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| <p style="text-align: center;">Non-Executive Report of the:</p> <p style="text-align: center;">Pensions Board</p> <p style="text-align: center;">11 September 2023</p> |  |
| <p>Report of: Caroline Holland Interim Director Resources</p> | <p>Classification: Open</p> |
| <p style="text-align: center;">Administering Authority Discretions – Overpayment of Pensions Policy</p> | |

Executive Summary

The proposed Pensions Overpayments Policy attached as Appendix 1 sets out the steps that the London Borough of Tower Hamlets Pension Fund (LBTHPF) will take on discovery of an overpayment of pension made to retired member of the LGPS, a beneficiary or estate of a retired member of the LGPS.

The aim of the proposed Policy is to reduce the scope for overpayments being made and to set out a consistent and fair approach for the recovery of overpayments where these occur, thereby reducing the prospect of Internal Dispute Resolution Procedure proceedings or Pension Ombudsman challenges.

Recommendations:

The Pensions Board is recommended to:

1. Consider and review the Policy on Pension Overpayments (the Pension Overpayments Policy)
2. Recommend to the Pensions Committee to approve the policy and delegates to the Corporate Director Resources the authority to update the Pension Overpayment policy as required from time to time to reflect changes in working practices and/or the law.
3. Recommend that the Pensions Committee approve publication on the Pension Fund website.
4. Recommend that this policy is reviewed every three years by the Pensions Board.

1. REASONS FOR THE DECISIONS

1.1 The Policy sets out:

- Steps that will be taken by LBTHPF to minimise the risk of overpayments occurring.
- The responsibilities of scheme members where they identify or suspect an overpayment.
- The procedure to be followed by LBTHPF where overpayments of pension have been made, both in cases where the member has died or where the member is living.
- Cases where LBTHPF may not seek recovery of an overpayment.
- The discretion for LBTHPF to pay any tax charge arising where an overpayment is deemed by HMRC to be an “unauthorised payment”.
- The principles within the Policy are intended to apply equally to members of the Fund.

1.2 An ‘Overpayment of Pension Policy’ will also strengthen the Fund’s position should a complaint be made using the Internal Dispute Resolution Procedure which, if exhausted without resolution, can be referred by the scheme member or their representative to the Pensions Ombudsman.

2. ALTERNATIVE OPTIONS

2.1 There are no alternatives to this report. Regulation states, and best practice dictates, that a Pension Fund should have a range of written policies and procedures in place. It is good practice to ensure the Fund has a policy in place regarding the treatment of overpaid pensions following the death of a pensioner or dependant or other circumstances.

2.2 Having a policy in place ensures that any overpayments are treated in a fair and equitable manner to prevent the administration team seeking individual write off approvals.

3. DETAILS OF THE REPORT

3.1 The Policy attached at Appendix 1 applies to:

- All members and former members, which in this policy includes survivor and pension credit members of the Fund who have received one or more payments;
- Executors of the Estates of deceased London Borough of Tower Hamlets Pension Fund members;
- Beneficiaries of Fund members where those beneficiaries have received one or more payments from that Fund;
- Members of the staff who administer pensions; and
- The Pensions Committee

3.2 The aim of the proposed Policy is to reduce the scope for overpayments being made and to set out a consistent and fair approach for the recovery of

overpayments where these occur, thereby reducing the prospect of Internal Dispute Resolution Procedure proceedings or Pension Ombudsman challenges.

- 3.3 The policy outlines the circumstances where the recovery of monies is pursued, along with the considerations as to the commercial viability of recovery, the reasons for write-off and actions undertaken to mitigate the loss to the taxpayer.

Disputes

- 3.4 If the member or dependant is not happy with a decision taken in accordance with this policy, they have the right of appeal through the relevant pension scheme's Internal Dispute Resolution Procedure (IDRP) which can be found on the Fund's website: <https://www.towerhamletspensionfund.org>

Policy Monitoring

- 3.5 This Policy will be reviewed formally on a 3-year basis but can be reviewed more frequently and amended if appropriate at the request of the Pensions Committee or significant changes in process or legislation.

4. EQUALITIES IMPLICATIONS

- 4.1 There are no direct equality implications regarding this matter.
- 4.2 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:
- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that it is prohibited by or under the Equality Act 2010;
 - (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
 - (iii) Foster good relations between those who have protected characteristics and those who do not.
- 4.3 Tower Hamlets Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone.
- 4.4 DLUHC and HMT undertake equality impact assessments with regard to the provisions of overriding legislation and LGPS.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.
 - Data Protection / Privacy Impact Assessment.

