

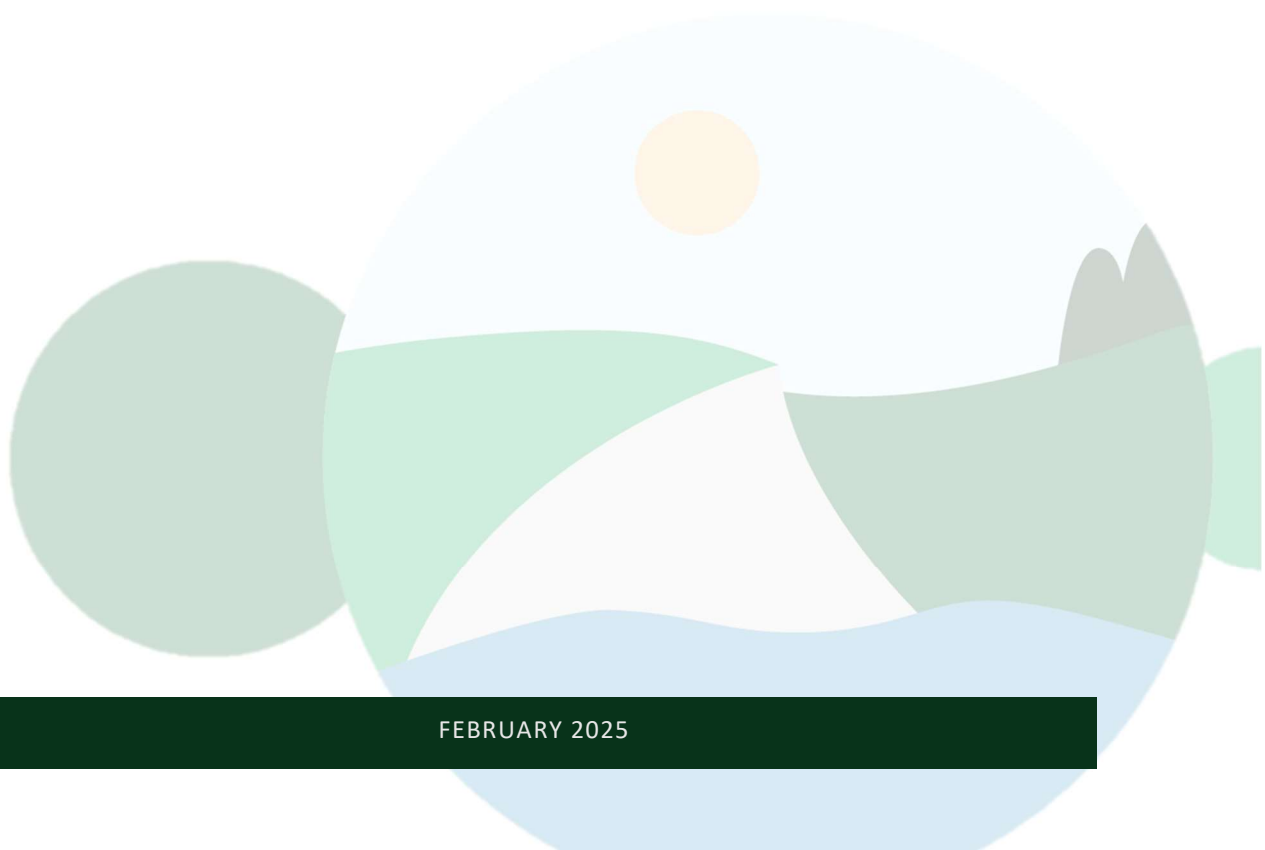


**Kent Pension Fund**  
*Delivering an outstanding service*

**KENT COUNTY COUNCIL**

**ADMINISTERING AUTHORITY FOR KENT PENSION FUND**

**PENSION OVERPAYMENT AND WRITE OFF POLICY 2025**



**FEBRUARY 2025**

## CONTENTS

1	Introduction .....	3
2	Policy objectives .....	3
3	Purpose of the policy .....	3
4	Effective date and reviews.....	3
5	Scope .....	4
6	Managing overpayments of pension on the death of a scheme member.....	4
7	Managing overpayments of children’s pensions failing to cease at the appropriate time .....	4
8	Managing overpayments of pension entitlement following incorrect information supplied by the employer in respect of the scheme member .....	4
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. ....	5
10	Managing overpayments of pension following an incorrect rate of pension entitlement being paid by the Fund and it can be said that the member cannot have known of the overpayment .....	6
11	Overpayments resulting from an error with Guaranteed Minimum Pension (GMP) .....	6
12	Discretion to write off overpayments.....	7
13	Recovery .....	7
14	Length of time to recover overpayment.....	8
15	Claims of inability to repay overpayments .....	8
16	Monitoring repayments.....	8
17	Authority to write off overpayments.....	8
18	Reporting to the HM Revenue and Customs and effects on the Fund and individual.....	9
19	Prevention .....	9
	Appendix 1 – Limitation Period Examples.....	11
	Appendix 2 - Examples of HM Revenue and Customs ‘genuine errors’ .....	14
	Genuine error - example 1 .....	16
	Genuine error - example 2 .....	16
	Genuine error - example 3 .....	17

## 1 INTRODUCTION

- 1.1 This is the Pension Overpayment and Write Off Policy for the Kent Pension Fund, which is managed by Kent County Council (the Administering Authority).
- 1.2 Pension overpayments can occur for a variety of reasons. It is important that the Fund has a clear policy on how pension overpayments are managed once they are identified.
- 1.3 Kent Pension Fund recognises the need to take a pro-active approach to identifying potentially fraudulent activity and overpayments.

## 2 POLICY OBJECTIVES

- 2.1 The policy objectives aim to ensure the Fund:
  - has 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.
  - manages 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 with the right amount.
  - identifies errors as soon as possible.
  - rectifies overpayments with the co-operation of the individual.
