpayment due to having spent the overpaid funds, and have changed their financial position as a result (for example on improving their lifestyle), the Administering Authority's understanding of the law is that this does not necessarily prevent recovery, and it may be for the member to prove in a court of law that they would not have incurred the equivalent expenditure anyway (i.e. had there not been the overpayment). In such cases it may be that partial recovery will be agreed i.e. the amount spent on changing the lifestyle will not be recoverable.

Where the Administering Authority is attempting to recover a lump sum overpayment, if the scheme member or representative refuses to engage with the correspondence, or cannot be found, the **Hackney Council** Finance/Accountancy team ~~at the Administering Authority~~ will make a recommendation on next steps. The administrators will be given instructions with appropriate sign-off. See the ~~below~~ section **11** for authorisation levels.

The Administering Authority's approach is designed to engage the member, and encourage a dialogue to agree how the over/under payment will be resolved. However, where the member does not respond after the Administering Authority has written to

them on two previous occasions over three months, the Administering Authority will suspend the pension at **after** the third time of writing. In such cases where appropriate, the Administering Authority will seek expert legal advice.

Typically overpayments will be recovered through the reductions to pensions applied in the pensioner payroll system. Where recovery is not being made through payroll and an invoice has been raised, responsibility for chasing the payment rests firstly with Equiniti and then, following escalation, with the Hackney Council Debt Recovery Team. **Any communications with members and beneficiaries/dependants will be handled sensitively.** If a final reminder is issued, Administering Authority officers are notified and a decision is made by the Head of Pensions (after consulting Hackney Council's legal team) as to whether to take legal action, taking into consideration the amount and circumstances and cost of legal action.

Where an overpayment is not recovered this will be reflected in the employer's funding position at the following triennial valuation, and may therefore impact the level of contributions the employer is required to pay as a result of the actuarial valuation process (for example, where a significant overpayment which cannot be recovered results in an increased funding deficit). **This may require dialogue with the employer.**

Overpayment (and underpayment) of benefits will be recorded as a breach of the law in ~~a separate spreadsheet record held by the administering authority,~~ **the Fund's breaches register.** Such breaches will, in accordance with The Pensions Regulator guidance and the Fund's Procedure for Reporting Breaches of the Law, be reported to the Pensions Regulator where considered of material significance (for example, large in size or indicative of wider administrative issues).

The below sections set out the Fund's approach to overpayments **in** ~~under~~ the following areas:

- Overpayments to an individual of an aggregate amount of less than £100
- Overpayments discovered within 6 years
- Overpayments discovered after 6 years
- Recovery period
- Recovery of overpaid pension on the death of a Scheme member
- Recovery of overpayments of pension due to incorrect amounts being paid by the Administering Authority
- Recovery of Pension Commencement Lump Sum overpayments
- Recovery of overpayments of pension or lump sum due to incorrect information supplied by the employer
- Overpayments due to Fraud or Corruption
- Overpayments to an individual where recovery will cause hardship

The Administering Authority also has a documented procedure note for administration staff to follow when an overpayment of pension has been discovered and escalated to Hackney Council by Equiniti.

6.1 Overpayments to an individual of an aggregate amount of less than £100

In line with the guidance set out in the HM Treasury document "Managing Public Money" (May 2023)¹ (~~July 2013 revised in August 2015~~), the Administering Authority will consider the cost of recovery of the pension alongside the amount of the overpayment.

The Administering Authority will not look to recover overpayments if the aggregate amount of the overpayment is less than £100, due to the anticipated administrative cost of recovering such amounts. This amount will be kept under review.

6.2 Overpayments discovered within 6 years

The Limitation Act 1980 sets out that a claim to recover overpayments has to be made within 6 years of the date when the cause (i.e. error, fraud or other criminal act) 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 Administering Authority'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).

6.3 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.

However, case law in 2018 (*Burgess and others v BIC UK*) has shown that if a Fund attempts to recover an overpayment via a reduction to the member's future pension i.e. via "recoupment", as opposed to requesting a lump sum repayment, the 6 year Limitation Act limit doesn't apply and Funds can reclaim all overpayments made.

The Administering Authority's approach is to seek maximum recovery in these circumstances unless there are other factors which need to be taken into account (as explained elsewhere in this policy).