Risk Management

- 5.2 There is always a risk of challenge when any discretion is exercised.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There are no direct financial implications arising from this report, although it is anticipated that implementation of the Policy will reduce the chance of overpayments being made and improve prospects of recovery where overpayments are made both of which will improve financial performance for the Fund.

7. COMMENTS OF LEGAL SERVICES

- 7.1 Although there are no apparent legal implications or risks within the content of this Report, under the LGPS Regulations, the Council, as Administering Authority is required to formulate and keep under review the policies that apply in respect of exercising the discretions referred to in this report.
- 7.2 The Council must publish written statements of the policies.

Linked Reports, Appendices and Background Documents

Linked Report

- List any linked reports.
- NONE.

Appendices

- Overpayment of Pension Policy – Appendix 1

Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- <https://www.legislation.gov.uk/ukpga/2010/15/section/149/enacted>
- Limitation Act - <https://www.legislation.gov.uk/ukpga/1980/58/contents>

Officer contact details for documents:

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PENSION OVERPAYMENT POLICY

Appendix 1

1.0 Introduction

This is the overpayments policy of the London Borough of Tower Hamlets Pension Fund (LBTHPF) (the Fund). This Policy sets out the course of action it will take in the event of overpayments.

The Policy aims to ensure that there is a clear process on how to prevent overpayments arising, as well as how overpayments are managed and recovered once they are identified.

Scope

2.0 The policy applies to:

- All members and former members, which in this policy includes survivor and pension credit members of the Fund who have received one or more payments.
- Executors of the Estates of deceased London Borough of Tower Hamlets Pension Fund members.
- Beneficiaries of Fund members where those beneficiaries have received one or more payments from that Fund.
- Members of the staff who administer pensions; and
- The Pensions Committee

Prevention of Overpayments

3.1 The Fund will take reasonable steps to minimise the risk of overpayments occurring to the following:

a) Monthly reconciliations of refunds of contributions, pensions paid, retirement grants, death grants and lumpsums (Senior Accountant Pension).

b) Action promptly all bacs return including payroll and non payroll bacs return (Pensions Admin Team Leaders)

c) Ensure that all calculations are checked by Pension Admin Team Leaders or Senior Pension Officers before processing for payments

d) Ensure that monthly pensioners payroll runs (main and supplementary) are checked and signed off before giving the payroll team the go ahead to process bacs (Senior Accountant Pension).

e.) Monthly reconciliations between zellis pensioners payroll system and altair pensions administration system (Senior Accountant Pension)

f) Remainders are included in all correspondence with members that LBTHPF must be advised of changes in circumstances, or of the death of a scheme member (Pensions Admin Team Leader)

g) All pension payments must be checked in agresso before approval by Pensions Admin Team Leaders.

h) Suspend a scheme member's pension payment where any scheme correspondence is returned. This allows officers time to investigate fully to ensure that overpayment does not occur; for example, mail may be returned where the scheme member has died (Pension Officers).

i) Monthly checking of Tell Us Once. The Fund is signed up to the Tell Us Once service. This allows a bereaved person to inform central and local government services of a death at one time instead of having to contact each service individual. (Pensions Admin Team Leaders).

j) The National Fraud Initiative is conducted twice a year; it compares files of pensioners with the Department for Work and Pensions database of the deceased and highlights matches for investigation. Officers should investigate matches, purchase certificates as required (Pension Admin Team Leaders).

k) The Fund participates in overseas life existence checks, by regularly requiring pensioners to provide independently verified proof to ensure that only legitimate pensions are being paid and to reduce the likelihood of fraudulent activity.

l) Changes to payroll by officers must be made in a correct and timely manner. This would be in circumstances such as a change from short-term dependant's to a long-term pension (Pension Officers).

m) A report is run on a quarterly basis to on the pensions administration system to identify individuals in receipt of a child's pension. Further investigations are then carried out for children that are identified as over the age of 18 to ensure they are still entitled to receive a pension (Senior Pension Officers).

Responsibility of Scheme Members

3.2 Scheme members have a responsibility to notify LBTHPF if they identify or suspect that pension payments are in excess of what they ought to be. There is an expectation that individuals will review payments against quotes received from the Fund.

Steps a member should take:

A query should be raised in writing where a member believes payments to be inconsistent with their entitlement.

This can be done via the Member Self Service Portal:

Or by email to pensions@towerhamlets.gov.uk

Or by phone to 0207 364 4251

Or by post to:
Tower Hamlets Pension Fund
Town Hall
160 Whitechapel Road
London E1 1BJ

3.3 **Managing Overpayments of Pension and Lump Sums**

Where overpayment of pension occurs, officers will generally endeavour to collect money owing to it promptly, efficiently and economically. Outlined below are the steps LBTHPF will take depending on the circumstances of the overpayments.

