

Avon  
Pension  
Fund



Your pension, your future

# **Policy on the Overpayment and Underpayment of Pension Scheme Benefits and Contributions**

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## 1. Introduction

This is the Overpayment and Underpayment of Pension Scheme Benefits and Contributions Policy for the Avon Pension Fund ('the Fund'), which is managed by Bath and North East Somerset Council ('the Administering Authority').

Underpayments and Overpayments of benefits can arise due to various reasons. Member benefits are explicitly outlined in the Local Government Pension Scheme (LGPS) Regulations and other relevant legislation, and it is impermissible under law for members to receive amounts other than those stipulated by these rules. However, it is crucial for the Fund to establish a clear policy for managing over and underpayments once identified.

Bath and North East Somerset Council acknowledges the importance of adopting a proactive approach to identify fraudulent activities, rectify overpayments, and pursue recovery where necessary. This commitment extends to maintaining effective processes that minimise the risk of over and underpayments, swiftly identifying such cases, and resolving them promptly in the interest of all affected parties.

## 2. Scope

The policy applies to:

- All members and former members of the Avon Pension Fund, and their dependants, councillor members and pension credit members.
- Executors of the Estate and personal representatives of deceased Avon Pension Fund members/dependants.
- 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;
- Administrators of the scheme;
- Employers participating in the scheme; and

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. 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.

The Administering Authority has several other discretionary policies in place, and the details set out in this policy are consistent with the approaches set out in those discretionary policies. The Administering Authority reserves the right to apply discretion in any under or overpayment scenario.

### **3. Regulations**

This policy is formulated under the Local Government Pension Scheme Regulations 2013 (as amended) - "LGPS Regulations" and related legislation.

The Fund will also implement this policy in line with the provisions of the various other LGPS Regulations and other legislation, including but not limited to:

Registered Pension Scheme (Authorised Payments) Regulations 2009

- The Limitation Act 1980
- The Pensions Act 1995
- The Finance Act 2004
- The principles of Law of Equity including the doctrine of equitable recoupment

Nothing within this policy can overwrite the legal requirements within those provisions.

### **4. Purpose of the policy**

The roles and responsibilities of the Administering Authority and the quality and performance standards expected of the Fund are set out in the Pension Administration Strategy. The Fund's administration and communications objectives are:

- The Fund and Employers are aware of and understand their respective roles and responsibilities under the LGPS Regulations and in the delivery of administrative functions (largely defined in the Service Level Agreement);
- The Fund operates in accordance with LGPS regulations and is aligned with The Pension Regulator in demonstrating compliance and scheme governance;
- Communication processes are in place to enable both the Fund and Employers to proactively and responsively engage with each other and other partners;
- Accurate records are maintained for the purpose of calculating pensions entitlements and Employer liabilities, ensuring all information and data is communicated accurately, timely and in a secure and compliant manner;

- The Fund and scheme employers have appropriate skills, and that guidance/training is in place to deliver a high-quality service and effectively contribute to the changing pensions agenda;
- Standards are set and monitored for the delivery of specified activities in accordance with Regulations and minimum standards as set out in the Service Level Agreement;
- Administrative services are developed and delivered digitally as outlined in the ICT Strategy, in order to streamline processes and maximise efficient use of resources.

Having a policy setting out what approach will be taken when a member has been underpaid or overpaid compared to the benefits due under the LGPS Regulations, or where an employer and/ or member has underpaid the contributions required to meet the cost of the members' benefits is integral to the Administering Authority achieving these objectives.

