

Cronfa Bensiynau Clwyd
Clwyd Pension Fund



FLINTSHIRE COUNTY COUNCIL

Administering Authority for
Clwyd Pension Fund

POLICY ON THE OVERPAYMENT AND UNDERPAYMENT OF PENSION SCHEME
BENEFITS

September 2021

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1. Introduction

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

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.

Any points of discretion or further decisions to be made as outlined in this policy will be decided jointly by the Head of Clwyd Pension Fund and Pensions Administration Manager, taking expert legal advice where appropriate, unless the policy states otherwise.

Underpayments and overpayments of pension can occur for a variety of reasons. Members' benefits are specified in the Local Government Pension Scheme Regulations 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 we have a clear policy on how these situations are managed when Fund under or overpayments are identified.

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

When dealing with overpayments and underpayments in the Fund, we will follow the principles set out in Flintshire County Council's Corporate Debt Recovery Procedures, the delegation of responsibilities in its Constitution and its Financial Procedure Rules, having regard to the fact that the Fund has specific circumstances which are not covered in those policies, such as payment of benefits following a pension fund member's death, and (as relates to HMRC) authorised and unauthorised payments.

2. Policy adoption and review

This Overpayment and Underpayment of Pension Scheme Benefits Policy was approved by the Clwyd Pension Fund Committee on 1 September 2021.

The Fund will review this policy as required in the light of future changes to LGPS or other relevant legislation. It will also be reviewed at least every three years and updated as necessary. Updates will be approved by the Clwyd Pension Fund Committee and the revised policy published as a public document following approval.

The Administering Authority 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.

3. Regulations

We will administer this policy to the extent reasonably possible in line with the provisions of the LGPS Regulations 2013, other legislation and legal requirements applicable to the LGPS and relevant to the management of occupational pension schemes in particular to overpayments and underpayments of pension scheme benefits, including:

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

4. Policy objectives

We recognise the significance of our role in managing the Clwyd Pension Fund on behalf of its stakeholders which include:

- around 49,000 current and former members of the Fund, and their dependants
- around 52 employers within the Flintshire, Denbighshire and Wrexham Council areas
- the local taxpayers within those areas.

The Clwyd Pension Fund Mission Statement is:

- to be known as forward thinking, responsive, proactive and professional providing excellent customer focused, reputable and credible service to all our customers.
- to have instilled a corporate culture of risk awareness, financial governance, and will be providing the highest quality, distinctive services within our resources.
- to work effectively with partners, being solution focused with a can - do approach.

In relation to the governance of the Fund, the key aims which relate to this policy are to:

- Act in the best interests of the Fund's members and employers
- Act with integrity and be accountable to our stakeholders for our decisions, ensuring they are robust and well based
- Strive to ensure compliance with the appropriate legislation and statutory guidance, and to act in the spirit of other relevant guidelines and best practice guidance
- Clearly articulate our objectives and how we intend to achieve those objectives through business planning, and continually measure and monitor success

The Fund's Administration Strategy has specific objectives, and those which are relevant to this policy are listed as follows:

- Administer the Fund in a cost effective and efficient manner utilising technology appropriately to obtain value for money
- Ensure the correct benefits are paid to, and the correct income collected from, the correct people at the correct time
- Maintain accurate records and ensure data is protected and has authorised use only.

The Fund's Communications Strategy has specific objectives relating to how we communicate with our stakeholders. The key objective in relation to this policy is as follows;

- Ensure we use the most appropriate means of communication, taking into account the different needs of different stakeholders.

5. Purpose of the policy

The purpose of this policy is to ensure that the relevant objectives set out in the administration and communications strategies set out above are met, and the administration of the Fund is carried 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
- we recover any overpayments of benefits where it is appropriate and practical to do so
- we reimburse members or their beneficiaries where underpayments have occurred
- we have 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;
- Accurate records are maintained and 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 employer 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, members and employers understand the importance of checking their payslips/payments for any reasonably identifiable errors and
- We manage 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.

6. Scope

The policy applies to:

- All members and former members of the Clwyd Pension Fund, and their dependants including members who left pensionable service prior to 1 April 2014, councillor members and pension credit members;
- 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
- Executors of the estates and personal representatives of deceased Clwyd Pension Fund members
- Administrators of the scheme
- Employers participating in the scheme and
- The Clwyd Pension Fund Committee ("the Committee").

This policy does not give, nor shall it be deemed to give, any rights, whether contractual or legally enforceable or otherwise to any member of the Fund, or to any other person whatsoever.

