



Powys

CRONFA BENSIWN
POWYS
PENSION FUND

Overpayment of Pension Policy

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Approved #####

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1. Introduction

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

2. Policy Objectives

- 2.1 The policy objectives aim to ensure the Fund:
 - Have robust governance arrangements in place, to facilitate informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance.
 - Manage the Fund in a fair and equitable manner, having regard to what is in the best interest of the Fund's stakeholders, particularly the scheme members and employers.
 - Ensures benefits are paid to and income collected from, the right people at the right time in the right amount;
 - Identifies errors and corrects them as soon as possible;
 - Rectifies overpayments with the cooperation of the individual;
 - Encourages individuals to take an active role in checking payslips/payments for obvious errors; and
 - Avoids the Internal Dispute Resolution Procedure (IDRP), where possible, by managing the process effectively.

3. Purpose of the Policy

- 3.1 The policy is designed to provide assurance to the Fund's stakeholders that:
 - all overpayments are treated in a fair and equitable manner;

- the Fund seeks to recover overpayments that have occurred but acknowledges that there may be legal reasons and/or other circumstances which mean that an overpayment may not, in practice, be able to be recovered (in whole or in part); and
- has steps in place to prevent and also investigate potential fraudulent activity.

4. Effective Dates and Reviews

- 4.1 This policy was first approved by the Pensions and Investment Committee on **26 June 2020** and was effective from **1 April 2020**.
- 4.2 This policy will be reviewed annually, and if necessary, more frequently to ensure it remains accurate and relevant.

5. Scope

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

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

- 6.1 Understandably, notification of a death of a pensioner member of the scheme does not always happen immediately and as such it is not always possible to stop payment of the pension after a point in the payroll month and so an overpayment can occur.
- 6.2 Should an overpayment of pension occur as a result of the death of a scheme member, the Fund will generally seek to recover overpayments that are greater than £100 (gross) in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100 or less in the instance of the death of a scheme member has been deemed by the Fund as uneconomical to pursue. In such circumstances, the

Fund's approach will be that the sum written off is treated as a liability against the scheme member's former employer.

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

6.4 An invoice will be raised by the Fund to recover an overpayment which is greater than £100 upon the death of a scheme member.

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

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

7.2 In these cases the individual in receipt of the pension is responsible for informing 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.

7.3 Should an overpayment of pension occur as a result of late notification of change of circumstances, the Fund will generally seek to recover overpayments that are greater than £100 (gross) in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100 or less has been deemed by the Fund as uneconomical to pursue. In such circumstances, the Fund's approach will be that the sum written off is treated as a liability against the scheme member's former employer.

7.4 An invoice will be raised by the Fund to recover the overpayment which is greater than £100 as a result of the late notification of the change in circumstances. The invoice will be sent to the individual whose bank account the child's pension was being paid into.

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

8.1 Should an overpayment of pension occur as a result of inaccurate information provided by the scheme member's employer on retirement, the Fund will generally seek to recover monies that are greater than £100 in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100 (gross) or less has been deemed by the Fund uneconomical to pursue due to the administrative time involved.

8.2 Overpayments that are greater than £100 in value will be recovered through the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will be reduced to the correct level for the next available monthly pension payment after a 6 week notice period. The scheme member will be notified in writing of the error and the course of action to be taken.

8.3 Where there is no ongoing pension from which to deduct the overpaid amount, an invoice will be arranged by the Fund to recover the overpayment which is greater than £100 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 several reasons why a pension could be paid at an incorrect higher rate. The most common reasons are detailed in the table below, but it should be noted that this is not an exhaustive list.

	Type of overpayment	How overpayment has occurred
1	Administration error upon creation of payroll record	Incorrect (overstated) rate of pension input on creation of payroll record but member informed in writing of the correct rate of pension to be paid.
2	Entitlement to pension ceasing	Non notification that a child's pension is no longer payable as the child aged 18 or above is no longer in full time education or vocational training.
3	Entitlement to current rate of pension ceasing	A Pension Sharing Order or Earmarking Order being received after the implementation date meaning that the pension has been overpaid since that implementation date.
4	Failure to action an alteration to the payroll record/reduction in pension	Failing to implement the change from the higher short-term dependents pension to the lower long term rate.
5	Failure to action an alteration to the payroll record/reduction in pension	Failing to implement a reduction to a pension as a result of National Insurance Modification order at State Pension Age

