



# North Yorkshire Pension Fund

## Overpayment Recovery Policy April 2025



Local Government  
Pension Scheme

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## Introduction

This is the Overpayment of Pension Recovery Policy for the North Yorkshire Pension Fund (NYPF), which is managed by North Yorkshire Council (NYC) as the Administering Authority.

Member benefits are explicitly outlined in the Local Government Pension Scheme (LGPS) Regulations and other relevant legislation, and pension scheme members are not permitted by law to receive amounts other than those specified.

Overpayments of pension can occur for a variety of reasons. It is important that the NYPF has a clear policy and processes in place to manage the overpayments of pension once they are identified. The NYPF recognises the need to take a pro-active approach to identify potentially fraudulent activity and overpayments.

## Policy objectives

This policy aims to provide assurance to the NYPF's stakeholders that it:

- has robust governance arrangements in place, to help informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance;
- is managed in a fair and equitable manner, having regard to what is in the best interest of its stakeholders, particularly the scheme members and employers;
- ensures a consistent approach to the treatment of all overpayments and debt, ensuring that all identified affected members and employers are treated in a fair and equitable manner;
- ensures all parties are aware of and understand their respective roles and responsibilities under the LGPS Regulations;
- ensures benefits are paid to, and income collected from, the right people at the right time and at the right value;
- identifies errors as soon as possible and has measures in place to prevent and also investigate potentially fraudulent activity;
- looks to recover overpayments and debt 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);
- rectifies overpayments with the co-operation of the recipient;
- encourages individuals to take an active role in checking payslips and payments for obvious errors; and
- avoids the Internal Dispute Resolution Procedure (IDRP), where possible, by managing the process effectively.

## Scope

The policy applies to:

- all members and former members, which in this policy, includes survivor and pension credit members of the NYPF who have received one or more payments
- executors of the estates of deceased members
- beneficiaries of members where those beneficiaries have received one or more payments
- current and former scheme employers and admission bodies
- administrators of the scheme

## Member Overpayment Management

### Managing overpayments of pension on the death of a pensioner member

Notification of the death of a pensioner member does not always happen immediately; therefore it is not always possible to stop pension payments in time and overpayments can occur.

The NYPF will recover pension overpayments that are more than £100.00 (gross) 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 £100.00 or less has been deemed as uneconomical to pursue. The NYPF will write the sum off and treat it as a liability against the member's former employer.

All correspondence about an overpayment will be handled sensitively due to the circumstances surrounding how the overpayment has occurred.

Where there is a survivor's pension payable, the beneficiary will be given the option to repay the debt in one of two ways:

1. By deduction from the survivor's pension, with the deduction being taken from any arrears due in the first instance and then by monthly deduction from the ongoing pension. To avoid causing financial hardship to the recipient, any deduction will not be more than 33% of the **net** monthly value being paid. Monthly deductions will continue until the debt is fully recovered or the beneficiary dies; or
2. As a single payment; the NYC's debt recovery team will issue an invoice for payment.

The NYPF will send a repayment option form to the beneficiary. If the form is not returned, the default method of recovery will be by deduction from the survivor's pension. Recovery will **NOT** be made from any death grant due or from any children's pensions that may be payable.

Where there is no survivor's pension payable, an invoice will be issued to the executors of the deceased's estate.

Where an overpayment of a death grant has occurred and the value is more than £250.00, an invoice will be sent to the individual who received the incorrect payment.

### **Managing overpayments of children's pensions not stopping at the correct time**

An eligible child, as defined by the LGPS Regulations 2013, is entitled to receive a pension until their circumstances change and they are no longer eligible to receive it. In these cases, the individual in receipt of the pension is responsible for informing the NYPF of the change in their circumstances to ensure the pension is stopped at the right time; failure to do so would result in an overpayment.

The NYPF will recover pension overpayments that are more than £100.00 (gross), 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 £100.00 or less has been deemed as uneconomical to pursue. The NYPF will write the sum off and treat it as a liability against the member's former employer.

An invoice will be raised to recover the overpayment and will be sent to the individual whose bank account the child's pension was being paid into.

### **Managing overpayments of pension entitlement following incorrect information supplied by the employer in respect of the scheme member**

An overpayment of pension may occur as a result of incorrect information being provided by the member's employer at retirement. The NYPF will seek to recover monies that are more than £100.00 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 £100.00 or less has been deemed as uneconomical to pursue. The NYPF will write the sum off and treat it as a liability against the member's former employer.