6.4 Recovery period

Unless otherwise specified, the Administering Authority will recover a pension overpayment through a reduction to the pension paid over the same time period as the overpayment occurred. In exceptional circumstances the Administering Authority may

¹ www.gov.uk/government/publications/managing-public-money

permit the recovery period to be extended, up to a maximum of 25% of the time period over which the overpayment occurred, at its discretion. Each such case will be considered on its merits.

Unless otherwise specified, the Administering Authority will aim to recover a lump sum overpayment immediately through a one-off recovery payment. The Fund may permit alternative approaches at its discretion depending on the particular circumstances of the overpayment.

6.5 Recovery of overpaid pension on the death of a Scheme member

All correspondence regarding an overpayment under these conditions will be handled particularly sensitively due to the circumstances. Fund members' next of kin or their estate (e.g. personal representatives or executors of will) will be contacted to explain the overpayment and the proposed method of recovery before an invoice is issued or a reduction to benefits is made.

6.5.1 Overpayment of up to one month's pension

Understandably, notification of the death of a pensioner or dependant member does not always happen immediately. Further, notice is required to amend payroll data so it is possible that a pension payment is made after a member has died, meaning an overpayment has occurred.

If an individual in receipt of a pension (including a dependant's pension) dies part way through a calendar month and the full monthly pension is paid (so the pension is overpaid for a proportion of one month), the Administering Authority will not seek to recover this overpayment (even if it more than £100) and the amount will be written off.

6.5.2 Overpayment of pension which relates to more than one month's payment

The Administering Authority will not look to recover such pensions in these cases if the aggregate amount of the overpayment is less than £100, due to the anticipated administrative cost of recovering such amounts.

The Administering Authority will look to recover overpayments of pension in all cases where the amount is in excess of £100. In the first instance, the administrators of the Fund will attempt to contact the deceased member's bank in order to request the funds be returned.

If the bank is not able to make the repayment, the amount will be recovered through a one-off payment from the member's estate unless there is a death grant payable of the balance of the deceased member's guaranteed pension payments, and recovery can be made via a reduction to the death grant by the amount overpaid. The amount of the death grant will need to be greater than the overpayment for this

approach to be taken.

The Administering Authority will discuss the method of repayment with the estate if a one-off repayment or reduction to death grant is not possible. If there is a dependant **due to receive an ongoing pension** it may be agreed with them to repay through a reduced pension for an agreed period of time.

Pension payments which are made for more than six months after the death of a member are classified as unauthorised payments for tax purposes. Please see the section on unauthorised payments for more details.

6.5.3 Overpayment of death grant

The Administering Authority will not look to recover death grant overpayments if the overpayment is less than £100, due to the anticipated administrative cost of recovering such amounts.

Where the Fund has overpaid a death grant, ~~the~~ **any** dependant's pension(s) will not immediately be reduced. The Administering Authority will contact the ~~dependant(s)~~ **recipient(s) of the death grant** to explain the error and provide the option of returning the overpayment via a one-off payment which will be invoiced directly, or via a reduction to **any** the dependant's pension **they are receiving**. The recovery period will be determined on a case-by-case basis depending on the size of the overpayment, the size of **any** the dependant's pension and the age of the **beneficiary**. ~~dependant~~.

Where there is more than one ~~dependant~~ **recipient**, the Administering Authority will generally seek to engage with the adult ~~dependant~~ **recipient**, if possible **or the recipient's guardian if the recipient who has been overpaid is a minor**.

6.6 Recovery of overpayments of pension due to incorrect amounts being paid by the Administering Authority

When the overpayment is discovered, the pension will be reduced to the correct level with effect from the next possible monthly payroll to avoid further overpayment. The member will be notified in writing with an explanation of the situation and how the overpayment will be recovered, before any invoice for recovery is sent or further reduction to benefits is applied. **The Administering Authority will aim to agree the method of overpayment with the member in advance of any invoice or reduction in pension being made.**

Where further investigations are required in order to determine the cause of the overpayment and the correct level of pension, the member will be informed of the situation and the pension in payment will not be corrected until the investigations and checks are complete.