The purpose of this policy is to ensure that the relevant objectives as set out above are met, and the administration of the Fund is carried out in line with the governance objectives of the Fund. In particular, it aims to:

- Ensure a consistent approach to the treatment of overpaid/underpaid members, their dependants, or personal representatives, ensuring that all identified affected members are treated in a fair and equitable manner to the extent possible;
- Ensure that all necessary steps are taken to rectify overpayments in cooperation with the individuals or their personal representatives and to recover overpaid pensions when they occur;
- the Fund attempts to reimburse members or their beneficiaries where underpayments have occurred; and
- Ensure the Fund has 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;
- The Fund maintains accurate records and ensures data is protected and has authorised use only;
- Errors are identified as soon as possible;
- Overpayments are recovered with the cooperation of the individual 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 understand the importance of checking their payslips/payments for any reasonably identifiable errors; and
- Minimise the necessity of resorting to the Internal Dispute Resolution Procedure (IDRP) by effectively managing the identification, rectification and repayment processes.

This document is designed to provide the Fund with practical guidance rather than a rigid framework, providing flexibility for the Fund to consider alternative courses of action when circumstances warrant.

## **5. Managing overpayments of pensions and lump sums**

Under Regulation 14 of the Registered Pension Scheme (Authorised Payments) Regulations 2009 the Fund is obliged to correct any overpayment they discover within a reasonable period of time, in order to avoid 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 the Administering Authority. Factors taken into account to consider recovery include:

- 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 impose "material hardship" on the member and the extent to which this hardship would impact their circumstances. See section 5.10 for more information.

Where a member claims that they are not able to repay any overpayment due to having spent the overpaid funds, and have changed their financial position as a result (for example on improving their lifestyle), the Administering Authority's 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). In such cases it may be that partial recovery will be agreed i.e. the amount spent on changing the lifestyle will not be recoverable.

Where the Administering Authority is attempting to recover a lump sum overpayment, if the scheme member or representative refuses to engage with the correspondence, or cannot be found, the Finance/Accountancy team at the Administering Authority will make a recommendation on next steps. The administrators will be given instructions with appropriate sign-off. See section 10 for authorisation levels.

The Administering Authority's approach is designed to engage the member and encourage a dialogue to agree how the over/under payment will be resolved.

However, in the case of an overpayment where the member does not respond after the Fund has written to them on two previous occasions over three months, the Fund will suspend the pension at the third time of writing. In such cases where appropriate, the Fund will seek expert legal advice.

Overpayment (and underpayment) of benefits will be recorded as a breach of the law in the Fund's breaches register. Such breaches will, in accordance with the Pensions Regulator guidance and the Fund's Procedure for Reporting Breaches of the Law, be reported to the Pensions Regulator where considered of material significance (for example, large in size or indicative of wider administrative issues).

The below sections set out the Fund's approach to overpayments in the following areas:

- Overpayments to an individual of an aggregate amount of less than £250;
- 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 will cause material hardship.

## **5.1 Overpayments to an individual of an aggregate amount of less than £250**

In line with the guidance set out in the HM Treasury document "Managing Public Money" (May 2023<sup>1</sup>), the Administering Authority will consider the cost of recovery of the pension alongside the amount of the overpayment.

The Administering Authority will not look to recover overpayments if the aggregate amount of the overpayment is less than £250, due to the anticipated administrative cost of recovering such amounts. This amount will be kept under review.

## **5.2 Overpayments discovered within 6 years**

The Limitation Act 1980 sets out that a claim to recover overpayments has to be made within 6 years of the date when the cause (i.e. error, fraud or other criminal act) 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.

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<sup>1</sup> <https://www.gov.uk/government/publications/managing-public-money>

The Administering Authority's 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).

### **5.3 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. Any overpayments that have occurred outside of this period will have the appropriate portion written off in accordance with section 10. In line with the outcome of the *Webber v Department of Education* court case, there may be circumstances where an overpayment already extends beyond six years, or there may be reasons to believe the case may protract. In these situations, advice should be sought from the Council's legal team to determine the benefit of initiating legal proceedings.

Case law in 2018 (*Burgess and others v BIC UK*) 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.

The Administering Authority's 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).

### **5.4 Recovery period**

The Administering Authority will engage in discussions with the scheme member, their representatives, or next of kin to determine a suitable repayment period. The aim is to arrive at a mutually agreeable timeframe if possible, however, ordinarily the Administering Authority will 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 25% of the time period over which the overpayment occurred, at its discretion. Each such case will be considered on its merits.