Pension overpayments that are more than £100.00 will generally be recovered through the member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will be immediately reduced to the correct level for the next available monthly pension payment. The member will be notified in writing of the error and the action being taken.

The deduction from the member's pension, will be taken from any arrears due in the first instance and then by monthly deduction from the ongoing pension. To avoid causing financial hardship to the recipient, any deduction will not be more than 33% of the **net** monthly value being paid. Monthly deductions will continue until the debt is fully recovered or the member dies.

Where there is no ongoing pension, an invoice will be raised to recover any overpayment which is greater than £100.00 in value. The invoice will be sent to the individual who received the original overpayment.

Where an overpayment of a lump sum has occurred (following inaccurate information provided by the employer), and the value is more than £250.00, an invoice will be sent to the individual who received the lump sum payment.

## Managing pension overpayments due to an incorrect rate of pension being paid and the member is reasonably aware of the overpayment.

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>
1	Administration error upon creation of payroll record	Incorrect (overstated) rate of pension input onto payroll record, but member informed in writing of the correct rate of pension to be paid.
2	Administration error upon calculation/payment of retirement lump sum	Incorrect (miscalculated/overstated) lump sum paid to member, but member informed in writing of the correct value of the lump sum to be paid.
3	Re-employment where abatement affects rate of pension due	Re-employment not notified and within the terms of the Administering Authority policy on the exercise of their discretion relating to abatement. The member's annual pension (only additional service awarded as compensation by their former employer) should have been reduced or suspended due to the level of earnings in the new employment. Identified through National Fraud Initiative exercise or other means.
4	Entitlement to a child's pension ceasing	Non notification that a child's pension is no longer payable as the child is aged 18 or above and is no longer in full time education or vocational training.
5	Entitlement to current rate of pension ceasing	A Pension Sharing Order or Earmarking Order received by the NYPF after the implementation date meaning that the pension has been overpaid since that date.
6	Failure to action an alteration to a dependent's payroll record/reduction in pension	Failing to implement the change from the higher short-term dependents pension to the lower long-term rate.
7	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 (at State Pension Age for those members who left the LGPS before 1 April 1998 and had membership before 1 April 1980).

If the member has been notified of the correct rate of pension and/or lump sum in writing and is receiving or has received a higher amount, it can be said that the member can be reasonably aware that they have been overpaid.

The NYPF will seek to recover monies that are more than £100.00 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 £100.00 or less has been deemed as uneconomical to pursue. The NYPF will write the sum off and treat it as a liability against the member's former employer.

The amount of overpaid pension will generally be recovered from the ongoing pension as this allows for the appropriate adjustment for tax. The pension will also be immediately reduced to the correct level for the next available monthly pension payment. The member will be notified in writing of the error and the action being taken.

Where there is no ongoing pension from which to deduct the overpaid amount, OR the retirement lump sum has been overpaid, an invoice will be raised to recover the overpayment. The invoice will be sent to the individual who received the overpayment.

## Managing pension overpayments due to an incorrect rate of pension being paid and the member is unaware of the overpayment

The table below illustrates how an overpayment of a member's pension can occur without the member being aware. 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 calculation and notification of benefit entitlement (includes dependants' pensions and Pension Credit members)	Incorrect (overstated) rate of pension input onto payroll record and member informed in writing of the, incorrect, rate of pension to be paid.
2	Administration error upon calculation and notification of retirement lump sum entitlement	Incorrect (overstated) retirement lump sum paid to the member and member informed in writing of the incorrect lump sum to be paid.
3	Pensions Increase	Pensions increase incorrectly applied to the elements of a pension in payment.

The NYPF will seek to recover monies that are greater than £100.00 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 £100.00 or less has been deemed as uneconomical to pursue. The NYPF will write the sum off and treat it as a liability against the member's former employer.

The amount will be recovered from the member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will also be immediately reduced to the correct level for the next available monthly pension payment. The member will be notified in writing of the error and the action being taken.

Where there is no ongoing pension from which to deduct the overpaid amount, or an overstated pension scheme lump sum has been paid, an invoice will be raised to recover any overpayment which is greater than £250.00 in value. The invoice will be sent to the individual who received the pension/lump sum overpayment.