6.6.1 Situations where the member could reasonably be aware of the overpayment

There are certain situations where a member could reasonably have been aware of the correct level of pension due and therefore cannot claim to have been unaware of the pension overpayment. In particular, in cases where the member has been notified of the correct rate of pension in writing, it can be said that the member can reasonably be aware that they are being overpaid.

The following is a list of scenarios where this may occur (this list is not exhaustive):

- Upon retirement the member was informed of the correct pension amount but an administrative error led to the incorrect amount being input onto the payroll record
- A child in receipt of a dependant's pension is over 18 and is no longer in full time education or vocational training and does not notify the Administering Authority.
- A Pension Sharing Order or Earmarking Order on divorce has been put in place but processed late, resulting in the pension being overpaid since the specified implementation date.
- ~~The member has been re-employed but has not notified the Administering Authority, where 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.~~

In these situations, unless the total overpayment is below £100, the Administering Authority will seek to recover the total value of the overpayment from a reduction to the member's ongoing pension. Where there is no ongoing pension from which to deduct the overpaid amount, the member will be invoiced for the overpayment.

6.6.2 Situations where the member cannot reasonably have known of the overpayment

There are situations where a member may not reasonably have been aware of a pension overpayment. For example (this list is not exhaustive):

- Administrative error within the calculation of benefit entitlement (includes dependants' pensions) with the incorrect pension amount communicated throughout the settlement process, the incorrect (overstated) rate of pension input into the payroll record and the member informed in writing of the incorrect rate of pension to be paid.
- The Pensions Increase is inaccurately applied to the elements of a pension in payment.
- New information from HMRC leads to a revised Guaranteed Minimum Pension (GMP) 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.

In general, in such situations the Administering Authority will not seek to recover the total value of the overpayment. However, where the size of the aggregate overpayment is significant (over £10,000) this will be considered by the Head of Pensions and reported to the Pensions Committee to ensure that the general policy of not seeking to recover such cases remains appropriate. Furthermore, where non-recovery would result in an unauthorised payment and therefore additional tax charges for the member and Fund, the case will be considered on its own merits, and referred to the Head of Pensions where the total cost to the Fund (of the write off and any additional tax charges) is significant (over £10,000).

However in all cases the pension will be reduced to the correct level with effect from the next possible monthly payroll to avoid further overpayment. The member will be informed of the correction.

It is expected that in all overpayment cases, until the time of discovery of the error the Administering Authority will have believed the pension in payment to be correct (e.g. where the overpayment is discovered following reconciliation of GMP with HMRC records). Such overpayments will therefore not be considered an unauthorised payment and so will not be subject to any additional tax charges.²

6.7 Recovery of Pension Commencement Lump Sum overpayments

6.7.1 Situations where member could reasonably be aware of the overpayment

There are certain situations where a member could reasonably have been aware of the correct level of lump sum due and therefore cannot claim to have been unaware of the overpayment. In particular, in cases where the member has been notified of the correct lump sum in writing, and the amount was paid shortly afterwards (for example, within six months), it can be said that the member can reasonably be aware that they have been overpaid.

The following is a list of scenarios where this may occur (this list is not exhaustive):

- Upon retirement the member was informed of the correct lump sum amount but an administrative error led to the incorrect amount being paid
- The Administering Authority paid the same (correct) lump sum amount twice, in

² This assumes that the conditions in Regulation 13 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 are met i.e.

- the payment was genuinely intended to represent the payment of a pension under the LGPS regulations
- the payer believed that the recipient was entitled to the payment, and
- the payer believed that the recipient was entitled to the incorrect amount.

error.

- In the period leading to retirement the member was given a retirement quotation with a correct estimated lump sum amount, but a later administrative error led to a much larger (incorrect) amount being stated on the final retirement documentation and being paid.

When the overpayment is discovered by the Administering Authority, an attempt to recover the overpayment will be made as soon as possible. The member will be notified in writing to explain the situation, and the Administering Authority will seek to recover the amount in full through one immediate repayment.

6.7.2 Situations where the member could not reasonably have known of the overpayment

There are situations where a member may not reasonably have been aware of a lump sum pension overpayment. For example, an administrative error within the calculation of the benefit entitlement resulted in the incorrect lump sum amount, which was communicated throughout the settlement process, the incorrect (overstated) and the incorrect amount was then paid and the incorrect amount stated in any payment notification.