Unless otherwise specified, the Administering Authority 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.

### **5.5 Recovery of overpaid pension on the death of a Scheme member**

Fund members' next of kin or their estate (e.g. personal representatives or executors of will) will be contacted to explain the overpayment, along with an invoice detailing the overpaid amount.



### **5.5.1 Overpayment of pension which relates to more than £250**

The Fund will look to recover overpayments of pension in all cases where the aggregate amount is in excess of £250, due to the anticipated administrative cost of recovering such amounts. In the first instance, the administrators of the Fund will attempt to contact the deceased member's personal representatives or next of kin for the funds be recovered through a one-off payment from the members estate.

The Fund administrators will discuss the method of repayment with the estate if a one-off repayment or reduction to death grant 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.

### **5.5.2 Overpayment of death grant**

Where the Fund has overpaid a death grant, any dependant's pension(s) will not immediately be reduced. The Administering Authority will contact the recipient(s) of the death grant 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 any dependant's pension they are receiving. The recovery period will be determined on a case-by-case basis depending on the size of the overpayment, the size of any dependant's pension and the age of the beneficiary.

Where there is more than one recipient, the Administering Authority will generally seek to engage with the adult recipient if possible, or the recipient's guardian if the recipient who has been overpaid is a minor.

In all instances where a Death Grant might become payable from the Fund in respect of an active member, administrators are required to check the LGA National Insurance database to confirm that no other LGPS entitlements exist that would mean that there is no death grant due from Avon Pension Fund. In cases where the deceased member has entitlements in other LGPS Funds, Avon Pension Fund will liaise with the relevant Fund(s) to ascertain which death grant should be paid and determine the communication process with potential beneficiaries, the next of kin or personal representatives.

## **5.6 Recovery of overpayments of pension due to incorrect amounts being paid by the Administering Authority**

When the overpayment is discovered, the pension will be reduced to the correct level, effective from the next available month. Where appropriate, a notice period of two monthly pension payments will be given to the member. This notice period is provided, for example, if the member has been receiving their pension for some time and could not have reasonably known about the overpayment. This aligns with the PASA guidance, which considers it a practical minimum to allow pensioners the opportunity to make any adjustments to their personal finances. To comply with this,

the Fund will establish a cut-off date before implementing the change in the subsequent month.

The member will be notified in writing with an explanation of the situation and how the overpayment along with an invoice detailing the overpaid amount. 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.

### **5.6.1 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 or Earmarking Order on divorce has been put in place but processed late, resulting in the pension being overpaid since the specified implementation date;
- Following the death of a member, their spouse is informed that a short-term pension is payable at a higher rate for three months before reducing. However, an administrative error results in the inadvertent continuation of the short-term payments.

In these situations, unless the total overpayment is below £250, the Administering Authority will seek to recover the total value of the overpayment from a reduction to the member's ongoing pension. Where there is no ongoing pension from which to deduct the overpaid amount, the member will be invoiced for the overpayment.

### **5.6.2 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 origin of this error could include incorrect provision of information to the Fund by the scheme employer;

- 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.
- Failing to implement a National Insurance Modification at State Pension Age for members who left the scheme before 1 April 1998 and had pre-1 April 1980 membership.

In general, in such situations the Administering Authority will not seek to recover the total value of the overpayment. However, where the size of the aggregate overpayment is significant (over £10,000 this will be considered by the Head of Pensions and reported to the Pensions Committee annually to ensure that the general policy of not seeking to recover such cases remains appropriate. Furthermore, where non-recovery would result in an unauthorised payment and therefore additional tax charges for the member and Fund, the case will be considered on its own merits, and referred to the Head of Pensions where the total cost to the Fund (of the write off and any additional tax charges) is significant (over £10,000). These cases and the decisions made will be recorded in a breaches log.

It is expected that in all overpayment cases, until the time of discovery of the error the Administering Authority will have believed the pension in payment to be correct (e.g. where the overpayment is discovered following reconciliation of GMP with HMRC records). Such overpayments will therefore not be considered an unauthorised payment and so will not be subject to any additional tax charges<sup>2</sup>.