  - encourages individuals to take an active role in checking payslips/payments for obvious errors.
  - 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).
  - has steps in place to prevent and also investigate potentially fraudulent activity.

## 4 EFFECTIVE DATE AND REVIEWS

### 4.1

Version	Policy effective date
Draft	May 2024
Final	February 2025

- 4.2 This policy will be reviewed every three years, 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 Kent Pension Fund who have received one or more payments from that Fund.
- executors of the estates of deceased Kent Pension Fund members.
- beneficiaries of Kent Pension Fund members where those beneficiaries have received one or more payments from that Fund.
- administrators of the scheme.
- 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 following the death of a scheme member, the Fund will generally seek to recover overpayments that are greater than £200.00 (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 £200.00 or less in the instance of the death of a scheme member has been deemed by the Fund as uneconomical to pursue.

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.

## 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 the Pensions Section of a change in circumstances to ensure the pension is ceased at the appropriate time, failure to do so would result in an overpayment. The relevant change in circumstances would be when the individual reaches age 18 or age 23 or ceases full time education.

7.3 Should an overpayment of pension occur as a result of a late notification of change of circumstances, the Fund will generally seek to recover overpayments that are greater than £200.00 (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 £200.00 or less has been deemed by the Fund as uneconomical to pursue.

## 8 MANAGING OVERPAYMENTS OF PENSION ENTITLEMENT 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 £200.00 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 £200.00 (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 £200.00 in value will generally 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, repayment will be requested by the Fund to recover any overpayment which is greater than £200.00 in value.
- 8.4 Where an overpayment of the lump sum has occurred following inaccurate information provided by the employer, a letter requesting repayment will be sent by the Fund to recover any overpayment which is over £200.00 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.