In all cases, formal legal action through the courts to recover debts will be a last resort and commenced generally where other routes have failed to achieve a resolution or where it is legally necessary to do so to protect the position of the Fund.

Managing overpayments of pension on the death of a scheme member

- 3.4 Pension payments are made monthly in arrears and even with prompt notification of a member passing away there is a risk of overpayment, given that payroll deadlines are in advance of actual payment date; at a minimum, a portion of the final payment will, as a consequence, have been overpaid.

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. Upon notification that a member has died, LBTHPF will immediately stop payroll, then seek to confirm the date of death and will calculate the net pension overpayment.

The Fund will always try to contact the deceased member's next of kin or their estate to explain the overpayment and the options for recovery of this.

Officers will seek to agree proposed method of recovery before any action is taken to recover the overpayment. Such methods of recovery include:

- a) Making a reduction to any death grant payable. The amount of the death grant will need to be greater than the overpayment for this approach to be taken.
- b) Agreeing a one-off payment from the member's estate.
- c) If there is a dependant, agreeing a reduced dependant's pension with them over a reasonable period of time.

- 3.5 Where the Fund has overpaid a death grant, the dependant's pension(s) will not immediately be reduced, officers 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 via a reduction to the dependant's pension.

- 3.6 Where there is more than one dependant and some are not yet adults, the Fund will generally seek to engage with the adult dependant(s) to resolve all the dependants' overpayments of pension, if this is possible.
- 3.7 Where recovery of an overpayment is to be made through a reduction to an ongoing dependant's pension, the recovery period will be determined reasonably 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 but will not be shorter than the length of time of the overpayments.
- 3.8 Where it has not been possible to make contact with the deceased member's next of kin or their estate, an invoice will be raised to "The Estate of [Member's name]" and issued to the member's last recorded address, or the address of the personal representative of their estate if known. The invoice will be issued with a covering letter seeking direct return of the overpayment where possible or admission of the claim against the estate of the late member where direct return of funds is not possible.
- 3.9 In the event that recovery of the overpayment cannot be achieved by agreement with the next of kin or the estate, or there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered or LBTHPF is unable to make contact with either, then recovery and the over payment amount is less than £150.00 gross, the Fund will consider writing off the debt against the last employer's liability.

A value of £150.00 or less in the instance of the death of a scheme member has been deemed by the Fund as uneconomical to pursue once initial steps have been taken. 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.

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

An invoice will be raised by the Fund to recover an overpayment which is greater than £150.00 upon the death of a scheme member.

In the event that recovery of the overpayment cannot be achieved by agreement with the next of kin or the estate, or LBTHPF is unable to make contact with either, and the amount in question is greater than £150.00, then recovery of the overpayment will be handled under Tower Hamlets Council's debt recovery policy.

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

- 3.10 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.

In these cases, the individual in receipt of the pension is responsible for informing the Fund of a change in circumstances to ensure the pension is ceased at the appropriate time, failure to do so would result in an overpayment.

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 £150.00 (gross) in value unless there are legal reasons and/or other circumstances which mean that the overpayment may not, in practice, be able to be recovered (in whole or in part).

A value of £150.00 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.

An invoice will be raised by the Fund to recover the overpayment which is greater than £150.00 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

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

- 3.11 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 all monies 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 £150.00 (gross) or less has been deemed by the Fund uneconomical to pursue due to the administrative time involved.

Overpayments that are greater than £150.00 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 4-week notice period. The scheme member will be notified in writing of the error and the course of action to be taken.

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 £150.00 in value.

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.

- 3.12 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 Pension payroll record | Incorrect (overstated) rate of pension inputted onto 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 Error not spotted when pension calculation is checked | All pension calculation should be checked by a Pensions Admin Team Leader or Senior Pensions Officer before it is entered in a gresso. Officers may miss the error while checking or approving the payment |

- 3.13 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.

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

- 3.14 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 and notification of benefit entitlement (includes dependants' pensions) | Incorrect (overstated) rate of pension inputted onto payroll record and member informed in writing of the, incorrect, rate of pension to be paid. |

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| 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. |
| 3 | Pensions Increase | Pensions Increase inaccurately applied to the elements of a pension in payment. |

Recovery Period

- 4.1 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.

- 4.2 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).
- 4.3 Examples of limitation periods and how they operate in relation to overpayments are included in this policy.
- 4.4 The Fund will seek to recover overpayments that have occurred within the last 6 tax years plus the current tax year or all the overpayment period if shorter.
- 4.5 It should be borne in mind that where the Fund seeks to recover overpayments, there may be arguments raised as to why the overpayments 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).