## Overpayments resulting from an error with a Guaranteed Minimum Pension (GMP)

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

1	GMP not included in the pension being paid	New information from HMRC or a review of the member's record shows that a GMP should have been included within the pension. Due to the different way cost of living increases are applied to GMPs and the excess over GMP, 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. Due to the different way cost of living increases are applied to GMPs and the excess over GMP, 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 GMPs and post 88 GMPs, a lower level of pensions increase should have been paid.

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 with the member advising that their pension was being paid incorrectly, the overpayment of any value will be written off without the requirement for authorisation.

The pension will be immediately reduced to the correct level for the next available monthly pension payment. The member will be notified in writing of the error and the action being taken.

### **Recovery of member overpayments**

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.

Therefore, the NYPF will seek to recover overpayments that have been discovered within the last six 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).

Examples of limitation periods and how they operate in relation to overpayments are included in Appendix 1 of this policy.

The NYPF 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 three month period, the recovery period to repay the overpayment will be three months. The NYPF can, at its discretion, allow an extension based on the individual's circumstances. Should a mutual agreement not be arrived at, the member should follow the IDRPs.

There may be arguments raised as to why the overpayment should not be recovered, for example where the repayment could result in financial hardship (in whole or in part). These will be considered on a case-by-case basis and, if successful, may affect the NYPF's ability to recover the overpayment (in whole or in part).

### **Reporting to HM Revenue and Customs (HMRC) and effects on the parties involved**

Administering authorities are obliged to correct any error that 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. HMRC has 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.'

Regulation 13 states that a payment made in error will be an authorised 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;
- the administering authority believed the recipient was entitled to the amount of pension that was paid in error.

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 HMRC and they will not collect tax charges on it.

Examples of HM Revenue and Customs 'genuine errors' are in Appendix 2 of this policy.

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.

Payments made between notifying the member of an overpayment and correcting the pension to the right level will be regarded under the above legislation as an unauthorised payment. If the total pension paid at the incorrect rate from point of notification to the correction date is more than £250 (gross) it would be subject to tax charges 1 and 3 and possibly 2 as set out above.

### **Overpayments due to Fraud or Corruption**

On rare occasions members' benefits may be overpaid due to fraud by the member, the deceased member's survivor or a representative responsible for administering their estate, the employer, a pensions officer or other criminal activity such as blackmail. Should this occur, the pension will be suspended, and efforts will be made to recover the overpayment of pension and lump sum immediately.

The North Yorkshire Council's internal fraud team will be notified, and any additional steps taken, as necessary.

### **Prevention**

The NYPF has processes in place in order to minimise the risk of overpayments occurring.

The NYPF participates in the National Fraud Initiative which is conducted every two years. It cross checks records from other pension schemes with the Department for Work and Pensions records, increasing the chances of all schemes finding out when someone has died.

The NYPF undertakes overseas life existence checks to ensure only legitimate pensions are being paid and to reduce the likelihood of fraudulent activity. A report is run regularly to identify individuals in receipt of a child's pension. Further investigations are then carried out for children that are identified as approaching 18 and those already over that age to ensure they are still entitled to receive a pension.

The NYPF investigates any returned pensioner payslips and pension payments returned by banks and building societies.

NYPF administration and payroll 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. For example, a change from a short-term dependant's pension to a long-term pension.

## **Employer and Miscellaneous Debt Management**

### **Monthly Contributions, Deficit Contributions, Strain Costs and Unfunded Pensions**

The Pensions Act 1995 and Regulation 16 of the Occupational Pension Scheme Regulations 1996 stipulate that employee pension contributions deducted must be paid to the Pension Fund no later than the 22nd day of the month following the payroll deduction (or 19th if paying by cheque). Regulation 69 of the Local Government Pension Scheme Regulations 2013 provides that the Administering Authority may determine deadline dates for the receipt of payments from scheme employers, and this includes employee and employer pension contributions. In relation to the payment and receipt of employee pension contributions, it is the NYPF specific deadline which must be met by scheme employers.

The NYPF's Pensions Administration Strategy sets the deadline date referred to in Regulation 69 as it applies to both employee and employer pension contributions. The Policy requires that these contribution payments are received by the 19th day of the month following deduction of the employee pension contributions. Finance officers closely monitor contribution payments to ensure all scheme employers adhere to these requirements. Failure to make payment of contributions may result in a report being made to The Pensions Regulator, who may investigate and potentially issue a fine to the employer.