<b>Type of overpayment</b>	<b>How overpayment has occurred</b>
<b>Administration error upon creation of payroll record</b>	Incorrect (overstated) rate of pension inputted onto payroll record but member informed in writing of the correct rate of pension to be paid.
<b>Administration error upon calculation/payment of pension scheme lump sum</b>	Incorrect (miscalculated/overstated) lump sum paid to member but member informed in writing of the correct value of the lump sum to be paid.
<b>Entitlement to current rate of pension ceasing</b>	A Pension Sharing Order or Earmarking Order being received after the implementation date meaning that the pension has been overpaid since that implementation date.
<b>Failure to action an alteration to the payroll record/reduction in pension</b>	Failing to implement the change from the higher short term dependents pension to the lower long-term rate.

- 9.2 If the scheme member has been notified of the correct rate of pension and/or lump sum in writing and is receiving/ has received a higher amount, it can be said that the member can reasonably be aware that they are being/ have been overpaid 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 £200.00 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 £200.00 or less has been deemed by the Fund as uneconomical to pursue due to the administrative time involved.
- 9.4 The amount of overpaid pension will generally 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, OR the pension scheme lump sum has been overpaid, a letter requesting repayment will be sent by the Fund to recover the overpayment which is greater than £200.00 in value.

## 10 MANAGING OVERPAYMENTS OF PENSION FOLLOWING AN INCORRECT RATE OF PENSION ENTITLEMENT 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
<b>Administration error upon calculation and notification of benefit entitlement (includes dependants' pensions and Pension Credit members)</b>	Incorrect (overstated) rate of pension inputted onto payroll record and member informed in writing of the, incorrect, rate of pension to be paid.
<b>Administration error upon calculation and notification of pension scheme lump sum entitlement</b>	Incorrect (overstated) pension scheme lump sum paid to the member and member informed in writing of the incorrect lump sum to be paid
<b>Pensions Increase</b>	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 £200.00 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 £200.00 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, or an overstated pension scheme lump sum has been paid, a letter requesting repayment will be sent by the Fund to recover any overpayment which is greater than £200.00 in value.

## 11 OVERPAYMENTS RESULTING FROM AN ERROR WITH GUARANTEED MINIMUM PENSION (GMP)

- 11.1 Overpayments can also occur as a result of an incorrect or non-application of the GMP element of a member's pension as detailed in the table below.

1	<b>GMP not included in the pension being paid</b>	New information from HMRC or a review of the member's record shows that a GMP should have been included within the pension but has not. 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.
---	---	--



**2 Incorrect level of GMP being paid**

New information from HMRC or a review of the member's record 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 GMP not accurately split between pre 88 and post 88**

New information from HMRC or a review of the member's record shows that a GMP has not been apportioned correctly. Due to the different way cost of living increases are applied to pre 88 GMP and post 88 GMP, means that, overall, a lower level of pensions increase should have been paid.

11.2 The application of GMP to a member's pension requires a high degree of technical understanding that can only reasonably be expected of a pensions practitioner. As such, and where there has been no explicit communication to the member that would mean that they could have known that their pension was being paid incorrectly as a result of the non or misapplication of GMP, the overpayment of any value should be written off without the requirement for authorisation as detailed in 17.1.

11.3 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.

**12 DISCRETION TO WRITE OFF OVERPAYMENTS**

12.1 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 considered 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 paragraph 17 dependent upon the amount potentially being written off.

12.2 The Kent Pension Fund has authority to automatically write off any amount up to £200.00 in line with HM Revenue and Customs authorised payments limits and analysis of the cost effectiveness of pursuing amounts up to this value.

**13 RECOVERY**

13.1 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.



- 13.2 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).
- 13.3 Examples of limitation periods and how they operate in relation to overpayments are included in appendix 1 of this policy.
- 13.4 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).

## 14 LENGTH OF TIME TO RECOVER OVERPAYMENT

- 14.1 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 over a 3-month period, the recovery period to repay the overpayment will be over 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.

## 15 CLAIMS OF INABILITY TO REPAY OVERPAYMENTS

- 15.1 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, Kent Pension Fund would have demonstrated engagement and negotiation with the complainant.