Length of time to recover overpayment

- 5.1 The Fund will allow a pension overpayment to be recovered over the same amount of time as the overpayment occurred. Upon challenge the Fund can allow this to be extended by a further 50% of the time period in which the overpayment occurred.

Scheme member is unable to return overpayment

- 6.1 In cases where officer have followed all of the above process and a Scheme member is unable to return the overpayment, the Fund will seek legal advice and follow the Tower Hamlets Council recovery process. This approach will reduce the number of Internal Disputes and referral to the Pensions Ombudsman. For any cases that do reach the Pensions Ombudsman, LBTHPF would have demonstrated engagement and negotiation with the individual.

Scheme member refuses to engage in any correspondence with regards to overpayment

- 7.1 In cases where the Scheme member refuses to engage in any correspondence the Fund will suspend the pension after three written attempts of contacts within three months. This should prompt the member to get in touch and allow for discussions to take place, where appropriate the Fund will seek expert legal advice.

Cases where LBTHPF may not seek recovery

- 8.1 The Fund will not seek to recover overpayments discovered as a result of Bulk 'reconciliation' exercises (such as the GMP reconciliation exercise) which may result in the discovery of overpayments or pension. In view of the size of these exercises and the number of potential overpayments, decisions concerning the writing-off of those overpayments will be made on a case-by-case basis.
- 8.2 Overpayments less than £150.00 which Officers have deemed uneconomical to pursue.

Monitoring repayments

- 9.1 In cases where recovery is not being made through the payroll or an invoice has been raised, the responsibility for chasing the payment initially rests with the Pension Officer and Team Leader responsible for the case. If Fund Officers remain unsuccessful in collection of outstanding debt a decision will be made by the Heas of Pensions and Treasury or the Pensions Administration Manager to decide whether to take legal action or seek assistance of the Council's Debt Recovery Team.

10. Write off in the event of death of a member

- 10.1 For all scenarios mentioned above, Officers have the ability to exercise discretion in the event of legal reasons and/or exceptional circumstances to ensure no individual is unfairly treated. If the pursuing recovery of an overpayment was to cause hardship 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 an overpayment will be investigated on a case-by-case basis to be presented by the Pensions Admin Team Leader and final decision will be made by the appropriate officer listed in the table below dependent upon the amount potentially being written off.

10.2 Overpayments where hardship has been established will be submitted for write off through the appropriate channels.

10.3 If there is no ongoing pension, after consideration of the case, the amount may be written off.

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|---|---|
| Total value of Overpayment*/** | Authority to write off Overpayment |
| No more than £150.00 on death of a pensioner and initial steps taken to recover | Automatic write off. Pensions Admin Team Leader or Pensions Admin Manager |
| £200-£2,000 | Head of Pensions and Treasury |
| £2,000-£5,000 | Director Finance Procurement and Audit |
| £5,000-£10,000 | Corporate Director Resources (s151 Officer) |
| Over £10,000 | Chief Finance Officer Seek approval of Chair of Pensions Committee |
| Over £20,000 | Seek approval of Pensions Committee |

*The value of overpayment occurring within the last 6 full tax years plus current tax year

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

Unauthorised Payments

11.1 The Fund believes that in the vast majority of cases, overpayments of pension will have arisen due to a genuine error and where these are waived by the Fund, in full or in part, they will be authorised payments under the Registered Pension Schemes (Authorised Payments) Regulations 2009

11.2 In the event that an overpayment is unauthorised, and the member incurs a tax charge, LBTHPF may offer to pay the tax charge on behalf of the member in circumstances where the member could not reasonably have known of the overpayment.

Write off in the event that the member is a living pensioner

12.1 If the member cannot make the repayment, then the Fund would advise the employer that we have not been able to recoup the money.

Overpayments due to Fraud or Corruption

- 13.1 On rare occasions members' benefits may be overpaid due to:
- Fraud by the member on their estate
 - Fraud by the employer
 - Fraud by a pension officer
 - Other criminal activity such as blackmail or corruption

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

The Fund will immediately involve internal audit in such cases and the settlement of overpayments may be resolved by the Courts of Law.

Underpayments

- 14.1 Should an underpayment to pension occur, any underpayment of pension will be rectified in the next available pay period after underpayment has been identified.

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

Disputes

- 15.1 If the member or dependant is not happy with a decision taken in accordance with this policy, they have the right of appeal through the relevant pension scheme's Internal Dispute Resolution Procedure (IDRP) which can be found on the Fund's website: <https://www.towerhamletspensionfund.org>

Policy Monitoring

- 16.1 This Policy will be reviewed formally on a 3-year basis but can be reviewed more frequently and amended if appropriate at the request of the Pensions Committee or significant changes in process or legislation.