## **5.7 Recovery of Lump Sum overpayments**

For the purpose of this policy, this section relates to Pension Commencement Lump Sums, Trivial Commutation & “de minimis” Lump Sum overpayments.

### **5.7.1 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

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<sup>2</sup> This assumes that the conditions in Regulation 13 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 are met, i.e.

- the payment was genuinely intended to represent the payment of a pension under the LGPS regulations
- the payer believed that the recipient was entitled to the payment, and
- the payer believed that the recipient was entitled to the incorrect amount.

the correct lump sum in writing, and the 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.
- The Administering Authority 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 retirement documentation and being paid.

When the overpayment is discovered by the Administering Authority, 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 the Administering Authority will seek to recover the amount in full through one immediate repayment.

### **5.7.2 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 lump sum 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, and the incorrect amount was then paid, and the incorrect amount stated in any payment notification.

When the overpayment is discovered, by the Administering Authority, consideration will be given to the length of time which has passed since the error was made to determine the approach to take, but generally 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 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.

### **5.8 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 might be if the employer initially notifies the Fund that a member is entitled to unreduced benefits, but this information is later revised, resulting in reductions to the payments being made before their normal pension age. Similarly, discrepancies in pensionable pay figures may be initially provided and subsequently corrected.

In cases where an overpayment of pension or lump sum occurs due to inaccurate information provided by the scheme member's employer on retirement, such as pensionable pay, the Administering Authority will seek to recover monies through the scheme member's ongoing pension.

The Administering Authority will manage any challenges resulting from such errors following the procedures set out in the Pensions Administration Strategy. For example, the Administering Authority 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.

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

On rare occasions members' benefits may be overpaid due to:

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

Where after reasonable investigation 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 Administering Authority 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 Reporting Breaches of the Law and the Bath and North East Somerset Council's Anti-fraud and Corruption Strategy <https://intranet.bathnes.gov.uk/anti-fraud-and-whistleblowing>

This strategy includes the following policies:

- Whistleblowing Policy
- Anti-Money Laundering Policy and Guidance
- Anti-Bribery and Corruption Policy

## **5.10 Overpayments to an individual where recovery will cause severe hardship**

In line with the guidance set out in the HM Treasury document "Managing Public Money" (May 2023<sup>3</sup>), where the member has demonstrated that the recovery of an overpayment would cause hardship, the Administering Authority will consider

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<sup>3</sup> [www.gov.uk/government/publications/managing-public-money](https://www.gov.uk/government/publications/managing-public-money)

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.

For the purpose of this policy, severe financial hardship is broadly defined as the adverse financial impact that a reduction in pension payments could impose on a member's ability to maintain a basic living standard. This includes their capacity to cover essential expenses such as mortgage or rent payments, household bills, and any day-to-day necessities like food.

In general, when arranging recovery of an overpayment, the member's ongoing pension will not be reduced to below 50% of the full (corrected) amount. For the purpose of this policy, the full corrected amount refers to the accurate level of pension the member is entitled to after the identification of an overpayment. The ongoing pension represents the pension level after deducting a payment to recover the overpayment.

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

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

## **5.11 Monitoring repayments**

When recovering any overpayment through payroll deductions, the Administering Authority will take responsibility for executing the necessary payroll entries for debit collection. This process involves ensuring the deductions cease promptly upon settlement of the debt by establishing an end date in Altair.

In instances where recovery is not facilitated through payroll deductions and an invoice has been raised, the responsibility for monitoring debit repayment falls to the Fund. In the event of a final reminder preceding legal action, the Head of Pensions will be promptly notified. The decision to pursue legal action will rest with the Head of Pensions, who will consider factors such as the overpayment amount, individual case circumstances, and the need for appropriate sensitivity.

## **6. Managing underpayment 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.

This section covers the general principles for ad hoc underpayments. Please see section 9 for underpayments arising as a result of the McCloud judgment.