When the overpayment is discovered, by the Administering Authority, consideration will be given to the length of time which has passed since the error was made to determine the approach to take, but generally an attempt to recover the overpayment will be made as soon as possible. The member will be notified in writing to explain the situation, and a proposed recovery plan will be set out, which will depend on the amount overpaid and how much time has passed since it was paid. This recovery plan is subject to agreement with the member. The amount will not be recovered via a reduction of the member's pension unless this is agreed with the member.

6.8 Recovery of overpayments of pension or lump sum due to incorrect information supplied by the employer

This situation may arise for a number of reasons. An example is where employers estimate redundancy calculations for employees who would be entitled to immediate unreduced payment of benefits on redundancy. If forms are provided to the Administering Authority which suggest the benefits are to be paid unreduced and it later transpires that the member had voluntarily left service, the employer will be required to pay the strain cost to the Fund of the unreduced early retirement rather than a reduction being applied to the member's benefits. The employer, Administering Authority and the Fund actuary may agree that the employer can pay this strain cost in instalments over a period of time such as 3 years. An example might be if the employer initially notifies the Fund that a member is entitled to unreduced benefits but this is later amended, or where incorrect pensionable pay figures are initially supplied and later corrected.

Should an overpayment of pension or lump sum occur as a result of inaccurate

information provided by the scheme member's employer on retirement (such as pensionable pay) the Administering Authority will seek to recover monies through the scheme member's ongoing pension.

The Administering Authority will manage any challenges resulting from such errors in line with the procedures set out in the Pensions Administration Strategy. For example, the Administering Authority may recharge the administrative cost of recovering such pension directly from the employer, and where recovery from the member in question is not possible, the employer may be asked to repay the overpayment to the Fund.

6.9 Overpayments due to Fraud or Corruption

On rare occasions members' benefits may be overpaid due to:

- Fraud by the member, a relative or the member's estate
- Fraud by the employer
- Fraud by a pensions officer
- Other criminal activity such as blackmail or corruption

Where after reasonable investigation an overpayment is discovered to have been made due to fraud or any other criminal act, the pension will be suspended and an attempt will be made to recover the overpayment of pension and lump sum immediately.

The Administering Authority will involve internal audit in such cases and the settlement of overpayments may be resolved through appropriate civil or criminal legal process which may include contacting the Police by the Courts of Law.

In dealing with such cases we will also follow the principles set out in the Fund's Procedure for Reporting Breaches of the Law and Hackney Council's Anti-fraud and Corruption Policy and/or Anti-Money Laundering Policy.

6.10 Overpayments to an individual where recovery will cause hardship

In line with the guidance set out in the HM Treasury document "Managing Public Money" (May 2023)³ (July 2013 revised in August 2015), 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.

³ www.gov.uk/government/publications/managing-public-money

In general, when arranging recovery of an overpayment, the member's ongoing pension will not be reduced to below 50% of the full (corrected) amount.

Further details of the procedure and the required evidence will be provided upon request. In these cases officers of the Administering Authority will consult with the scheme member, and where appropriate the Administering Authority will seek expert legal advice.

This approach is intended to reduce the number of Internal Disputes and referral to the Pensions Ombudsman.

7. Managing underpayments of benefits

In this section:

- General principles for repayment of underpaid pension or pension commencement lump sum payments
- Underpayment of pension resulting from incorrect information supplied by the employer
- Underpayment of pension discovered following the death of a Scheme member

This section covers the general principles for ad hoc underpayments. Please see section 9 for underpayments arising as a result of the McCloud judgment.

7.1 General principles for repayment of underpaid pension or pension commencement lump sum payments

Where an underpayment of pension or lump sum is identified by the Administering Authority, the pension will be immediately increased to the correct level and the member will be informed in writing of the underpayment.

Underpayments of benefits totalling less than £5 in value will not be reimbursed due to the administrative cost of doing so, unless specifically requested.

The underpayment will be reimbursed to the member in one lump sum payment which is paid through the pensions payroll with the next monthly pension payment. This is to ensure the correct rate of tax is applied.