7. Managing overpayments of benefits

Under regulation 14 of the Registered Pension Scheme (Authorised Payments) Regulations 2009, we are obliged to correct any overpayment we discover within a reasonable period of time in order to avoid adverse 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 may not be recovered from the member and may be written off by us. 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 changed their financial position as a result (for example on improving their lifestyle), our 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).

Our 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 we have written to them on three occasions over three months, we will look to recover an overpayment from the ongoing pension, subject to legal advice on the matter.

Typically, overpayments of pension 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 with the Flintshire County Council Debt Recovery Team. Any communications with members will be handled sensitively. If a final reminder is issued, pension fund officers are notified and a decision is made in accordance with the Fund's authorisation requirements for writing off overpayments (as outlined in Section 11 of this policy) as to whether to write off the overpayment or take further legal action to recover the amount, taking into consideration the amount and circumstances and cost of legal action.

Where an overpayment is ultimately not recovered this may be reflected in the employer's funding position, 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 the Fund Breaches register. Such breaches will, in accordance with Pensions Regulator guidance and the Fund's Procedure for Recording and Reporting Breaches of the Law, be reported to the Pensions Regulator where it is likely to be considered of material significance to the Regulator in the exercise of its functions (for example, large in size, or indicative of wider administrative issues).

This policy sets out our approach to overpayments in 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 may cause hardship.

7.1 Overpayments to an individual of an aggregate amount of less than £100¹

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

We will therefore not attempt to recover overpayments to an individual which total less than £100¹.

¹ This £100 at the time of drafting the policy will be annually increased with effect from 1 April with the Consumer Prices Index from the previous September, in line with LGPS pension increases. The increase will be rounded up to the nearest £5.

7.2 Overpayments discovered within 6 years

The Limitation Act 1980 sets out that a claim to recover overpayments should usually be made within 6 years of the date when the cause (e.g. error or fraud) was first discovered or could, with reasonable diligence, have first been discovered. Where a claim is made within the 6-year period, all of the overpayment can be recovered. Our 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).

7.3 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 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.

Our 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).

7.4 Recovery period

Unless otherwise specified, we will aim to recover a pension overpayment through a reduction to the pension paid over the same time period as the overpayment occurred. In exceptional circumstances the Fund may permit the recovery period to be extended, up to a maximum of a 50% of the time period over which the overpayment occurred, at its discretion. Each such case will be considered on its merits.

Unless otherwise specified, we 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.

7.5 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, executors of a 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.

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 and the timing of the notification to the Fund results in the pension being paid in respect of a period beyond the date of death, resulting in an overpayment, we will not seek to recover this overpayment and the amount will be written off, provided the amount overpaid is less than £100¹.

Where the amount is £100¹ or more, we will look to recover the overpayment, and this will be done by issuing an invoice to the deceased member's estate. We will then discuss the method of repayment with the estate if a one-off repayment is not possible.

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.

7.5.1 Overpayment of death grant

We will not look to recover death grant overpayments if the overpayment is less than £100¹, due to the anticipated administrative cost of recovering such amounts.

Where the Fund has overpaid a death grant, the dependant's pension(s) will not immediately be reduced. We will contact the dependant(s) to explain the error and provide the option of returning the overpayment via a one-off payment which will be invoiced directly, or possibly via a reduction to the dependant's pension if the death grant recipient is also the recipient of the dependant's pension. The recovery period will be determined on a case-by-case basis depending on the size of the overpayment, the size of the dependant's pension and the age of the dependant. Where there is more than one dependant, we will generally seek to engage with the adult dependants if possible, or the dependant's guardian if the dependant is a minor.

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

When the overpayment is discovered, we will aim to reduce the pension 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. We will aim to agree this in advance of any invoice or reduction in pension with the member.

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.

7.6.1 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 Fund.
- A Pension Sharing 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 us, 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 £100¹, we will usually seek to recover the total value of the overpayment from a reduction to the member's ongoing pension. This should usually be agreed with the member. Where there is no ongoing pension from which to deduct the overpaid amount, the member will be invoiced for the overpayment.

7.6.2 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 situations where the overpayment is made in error but until the time of discovery of the error we believe the pension in payment to be correct (e.g. where the overpayment is discovered following reconciliation of GMP with HMRC records), this will not usually be considered an unauthorised payment and so will not be subject to any additional tax charges.

In such situations, and depending on the circumstances, we will generally not seek to recover the total value of the overpayment, unless non-recovery would result in an unauthorised payment and therefore additional tax charges for the member and Fund.

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.

7.7 Recovery of Pension Commencement Lump Sum overpayments

7.7.1 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 incorrect 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,
- We paid the same (correct) lump sum amount twice, in 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 documentation and being paid.