## 16 MONITORING REPAYMENTS

- 16.1 In cases where recovery is not being made through the payroll and a recovery letter has been issued, the responsibility for chasing the payment rests with Kent Pension Fund. If a final reminder is issued, officers are notified and the Head of Pensions will decide whether to take legal action if no payment is forthcoming, taking into consideration the amount owed, the amount outstanding, the circumstances of the debtor, the cost of legal action and the likelihood of legal action being successful.

## 17 AUTHORITY TO WRITE OFF OVERPAYMENTS

- 17.1 In line with Kent 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 £200.00 (gross) on death of a pensioner and any other overpayment type	Pensioner Payroll
Up to no more than £4,999 (gross)	Pensions Administration Manager (in the absence of the Pensions Administration Manager authority will move to the Operations and Performance Lead Manager,





Technical & Compliance Lead Manager or  
Communications & Support Lead Manager)

Up to no more than £49,999 (gross)

Head of Pensions & Treasury

£50,000+ (gross)

Director of Corporate Finance/S151 Officer (these cases  
will also be reported to the Pension Fund Committee)

**\*Subject to a full evidence-based report produced by Officers of the Fund**

## 18 REPORTING TO THE HM REVENUE AND CUSTOMS AND EFFECTS ON THE FUND AND INDIVIDUAL

Part 4, Chapter 3 of 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.

- 18.1 Administering authorities are obliged to correct any error they discover within a reasonable period of time. To do otherwise could render payments unauthorised under Part 2 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”*.
- 18.2 Appendix 2 sets out when an error may be regarded as a genuine error under Part 2 of the 2009 Regulations.
- 18.3 In addition to the above, there is a further exemption where the overpayment is not a ‘genuine error’, and the aggregate overpayment (paid after 5th April 2006) is less than £200. 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.
- 18.4 In Appendix 2 of this policy we set out some examples of HM Revenue and Customs ‘genuine errors.
- 18.5 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 £200 (gross) it would be subject to tax charges 1) and 3) and possibly 2 as set out in paragraph 18.1.

## 19 PREVENTION

- 19.1 The Fund has in place processes in order to minimise the risk of overpayments occurring.
- 19.2 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. Kent Pension Fund actively participates in this initiative.
- 19.3 Kent Pension Fund participates in overseas life existence checks to ensure only legitimate pensions are being paid and to reduce the likelihood of fraudulent activity. If Pensioners do not complete the existence checks by the deadline given, then their pensions are suspended pending further investigation.



- 19.4 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.
- 19.5 Kent 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 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.
- 19.6 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.



Scenario	Limitation Period	Overpayment Period which can be claimed*
<ul style="list-style-type: none"> <li>• Overpayments began in April 2013 (the first Mistake Date)</li> <li>• Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2015 (the Discovery Date under Section 32 of the Limitation Act 1980)</li> <li>• Overpayments made for period between April 2013 and August 2015</li> <li>• Formal claim** for recovery made in January 2020 (the Cut Off Date as referred to in <i>Webber v Department for Education</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6-year period after the Discovery Date</li> <li>• Claims are therefore valid and should proceed</li> </ul>	<ul style="list-style-type: none"> <li>• Overpayments back to when they began in April 2013 until August 2015 may be claimed (based on the assumption that the overpayment was discovered in August 2015, if not discovered at this time the overpayment period would be longer).</li> </ul>
<ul style="list-style-type: none"> <li>• Overpayments began in April 2008 (the first Mistake Date)</li> <li>• Overpayments discovered, or could have been discovered with reasonable due diligence, in November 2014 (the Discovery Date under Section 32 of the Limitation Act 1980)</li> <li>• Overpayments made from April 2008 to November 2014</li> <li>• Formal claim for recovery made in December 2016 (the Cut Off Date as referred to in <i>Webber</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6-year period after the Discovery Date</li> <li>• Claims are therefore valid and should proceed</li> </ul>	<ul style="list-style-type: none"> <li>• Overpayments back to when they began in April 2008 until November 2014 may be claimed (based on the assumption that the overpayment was discovered in November 2014, if not discovered at this time the overpayment period would be longer).</li> </ul>