Employer strain costs are invoiced each month with a payment term of 30 days. Unfunded pension recharges are invoiced on an annual basis.

All of these types of debt will be chased within the usual debt recovery process. Any unpaid amounts will be reported in the next triennial valuation of the Fund and could have a negative impact on the employer's funding position, potentially resulting in a less favourable future employer contribution rate.

### **Recharges and Miscellaneous Debt**

Where NYC invoices a company who is not a participating employer, invoices are raised with a payment term of 30 days. If payment is not made, NYC's full debt recovery process will be followed. If the process is exhausted and the debt remains unpaid, then enforcement proceedings may be initiated.

These types of debt could include invoices to other local authorities for unfunded pension recharges and recharges of actuarial fees. Actuarial recharge fees are set out in the schedule of works that must be completed by the instructing authority before any work is undertaken.

If the debt is owed by an admission body who received a guarantee from a scheme employer, the NYPF may seek to recover the debt from the relevant scheme employer, if the admission body fails to make payment.

If the debt is the result of a divorce proceeding, a schedule of charges is issued in line with the Pensions on Divorce (Provisions of Information) Regulations 2000 at the onset of work being undertaken.

### Recovery of debts

NYC will seek to recover debts within the standard 30 day payment term with the exception of secondary contribution rates which would be considered late if not fully paid by the end of the financial year.

There may be some circumstances where debts are not recoverable due to reasons such as:

- The debt is over 6 years (limitations act)
- There is a bankruptcy order in place
- Recovery action is not possible for overseas debtors
- A company has gone into liquidation/administration/receivership
- The debtor has become untraceable
- The debt is uneconomical to pursue.

All cases will be reviewed in line with NYC’s delegation as listed below.

### Claims of inability to repay overpayments and debts

In cases where it is claimed that an overpayment cannot be repaid, NYPF officers will enter into negotiations with the 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, legal advice will be obtained. This approach will reduce the number of IDRPs applications and referrals to the Pensions Ombudsman.

For any cases that do reach the Pensions Ombudsman, the NYPF will have demonstrated engagement and negotiation with the complainant. All applications made to write off an overpayment will be investigated on a case by case basis and a final decision will be made by the appropriate officer listed below.

Overdue employer and miscellaneous debts will be monitored quarterly and recovery action exhausted appropriate to the value of the debt. Where the chance of successful recovery is low, the cost of recovery exceeds the benefit of recovery or all legal avenues have been exhausted, the NYPF may seek to write off the debt. All unpaid debts will be investigated on a case by case basis and a final decision will be made by the appropriate officer listed below.

### Authority to write off overpayments & debts

In line with NYC’s Schedule of Financial Management Permissions, the NYPF will apply the following levels of authority when writing off overpayments/debts:

<b>Total value of overpayment/debt</b>	<b>Authority to write off overpayment/debt</b>
Up to £1,000 (gross) on death of a pensioner and any other overpayment type	Credit Control Team Leaders/Revenue & Benefits Managers/Relevant sundry debt service managers as authorised by the Assistant Director Resources (Corporate)
Between £1,001 and £10,000 (gross)	Relevant Heads of Finance
Over £10,000 (gross)	Relevant Assistant Director Resources

To request write off [complete this form](#) and send to [arcollections@northyorks.gov.uk](mailto:arcollections@northyorks.gov.uk). The Finance team will progress the write-off to secure the correct level of approval before they process the write-off on the finance system. For some levels of debt they may also notify the budget holder, Head of Finance, etc.

## Appendix 1 – Limitation Period Examples

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 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 six 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 between April 2008 and 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 six 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>
<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 six 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 (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>

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 between April 2011 and August 2014</li> <li>• Formal claim** for recovery made in January 2022 (the Cut Off Date as referred to in Webber)</li> </ul>	<ul style="list-style-type: none"> <li>• Issue with the Limitation Period as formal claim for recovery commenced more than six 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 six 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 may be applicable).</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 2021</li> <li>• Formal claim** for recovery made in January 2022 (the Cut Off Date as referred to in Webber)</li> </ul>	<ul style="list-style-type: none"> <li>• Issue with the Limitation Period as formal claim for recovery commenced more than six 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 Webber case is that overpayments made in the six 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 six years after the Discovery Date.</li> <li>• Overpayments for the period February 2016 to August 2021 may be reclaimed.</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 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.