When the overpayment is discovered by us, 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 we will seek to recover the amount in full through one immediate repayment via issuing the member with an invoice, in accordance with Flintshire County Council's Debt Recovery Procedures.

7.7.2 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 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) amount was then paid and the incorrect amount stated in any payment notification.

In these cases, the overpayment is likely to be discovered after the event by us. In such circumstances, we will consider the length of time which has passed since the error was made in determining the approach to take, but generally will seek to recover the overpayment as soon as possible. We will notify the member 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.

If we do not receive any response from the member, we will follow Flintshire County Council's Debt Recovery Procedures, including issuing an invoice for repayment.

7.8 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 us which suggest the benefits are to be paid unreduced and it later transpires that the member had voluntarily left service, we will seek to recover the overpayment from the member in the first instance. We reserve the right to charge the employer for the strain cost to the Fund of the unreduced early retirement rather than a reduction being applied to the member's benefits. This cost may be recovered via the issuing of an invoice or the additional strain cost being added to the employer's funding liabilities and taken into account at the next triennial actuarial valuation when setting contributions.

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 incorrect pensionable pay information), we will seek to recover the overpayment through the same processes as set out above.

We will manage any challenges resulting from such errors in line with the procedures set out in the Fund's Administration Strategy. For example, we 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.

7.9 Overpayments due to Fraud or Corruption

On rare occasions members' benefits may be overpaid, or pension fund money may otherwise be obtained due to

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

Where an overpayment is after reasonable investigation discovered to have been made due to fraud or any other criminal act, unless the member was not involved in the criminal act, the pension will be suspended and an attempt will be made to recover the overpayment of pension and lump sum immediately.

We 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.

In dealing with such cases we will also follow the principles set out in the Fund's Procedure for Recording and Reporting Breaches of the Law, and Flintshire County Council's Corporate Anti-Fraud and Corruption Strategy and Fraud and Irregularity Response Plan.

7.10 Overpayments to an individual where recovery will cause hardship

In line with the guidance set out in the HM Treasury document "Managing Public Money" (July 2013 revised in August 2015), where the member has demonstrated that the recovery of an overpayment would cause hardship, we will consider that guidance and 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.

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

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

8. 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.

8.1 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 we will inform the member in writing of the underpayment.

The underpayment will be usually 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. A year-on-year breakdown of the underpayments over each tax year can be supplied if required.

Interest will be paid on the underpaid amount(s) in line with Regulation 81 of the LGPS Regulations. 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 will 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.

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

We may recharge the administrative cost of investigations and checks into the underpayment amount and correspondence with the affected members or dependants directly from the employer. We may charge any interest due in relation to an 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.

8.3 Underpayment of benefits discovered following the death of a Scheme member

Any underpayment of a pension following the death of a Scheme member will be paid to the member's estate.

If a death grant payment is discovered to have been underpaid, (including where the balance of 10 years' annual pension is due for payment to a particular party under our discretion under Regulation 46(2) of the LGPS Regulations 2013 following the death of a pensioner), the underpayment will be reimbursed to the party determined by us in accordance with the exercise of our discretion (under regulations 17(12), 40(2), 43(2) and 46(2) of the LGPS Regulations 2013).

9. Underpayments and overpayments relating to reconciliation 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 2021. 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 taken by the Pension Fund Committee in relation to if and how the pensions were adjusted and the treatment of accumulated over and underpayments. It is therefore possible that the treatment of such cases is not consistent with the remainder of this 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 Pension Fund Committee and, as such, elements of this Policy may be departed from. If there is any national guidance (for example, provided by the Scheme Advisory Board or other national stakeholders) in relation to dealing with such over and underpayments we will have regard that guidance in developing our approach.

10. Underpayments and Overpayments of other benefit settlement amounts

10.1 Transfer values

Where an individual transfer value for a member who has transferred Clwyd Pension 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, we will discuss alternative options with the member e.g. an alternative pensions savings vehicle.

If a transfer is discovered to have been overpaid, then the correct amount will be calculated and we generally will seek to recover the overpayment as soon as possible, albeit each individual case will be considered on its own facts and merits.

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, we will write to the member to agree an approach.

It may be that the underpayment is paid but is subject to additional tax charges. We may offer to pay the member's tax charge in such cases. 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 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 member could reasonably have known this was an overpayment).

In all cases, each individual case will be considered on its own facts and merits, and any amounts to be written off will follow the procedure described in section 11 below.

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 it 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 the unauthorised payment section later in this policy for more details.

In all cases, each individual case will be considered on its own facts and merits, and any amounts to be written off will follow the procedure described in section 11 below.