Scenario	Limitation Period	Overpayment Period which can be claimed*
<ul style="list-style-type: none"> <li>• Overpayments began in January 2004 (the first Mistake Date)</li> <li>• Overpayments discovered or could have been discovered with reasonable due diligence in September 2021 (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)</li> <li>• Overpayments made for the period from January 1999 to September 2021</li> <li>• Formal claim for recovery made in February 2022 (the Cut Off Date as referred to in <i>Webber</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6-year period after the Discovery Date</li> <li>• Claims are therefore valid and should proceed</li> </ul>	<ul style="list-style-type: none"> <li>• Overpayments back to when they began in January 2004 until September 2021 may be claimed</li> <li>• (based on the assumption that the overpayment was discovered in September 2021, if not discovered at this time the overpayment period would be longer).</li> </ul>
<ul style="list-style-type: none"> <li>• Overpayments began in April 2011 (the first Mistake Date)</li> <li>• Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2014 (the Discovery Date under Section 32 of the Limitation Act 1980)</li> <li>• Overpayments made for period between April 2011 and August 2014</li> <li>• Formal claim for recovery made in January 2022 (the Cut Off Date as referred to in <i>Webber</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• Issue with the Limitation Period as formal claim for recovery commenced more than 6 years after the Discovery Date</li> <li>• Claims are therefore out of time and should not proceed</li> </ul>	<ul style="list-style-type: none"> <li>• Overpayments cannot be claimed back as the formal claim for recovery was made more than 6 years after the Discovery Date (based on the assumption that the overpayment was discovered in August 2014, if discovered after this time a period of reclaim maybe applicable).</li> </ul>



Scenario	Limitation Period	Overpayment Period which can be claimed*
<ul style="list-style-type: none"> <li>• Overpayments began in April 2011 (the first Mistake Date)</li> <li>• Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2014 (the Discovery Date under Section 32 of the Limitation Act 1980)</li> <li>• Overpayments made for period between April 2011 and August 2021</li> <li>• Formal claim** for recovery made in January 2022 (the Cut Off Date as referred to in <i>Webber</i>)</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Issue with the Limitation Period as formal claim for recovery commenced more than 6 years after the Discovery Date</li> <li>• Claims for overpayments between April 2011 and January 2016 are therefore out of time and should not proceed</li> <li>• However, as each monthly overpayment is a separate overpayment, the effect of the <i>Webber</i> case is that overpayments made in the 6 years prior to the Cut Off Date (i.e. the overpayments made in February 2016 to August 2021) can be recovered</li> </ul>	<ul style="list-style-type: none"> <li>• Overpayments for the period April 2011 to January 2016 cannot be claimed back as the formal claim for recovery was made more than 6 years after the Discovery Date.</li> <li>• Overpayments for the period February 2016 to August 2021 may be reclaimed.</li> <li>• (based on the assumption that the overpayment was discovered in August 2014, or discovered after this time the overpayment period would be longer).</li> </ul>

\* whilst 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.



## LEGISLATIVE BACKGROUND

Section 164 of the Finance Act 2004 restricts the type of payments that a pension scheme may lawfully make.

The Registered Pension Schemes (Authorised Payments) Regulations 2009/1171 (as amended) allow certain payments that would otherwise be unlawful under section 164 to be treated as lawful payments.

Regulation 4 allows certain payments that may be paid by a pension scheme to be treated as authorised payments and provides that payments that may be made are taxable.

Regulation 13 – allows for certain pension payments paid in error to living recipients to be treated as lawful payments. A pension paid to a living person will be deemed to be paid (lawfully) in error if the scheme administrator making the payment believed that—

- (a) the recipient was entitled to the payment, and
- (b) the recipient was entitled to it in that amount.

Regulation 14 – allows for certain pension payments paid in error, after discovery of the error, to be treated as lawful payments if:

- (a) it is made after there is a payment within regulation 13 to the same person and (apart from the discovery of the error) is of a similar nature to that payment; or
- (b) if the error had not been discovered until after the payment, it would have been a payment within regulation 13; and

the payer took reasonable steps to prevent it being made or it being made in that amount.