## Appendix 2 - Examples of HMRC 'genuine errors'

### Genuine error - example 1

Apart from the case of pensions continuing under a 'term certain' guarantee, pensions are supposed to stop accruing on the death of the pensioner. If payments that were incorrectly accrued after the death continue to be made, they will be unauthorised unless they fall within the limited conditions of regulation 15 of The Registered Pension Schemes (Authorised Payments) Regulations. The main feature of those conditions is that instalments can be paid within six months of the member's death providing the payer was reasonably unaware the pensioner had died.

Once the six month time limit has passed, the tax rules will regard any future instalments as unauthorised member payments, and the fact the payer might remain unaware of the member's death does not change the essential character of any payment made. When the death comes to light the payer can see that the payments made more than six months after death were made in error.

### Genuine error - example 2

The tax regulations typically mandate that a pension being paid to a dependent child of a deceased member must stop when the recipient reaches age 23. If the recipient does not qualify for any of the exceptions that would permit continuation of their beyond this age, such as a disability, the payer must ensure that the pension is stopped in a timely manner. To achieve this, they may give a clear and prompt warning to the bank to stop payments from the specified date. However, if the bank fails to act on those instructions, payments will continue to be made in error.

In both examples, if the error was identified and corrected (pension overpayments were repaid) as soon as reasonably possible, the inadvertent pension instalments (in the case of example 1, only for instalments paid after the six month limit where the conditions otherwise apply) would not be considered unauthorised member payments.

However, there would be an unauthorised member payment if, despite identifying the error, it is decided not to pursue the repayment of the inadvertently overpaid pension instalments or. Alternatively, if the scheme does attempt recovery (in the case of example 1, only for instalments paid after the six month limit where the conditions otherwise apply) but is unsuccessful and eventually decides to write off the overpayment (even though the decision might be due to administration costs or sensitivity). The exception to this would be if one of the categories of authorised payments introduced by the Registered Pension Schemes (Authorised Payments) Regulations 2009 can then applied to payments made in genuine error but left in place.

The date of the unauthorised payment for reporting purposes, is the date that the decision is made not to seek recovery of the overpayment or the date the decision is taken to no longer seek recovery of the overpayment. If the overpayment is not pursued or, recovery attempts are unsuccessful, and the total overpaid pension instalments paid after 5 April 2006 (overpaid instalments paid before 6 April 2006 do not count for this purpose) does not exceed £250:

- for its own reasons of cost administration, under its Collection and Management powers, HMRC will not look to collect the tax that is due in respect of the unauthorised payment (although the payment remains an unauthorised payment), and
- the scheme administrator does not have to report the unauthorised payment to HMRC, and
- the unauthorised payment does not have to be returned on the recipient's Self-Assessment tax return or otherwise be notified to HMRC.

If the total overpayment exceeds £250, the entire amount is chargeable as an unauthorised payment (i.e. the £250 cannot be deducted as an allowance). This threshold applies to the total overpayments received by, or in respect of, the member.

Where conditions would normally apply to pension instalments paid later than six months after the pensioner's death, the £250 threshold applies only to the aggregate of pension instalments paid after the six month limit. The pension instalments paid within the six month time limit are not included.

### **Overpayment of lump sums**

The conditions mentioned above also apply to overpayment of lump sums, such as a pension commencement lump sum or serious ill-health lump sum. The £250 will apply, but any lump sum exceeding this amount, where recovery cannot be made, will be considered an unauthorised payment to the extent that it is not an authorised payment.

For example, if a pension commencement lump sum of £100,000 is due to be paid under the scheme rules, but £105,000 is paid in error, and the scheme administrator cannot recover the excess, the entire £5,000 excess is an unauthorised payment under tax rules (i.e. the £250 cannot be deducted as an allowance).

Note that a lump intended to be a pension commencement lump sum but exceeding the permitted maximum, may still be an authorised member payment if certain conditions are met.

### **Example**

A pension commencement lump sum must be paid within an 18 month period starting six months before and ending 12 months after the member becomes entitled to the lump sum and linked pension. However, due to an administrative error, the lump sum payment is not made within this deadline. If the lump sum is paid after the deadline it will not be considered a pension commencement lump sum and, unless it falls within the definition of another authorised lump sum, will be an unauthorised member payment.