11. Authorisation

According to paragraph A4.11.10 "Cost of the guidance" set out in the HM Treasury document "Managing Public Money", public sector organisations should take decisions about their tactics in seeking recovery in particular cases on the strength of cost benefit analysis of the options. Decisions not to pursue recovery should be exceptional and taken only after careful appraisal of the relevant facts, taking into account the legal position. The option of abating future payments to the recipient should always be considered.

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 us to determine whether to write off the overpayment. Any sum which is written off is treated as a liability against the scheme member's former employer. This should involve discussion with the employer if it is likely to have a material impact on their funding level or contribution rate. In all cases, the cost of recovery should be considered against the amount of any overpayment, and our obligation to pay the right amount of benefits.

The decision whether to write off the overpayment will be made by the parties using the two - stage process as outlined in the table below.

Cause of overpayment	Total value of overpayment	Agree recommendation to write off overpayment	Approve write off of overpayment
Any overpayment of lump sum, regular pension benefits or other benefit settlement amount.	Up to £99.99	Automatic write off with no specific recommendation required	Chief Finance Officer
Any overpayment of lump sum, regular pension benefits or other benefit settlement amount	Between £100 and £250	Team Leader with Pension Administration Manager	Chief Finance Officer
Any overpayment of lump sum, regular pension benefits or other benefit settlement amount	Between £250 and £1,000	Pension Administration Manager with Pension Fund Accountant	Chief Finance Officer
Any overpayment of lump sum, regular pension benefits or other benefit settlement amount	Between £1,000 and £5,000	Pension Administration Manager with Deputy Head of Clwyd Pension Fund	Chief Finance Officer
Any overpayment of lump sum, regular pension benefits or other benefit settlement amount	Between £5,000 and £25,000	Pension Administration Manager with Deputy Head of Clwyd Pension Fund	Chief Finance Officer in consultation with the Clwyd Pension Fund Committee.
Any overpayment of lump sum, regular pension benefits or other benefit settlement amount.	More than £25,000	Pension Administration Manager, with Deputy Head of Clwyd Pension Fund and Chief Finance Officer	Clwyd Pension Fund Committee

An alternative approach to that set out above may be required if the same cause of overpayment has affected multiple members at the same time (for example, members for whom section 9 of this policy applies).

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.

We understand 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 we will engage with Her Majesty's Revenue and Customs (HMRC) to resolve the issue and establish any resulting tax charges. We are obliged to report any unauthorised payments to HMRC each year in their annual event report.

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 Fund this is an unauthorised payment but does not have to be reported by 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 are as follows:

The unauthorised payments charge

Where the unauthorised payment is made to or for a member, the member 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 the unauthorised payments charge has been paid by the member.

We will apply to be discharged from the tax charge where it would not be just and reasonable for us to pay the tax, e.g. where we have been misled or given incomplete information leading us to reasonably believe that the payment was an authorised payment.

Further details on unauthorised payments are available on Her Majesty's Revenue and Customs website. There could also be other tax consequences for members in administering underpayments or overpayments including income tax, annual allowance and lifetime allowance issues.

13. Prevention

We have the following internal controls in place in order to minimise the risk of overpayments or underpayments occurring.

- The 'Tell Us Once' service has been adopted whereby deaths are notified through a central system accessible by us. This increases the notification of the death of scheme members and therefore minimises potential overpayments.
- The National Fraud Initiative is conducted by the Wales Audit 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. We actively participate in this initiative.
- Member Self-Service, 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.
- We include reminders in our correspondence (including deferred benefit statements pensioner payslips and annual pension increase communications) that we must be advised of changes in circumstances or the death of a scheme member.
- We investigate any returned pensioner payslips and pension payments returned by banks and building societies, in order to check the welfare of the scheme member and to protect the Fund's money.
- We investigate any positive matches as a result of a monthly mortality screening exercise. This exercise identifies any members that have passed away and their details registered minimising potential overpayments.
- Annual eligibility certificates are sent out for completion to any dependants that are in full time education. This ensures pensions are only paid to those that meet the criteria and minimises potential overpayments.

- Checks are carried out on the ongoing eligibility of the payment of ill health pensions and children's pensions.
- The pension payroll process ensures changes are made in a correct timely manner and before payroll deadlines and ensures pensions increases are applied correctly.
- 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 pension 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 that prevent pensions officers from accessing their own pension record reducing the potential to commit fraud and corruption.
- Comprehensive training for all pensions officers in the administration of the benefits.
- Guidance for employers on their responsibilities, and employer service level agreements.

14. Further Information

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

Karen Williams, Pensions Administration Manager
Flintshire County Council
County Hall
Mold
Flintshire
CH7 6NA

E-mail - karen.williams@flintshire.gov.uk

Telephone - 01352 702963