Interest will be paid on the underpaid amount(s) in line with Regulation 81 of the LGPS Regulations (in particular, interest is due on pension payments which are more than 1 year late, and on lump sum payments which are more than 1 month late). Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

Lump sum payments to rectify underpayments are treated as income for tax

purposes and the tax will be deducted through Pay As You Earn (PAYE) in the usual way. The tax deducted will be estimated and may not be the correct amount once all of the member's income for the year is taken into account. After the next 5 April, HM Revenue & Customs (HMRC) will check whether each member has paid the correct amount of tax and if not they'll contact the member directly. Members can contact HMRC directly if they think they have paid too much tax and request a refund using a form P35A.

7.2 Underpayment of pension resulting from incorrect information supplied by the employer

The underpayment to the member will be dealt with as described in 7.1 above. The Administering Authority may recharge the administrative cost of investigations and checks into the underpayment amount and correspondence with the affected members or dependants directly to the employer. **The Administering Authority may also charge any interest due in relation to the underpayment to the employer via the additional cost being added to the employer's funding liabilities and taken into account at the next triennial actuarial valuation when setting contributions.**

7.3 Underpayment of pension or death grant discovered following the death of a Scheme member

Where there is a surviving partner or spouse, the underpayment (with interest as described above) will be paid to that dependant with the death grant or the first monthly dependant pension payment. Where there are multiple children's pensions payable (and no surviving spouse or partner), the underpayment will be spread evenly across those beneficiaries.

Where there are no ongoing dependant pensions, the underpayment will be reimbursed to the deceased member's estate unless the total payment is below £5, in which case the Administering Authority will not make the payment due to the administrative cost of doing so.

If a death grant payment is discovered to have been underpaid, (including where the balance of 10 years' annual pension is due to a deceased member's estate following the death of a pensioner), the underpayment will be reimbursed to the deceased member's estate unless the total death grant is below £5, in which case the Administering Authority will not make the payment due to the administrative cost of doing so.

In these cases a claim form is sent to the member's **dependant or representative next of kin**, and if the total amount payable to the estate is below £5,000 the Administering Authority will pay the amount to the person specified on the claim form. If it is above £5,000 the original Grant of Probate or Letters of Administration is requested before payment is made.

8. Underpayments and Overpayments of Guaranteed Minimum Pensions(GMP) and other ad-hoc bulk situations

A Guaranteed Minimum Pension (GMP) is the minimum pension the Fund must provide in relation to being contracted-out of the State Earnings Related Pension Scheme from April 1978 to April 1997. It is a notional benefit which is only paid if a member's Fund benefits are less than the GMP; it is not a separate benefit payable in addition. Not all members in the Fund between 1978 and 1997 will have accrued any GMP.

A reconciliation exercise comparing the Fund's GMP records with those held by HMRC was carried out and concluded during 2022. This identified that some individuals' pensions have been under or overpaid due to the Fund's GMP record being incorrect.

Given the magnitude of this exercise, separate decisions ~~were will be~~ taken by the Pensions Committee in relation to if and how the pensions ~~are~~ were adjusted and the treatment of accumulated over and underpayments. It is therefore possible that the treatment of such cases ~~is~~ was not consistent with the remainder of this Policy, albeit the Committee ~~will have~~ had regard to the Policy.

There may be further exercises in the future which affect more than a small number of scheme members. In such situations, the treatment of such cases may be considered separately by the Pensions Committee and, as such, elements of this Policy may be departed from.

9 Underpayments due to the McCloud judgment

In 2014 the LGPS rules amended the way benefits accrued, changing from a final salary basis to a Career Average Revalued Earnings (CARE) basis, with protections put in place for older members. Other public sector schemes made the same change in 2015. However, in 2018 the Court of Appeal determined that the protection for older members only was age discrimination and this is now known as the McCloud judgment, after the member of the Judicial Pension Scheme that brought the case. Legislation has now been put in place to extend the protection for younger members, meaning that benefits for qualifying members need to be checked to see if they need to be increased due to the protection now in place.