9.2 If the scheme member has been notified of the correct rate of pension in writing and is receiving a higher amount, it can be said that the member can reasonably be aware that they are being 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 £100 gross in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100 or less has been deemed by the Fund as uneconomical to pursue due to the administrative time involved.
- 9.4 The amount will be recovered from the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will also be reduced to the correct level for the next available monthly pension payment after a 6 week notice period. and will be notified in writing of the error and the course of action to be taken.
- 9.5 Where there is no ongoing pension from which to deduct the overpaid amount, an invoice will be arranged by the Fund to recover the overpayment which is greater than £100 in value.
- 10. Managing overpayments of pension following an incorrect rate of pension being paid by the Fund and it can be said that the member cannot have known of the overpayment**
- 10.1 The table below illustrates how an overpayment of a member's pension can occur without the member being aware. It should be noted that the table below is not an exhaustive list;

	Type of overpayment	How overpayment has occurred
1	Administration error upon calculation <u>and</u> notification of benefit entitlement (includes dependants' pensions)	incorrect (overstated) rate of pension put into payment and member informed in writing of the incorrect rate of pension to be paid.
2	Incorrect level of Guaranteed Minimum Pension (GMP) being paid	New information from HMRC leads to a revised rate of GMP to be used which, due to the different way cost of living increases are applied to GMP and the excess over GMP, means that, overall, a lower level of pensions increase should have been paid. Includes notification resulting as part of the cessation of contracting out and subsequent GMP reconciliation exercise (see note 11.3 below)
3	Pensions Increase	Pensions Increase inaccurately applied to the elements of a pension in payment.

- 10.2 In these circumstances the Fund will generally seek to recover monies that are greater than £100 gross in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part). A value of £100 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
- 10.4 Where there is no ongoing pension from which to deduct the overpaid amount, an invoice will be arranged by the Fund to recover the overpayment which is greater than £100 in value.

11. Discretion to write off overpayments

- 11.1 For all scenarios mentioned above, Officers have the ability to exercise discretion in the event of legal reasons and/or exceptional circumstances and to ensure no individual is unfairly treated. If the pursuing recovery of an overpayment was to cause significant distress and/or if there are legal reasons as to why the overpayment may not be recovered (in whole or in part) this would be taken into account as would the cost effectiveness of recovery. All applications made to write off of an overpayment will be investigated on a case by case basis and final decision will be made by the appropriate officer listed in section 15 dependent upon the amount potentially being written off.
- 11.2 The Powys Pension Fund has discretion to write off any amount under £250.00 in line with HM Revenue and Customs authorised payments limits and the analysis of the cost effectiveness of pursuing the claim conducted by the Fund.
- 11.3 Where an overpayment has occurred as a result of the GMP reconciliation exercise completed in 2020, then the Fund is following the national suggested approach of not recovering any overpayment, but correcting future pension payments.

12. Recovery

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

reasonable diligence have discovered it". The potential effect of section 32(1) in relation to any overpayment and its recovery will be considered on a case-by-case basis.

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

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

13. Overpayment recovery period

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

14. Claims of inability to repay overpayment

14.1 In cases where it is claimed that an overpayment cannot be repaid officers of the Fund will enter into discussions 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, Powys Pension Fund would have demonstrated engagement and negotiation with the complainant.

15. Authority to write off overpayments

15.1 The Fund will apply the following levels of authority when writing off overpayments:

Total Gross Value of overpayment */**	Authority to write off overpayment
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No more than £100.00 on any overpayment type	Automatic write off
Up to no more than £500	Pension Fund Manager
Up to no more than £1000	Head of Finance/Section 151 Officer
Over £1000	Portfolio Holder for Finance

* The value of overpayment occurring within the last 6 years or appropriate period if postponement has been applied.

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

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

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

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

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

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

16.4 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.

- 16.5 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 £250 (gross) it would be subject to tax charges 1) and 3) and possibly 2 as set out in section 16.4.

17. Prevention of overpayments

- 17.1 The Fund regularly reviews its processes in order to minimise the risk of overpayments occurring.
- 17.2 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. Powys Pension Fund actively participates in this initiative.
- 17.3 Powys Pension Fund routinely participates in overseas life existence checks to ensure only legitimate pensions are being paid and to reduce the likelihood of fraudulent activity.
- 17.4 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 to ensure they are still entitled to receive a pension.
- 17.5 Powys Pension Fund includes reminders in its correspondence that the Fund must be advised of changes in circumstances or the death of a scheme member. The Fund also investigates any returned pensioner payslips, correspondence and pension payments returned by banks and building societies, to ensure the welfare of the scheme member and to protect payment of the Fund's money.
- 17.6 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.

18. Contacts

- 18.1 Any questions, queries or observations on this document should be addressed to:

The Pension Administration Manager or Pension Fund Manager
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