Regulation 15 - allows for certain pension payments paid in error to deceased recipients to be treated as lawful payments, if:

the payment is one which is intended to represent the payment of a pension permitted by the pension rules or the pension death benefit rules to or in respect of a member and if—

- (a) the payment is made no later than six months after the date of the person's death;
- (b) the payment would not have been an unauthorised payment if it had been made on the day before the person died; and either



- (a) the scheme administrator (“the payer”) did not know, and could not reasonably have been expected to know, that the person had died before the payment was made; or the payer knew of the person's death before the payment was made, the payer took reasonable steps to prevent the payment's being made or its being made in that amount; or
- (b) where the payer knew of the person's death before the payment was made, the payer took reasonable steps to prevent the payment's being made or its being made in that amount.

Regulation 16 - allows for payment of arrears of pension to be paid to a pensioner after death to be treated as a lawful payment, if:

- (a) the payment is in respect of a defined benefits arrangement; and
- (b) the payment represents accrued arrears of scheme pension the member's entitlement to which the scheme administrator had not established until after the member's death; and
- (c) the payment would not have been an unauthorised payment if the payment had been made immediately before the member's death and the member had been entitled to it; and
- (d) the scheme administrator could not reasonably have been expected to make the payment before the member's death.

But only to the extent that to so much of the payment as does not exceed the amount accrued during the period—

- (a) beginning with the earliest date from which the member could have required the scheme administrator to make the payment if the member had been entitled to it; and
- (b) ending with the member's death.

Regulation 17 - allows for the overpayment of a lump sum to a living recipient to be treated as a lawful payment, if:

the lump sum exceeds the permitted maximum only because it has been calculated by reference to the amount of a relevant pension; and either—

- (i) the payment of the pension is a payment within regulation 13 or 14 (1)(b), or
- (ii) the lump sum is paid before the pension by reference to which its amount was calculated; or
- (iii) the pension is not in the event paid, or paid in the amount originally intended, because an error is discovered; and



had the error had not been discovered and the pension had been paid as intended, its payment would have been a payment within regulation 13.

The discovery that the lump sum exceeds the permitted maximum before the payment is made does not prevent the payment's being a lawful payment if the payer took reasonable steps to prevent its being made or its being made in that amount.

Regulation 19 - allows for the overpayment of a lump sum to a deceased recipient to be treated as a lawful payment if:

- (a) the payment is in respect of a defined benefits arrangement;
- (b) the scheme administrator had not established the member's entitlement to the payment until after the member's death;
- (c) the scheme administrator could not reasonably have been expected to make the payment before the member died;
- (d) the payment would have been a pension commencement lump sum if it had been made immediately before the member's death and the member had been entitled to it; and
- (e) it is made no later than the end of the period of one year beginning with the earlier of—
  - (i) the day on which the scheme administrator first knew of the member's death, and
  - (ii) the day on which the scheme administrator could first reasonably be expected to have known of it

#### GENUINE ERROR - EXAMPLE 1

Pensioner X receives a monthly pension payment 7 days after her death. The pension administrators were informed of the death 3 days after it occurred, took immediate steps to prevent the payment, but it was too late to stop it. Here Regulation 15 is satisfied and so the overpayment is lawful as a genuine error.

#### GENUINE ERROR - EXAMPLE 2

Pensioner Y, who is living, receives a monthly pension payment which is £500 too high. The pension administrators had the correct monthly amount on their system, but because of human error paid the pensioner too much. Here Regulation 13 is not satisfied, because the pension administrator did not believe that the pensioner was entitled to that amount.





### GENUINE ERROR - EXAMPLE 3

Pensioner Z, who is living, receives a lump sum which is wrongly calculated because it is based on data, which has been wrongly recorded on the Pension Administrator's system because of erroneous data provided by the pensioner's former employer. The payment is made before the error is discovered. Here Regulation 17 is satisfied and so the overpayment is lawful as a genuine error.