The Fund is currently undertaking this benefit rectification exercise, which is expected to conclude by August 2025. Any underpayments will be rectified and the arrears paid according to legislation and McCloud statutory guidance issued by the Department for Levelling Up, Housing and Communities (DLUHC). This may mean that the treatment of underpayments due to the McCloud remedy is not consistent with the remainder of this policy, albeit the Administering Authority will have regard to this Policy when making any decisions.

10 Underpayments and Overpayments of other benefit settlement amounts

10.1 Transfer values

Where an individual transfer value for a member who has transferred Hackney Fund benefits to another pension arrangement is discovered to have been underpaid, the correct amount will be calculated and the underpayment will be paid to the receiving scheme. Where the member's new scheme is not able to accept the balance transfer payment, an alternative pensions savings vehicle will be sought, and payment made once agreed by the Head of Pensions.

If a transfer is discovered to have been overpaid, then the correct amount will be calculated and the Administering Authority will attempt recovery of the overpaid amount from the receiving scheme.

Where a transfer should not have been paid because the member was not eligible for a transfer payment (e.g. if they already have an LGPS pension in payment), the transfer becomes an unauthorised payment. Please refer to the ~~unauthorised payment~~ section 12 later in this policy for more details.

10.2 Trivial Commutation and "de minimis" lump sum payments

Where a member has received a Trivial Commutation of benefits (or a "de minimis" lump sum payment) and the amount paid is later discovered to have been underpaid, the correct amount will be calculated and the underpayment will be paid to the member, less any tax due. If the recalculated total amount results in the HMRC thresholds for these lump sums being breached, the payment of the additional amount would result in an unauthorised payment. In these cases the Administering Authority will write to the member to agree an approach. This may be that the underpayment is paid but is subject to additional tax charges. The Administering Authority may offer to pay the member's tax charge in such cases. **Please refer to section 12 later in this policy for more details.** ~~See the below section on unauthorised payments for more detail.~~

Where a member has received a Trivial Commutation of benefits (or a "de minimis" lump sum payment) and the amount paid is later discovered to have been overpaid, the correct amount will be calculated and the overpayment will be written off.

Where a trivial commutation or de minimis payment should not have been paid because the member had other pension benefits which meant they weren't eligible, it becomes an unauthorised payment. ~~Please refer to the unauthorised payment section later in this policy for more details.~~ **Please refer to section 12 later in this policy for more details.**

10.3 Refund of contributions

Where a member has received a refund of contributions on leaving active membership in the Fund and this amount is discovered to have been underpaid, the underpayment will be paid to the member less any tax due.

If a refund of contributions is discovered to have been overpaid, then a request for the member to repay the overpayment may be made depending on the situation (e.g. size of the overpayment and whether the overpayment was due to an employer error, and whether the member could reasonably have known this was an overpayment).

Where a refund should not have been paid because the member had previous LGPS service, the refund becomes an unauthorised payment. **Please refer to section 12 later in this policy for more details.**

Please refer to the unauthorised payment section later in this policy for more details.

11 Authorisation

Overpaid amounts of £100 or more for which an invoice has been issued are passed to Debt Recovery to follow up on the repayment. If no repayment or response is received this is passed back to the Administering Authority to determine whether or not to write off the overpayment. Any sum which is written off is treated as a liability against the scheme member's former employer.

The Administering Authority will apply the following levels of authority when writing off overpayments:

Total value of overpayment	Authority to write off overpayment
Up to £100	Automatic write off
Between £100 and £3,000	2 of the following: <ul style="list-style-type: none"> ● Group Accountant, Financial Services ● Head of Pensions ● Pensions Manager
Above £3,000	As above, plus Director, Financial Management

The third party administrators will review all cases and a senior administrator and/or team leader will evidence compliance with the Administering Authority's policy in every case.

Any sum which is written off is treated as a liability against the scheme member's former employer.

Where any guidance regarding the write off of overpaid pension is provided for the Local Government Pension Scheme (LGPS) as a whole (for example in relation to the **rectification of benefits due to the McCloud remedy**) ~~reconciliation of Guaranteed Minimum Pension~~, the Administering Authority will follow such guidance as long as this does not contradict other Hackney Council policies which override such guidance.

12 Unauthorised payments

The Finance Act 2004 sets out the payments which a registered pension scheme is authorised to make to members. Any other payments are unauthorised payments and could result in tax charges for the member and the Fund.

The Administering Authority understands that any overpayment which is written off is an unauthorised payment unless it falls within regulations 13 or 14 of the Registered Pension Schemes (Authorised Payments) Regulations 2009. Where an unauthorised payment has been made the Administering Authority will engage with His Majesty's Revenue and Customs (HMRC) to resolve the issue and establish any resulting tax charges. **The Administering Authority is obliged to report any unauthorised payments to HMRC each year in its annual event report.** We do not expect Regulation 14 to apply but it is expected that the conditions of Regulation 13 would apply in most cases i.e.:

- the payment was genuinely intended to represent the payment of a pension under the LGPS regulations
- the payer believed that the recipient was entitled to the payment, and
- the payer believed that the recipient was entitled to the incorrect amount.

Where the overpayment is a "genuine error" as described in HMRC's PTM146300 and the aggregate overpayment is less than £250, if this is waived by the Administering Authority this is an unauthorised payment but does not have to be reported to HMRC, and HMRC will not seek to collect tax charges on it.

If overpayments which are the result of a "genuine error" are recovered, in general these are not considered to be unauthorised payments and so additional tax charges do not apply.

Where an overpayment is an unauthorised payment, both the individual member and the Fund will have to pay additional tax charges. These charges are as follows:

The unauthorised payments charge

Where the unauthorised payment is made to or for a member, it's the member who is responsible for paying the tax charge. If the payment is made after the member's death, the person who receives the payment is responsible for paying the tax.

The rate of the unauthorised payments tax charge is 40% of the overpayment.

The unauthorised payments surcharge

This is payable by the same person who is subject to the unauthorised payments charge. It is usually due when a member receives unauthorised payments of 25% or more of their pension value in a year. This is very unlikely to occur, but when it does the rate of the unauthorised payments surcharge is 15%. This means that with the unauthorised payments charge, the total tax rate payable on the overpayment would be 55%.

The scheme sanction charge

The scheme administrator must pay the scheme sanction charge and this is at a rate of between 15 and 40% of the unauthorised payment and depends on whether or not the unauthorised payments charge has been paid by the member.

The Administering Authority will apply to be discharged from the tax charge where it would not be just and reasonable for the Fund to pay the tax, e.g. where the Administering Authority has been misled or given incomplete information leading them to assume that the payment was an authorised payment.

Where the member could not reasonably have known of the overpayment, the Administering Authority may offer to pay the member tax charge on behalf of the member. The Administering Authority will require the member to provide written authorisation to do this.

This will be set out clearly in any correspondence to the overpaid

member. A deceased person has no unauthorised payments tax

liability.

Further details on unauthorised payments are available on His Majesty's Revenue and Customs website:

<https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm131000>.

13 Managing overpayment and underpayment of contributions

Underpayments of contributions will be recorded as a breach of the law in the Fund Breaches register, and will be reported to the Pensions Regulator where considered of material significance (for example, large in size or indicative of wider issues with the employer covenant – such cases may also be added to the risk register).

13.1 Employee contributions

The Administering Authority will perform regular checks against the pensionable

pay and contribution rates reported by employers, to ensure that the correct contribution rates are applied. Where a discrepancy is noted, this will be queried with the employer.

Where a member has underpaid regular contributions, the Administering Authority will notify the employer and the decision whether to recover the underpaid contributions from the member will rest with the employer. Where a member has underpaid regular contributions, unless they have materially done so it is unlikely they would have reasonably noticed this was the case and it is likely to be due to an error in deducting the correct amount rather than through the member's actions. As a result the employer may determine that the underpayment should not be recovered from the member and will simply be reflected in the employer's individual funding position and resulting contribution requirements from the following triennial valuation.

Where the underpayment relates to additional pension contributions the member will be contacted (via their employer) to arrange for the underpayment to be made, and if this is not made the additional pension contract will be cancelled or amended accordingly and the member will be notified.

13.2 Employer contributions

It is not possible to repay the overpayment of contributions to an employer and so these will not be reimbursed. The overpayment will be taken into account at the following triennial actuarial valuation and will be reflected in the employer's funding position at that time and revised contributions based on that position will be payable.

Where the employer has underpaid regular contributions either through applying the incorrect rate of contribution or due to the incorrect pay being used to calculate the contributions due (for example due to complications regarding Assumed Pensionable Pay), the underpayment will be recovered as soon as discovered, and interest will be applied to the underpaid contributions at a rate equivalent to one per cent above the Bank of England base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

Where ongoing underpayments are discovered before the year-end, the employer will be contacted by the Fund administrators and will be requested to make an adjustment in the next month's contribution payment.

Employers will be asked to pay the underpayments of deficit contributions as soon as reasonably possible, and interest will be applied to the underpaid contributions at a rate equivalent to one per cent above the Bank of England base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

The Administering Authority will contact the employer in all cases of underpayment to draw attention to the underpayment and the proposed approach for recovery.

14 Prevention

The Administering Authority has the following internal controls in place in order to minimise the risk of overpayments or underpayments occurring.

The third party administrators will also review all cases of overpayments and a senior administrator and/or team leader will evidence compliance with the Administering Authority's policy in every case, including where any amounts are to be written off.

14.1 Benefit payments

- The 'Tell Us Once' service has been adopted whereby deaths are notified through a central system accessible by Equiniti as the administrators of the Fund. This increases the notification of the death of scheme members and therefore minimises potential overpayments.
- The National Fraud Initiative is conducted by the Cabinet Office every two years; it compares files of pensioners and deferred members with the Department for Work and Pensions database of the deceased and highlights matches for investigation. The Fund actively participates in this initiative.
- The Fund includes reminders in its correspondence (including deferred benefit statements and pensioner payslips and annual pensioner increase communications) that the Fund must be advised of changes in circumstances or the death of a scheme member.
- Checks are carried out on the ongoing eligibility of the payment of ill health pensions and children's pensions.
- The Administering Authority investigates any returned pensioner payslips and pension payments returned by banks and building societies, in order to check on the welfare of the scheme member and to protect payment of the Fund's money.
- The pension payroll process ensures changes are made in a correct timely manner and before payroll deadlines, and ensures pensions increases are applied correctly.
- Guidance for employers on their responsibilities in relation to providing accurate information about members, and employer service level agreements are in place.
- Comprehensive training for all pension officers and third party administration staff in the administration of the benefits.
- Robust processes for the calculation and checking of pension benefits and other benefit payments, including appropriate levels of sign-off. **Definitive roles are set up within the pensions administration software system, providing clear accessibility and a separation of duty between pension officers who complete and check calculations.**
- **Internal processes are in place which prevent Administering Authority officers and third party administration staff from accessing their own pension record reducing the potential to commit fraud or corruption.**

- Online member self-service being implemented which allows members to access their pension details on-line, check their records are correct and amend certain records including expressions of wish forms and personal details.
- Pension payroll is run on the same system/platform as the member administration records

14.2 Contributions

- Monthly checks in respect of the payment of employer and employee contributions over to the Fund are carried out by both Equiniti and within the in-house Pensions Team, ensuring receipts are reconciled against the appropriate records and supporting information
- Guidance for employers on their responsibilities, and employer service level agreements.

15 Policy adoption and review

This Overpayment and Underpayment of Pension Scheme Benefits and Contributions Policy was approved by the Pensions Committee on 7th February 2024 and is effective from 1st April 2024.

Hackney Council will review this policy as required in the light of future changes to LGPS or other relevant legislation. It will also be formally reviewed triennially and updated as necessary, with a 'light touch' review annually by officers to ensure the policy remains appropriate. Significant updates will be approved by the Pensions Committee and the revised policy published as a public document following approval.

When undertaking a review of this policy the Council will have regard to the current legislation and the extent to which the exercise of the policy could lead to a serious loss of confidence in the public service.

Hackney Council retains the right to change this policy at any time as long as it republishes the amended policy at least one month in advance of the change(s) being introduced coming into effect.

16 Further Information

If you require further information about anything in or related to this Policy, please contact:

Pensions Administration

London Borough of Hackney Pension Fund

Financial Services, 4th Floor, Hackney Service Centre, 1 Hillman Street, London E8 1DY

The London Borough of Hackney Pension Fund



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