## **6.1 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. The member will receive written notification of the underpayment if the total underpaid amount exceeds £5.

The underpayment will 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.

Interest will be paid on the underpaid amount(s) in line with Regulation 81 of the LGPS Regulations (in particular, interest is due on pension payments which are more than 1 year late, and on lump sum payments which are more than 1 month late). Interest payable under this regulation is calculated at one per cent above base rate 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'll contact the member directly. Members can contact HMRC directly if they think they have paid too much tax and request a refund. Where the Administering Authority deems appropriate or upon receiving a request from a member, a year-by-year breakdown of the arrears will be provided. This enables the member to address any tax queries can be addressed with HMRC.

## **6.2 Underpayment of pension resulting from incorrect information supplied by the employer**

The underpayment to the member will be dealt with as described in 7.1 above. The Fund may recharge the administrative cost of investigating and verifying the underpayment amount, as well as corresponding with the affected members or dependants, to the employer if it is deemed to require a disproportionate amount of work. This action will align with the Pensions Administration Strategy.

## **6.3 Underpayment of pension or death grant discovered following the death of a Scheme member**

Where the member has died since the underpayment has been identified, the arrears will be paid to the deceased member's estate. In these cases, a claim form is sent to the member's next of kin, and if the total amount payable to the estate is

below £5,000 the Administering Authority will pay the amount to the person specified on the claim form. If it is above £5,000 the original Grant of Probate or Letters of Administration is requested before payment is made.

If a death grant payment is discovered to have been underpaid, (including where the balance of 10 years' annual pension is due to a deceased member's estate following the death of a pensioner), the underpayment will be reimbursed to the party determined previously in accordance with the exercise of the Fund's discretion under the LGPS Regulations 2013 providing it is paid before the period of two years beginning with the earlier of the day on which the Administering Authority first knew of the members death and the day on which the admin authority could first reasonable have expected to have known of it. Any death grant underpayment paid after this period would be paid to the deceased's personal representatives and will be subject to a tax charge. For more information on this please see section 12.

## **7. Underpayments and Overpayments of Guaranteed Minimum Pensions (GMP)**

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.

The Authority is undertaking a reconciliation of HMRC records vs APF records, from which the Authority will determine the correct pensions payable to each member. How resulting changes to members' pensions are implemented and how any over/under payments are managed with members, will follow relevant policies explained in earlier sections of this policy.

## **8. Underpayments due to the McCloud judgment**

The Fund is currently undertaking this benefit rectification exercise, which is expected to conclude by August 2025. Any underpayments will be rectified, and the arrears paid according to legislation and McCloud statutory guidance issued by the Department for Levelling Up, Housing and Communities (DLUHC). This may mean that the treatment of underpayments due to the McCloud remedy is not consistent with the remainder of this policy, albeit the Administering Authority will have regard to this Policy when making any decisions.

## **9. Underpayments and Overpayments of other benefit settlement amounts**

### **9.1 Transfer values**



Where an individual transfer value for a member who has transferred Avon 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, an alternative pensions savings vehicle will be sought, and payment made once agreed by the Head of Pensions

If a transfer is discovered to have been overpaid, then the correct amount will be calculated, and the Administering Authority will attempt recovery of the overpaid amount from the receiving scheme.

Where a transfer should not have been paid because the member was not eligible for a transfer payment (e.g. if they already have an LGPS pension in payment), the transfer becomes an unauthorised payment. Please refer to section 12 regarding unauthorised payments for more details.

## **9.2 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 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 section 11 unauthorised payments for more details.

## **10. Authorisation**

Overpaid amounts of £250 or more for which an invoice has been issued are passed to the Council's Debt Recovery team to follow up on the repayment. If no repayment or response is received this is passed back to the Administering Authority to determine whether or not to write off the overpayment. Any sum which is written off is treated as a liability against the scheme member's former employer.

In line with Bath and North East Somerset Council's Scheme of Delegation and Financial Procedure Rules, the Fund will apply the following levels of authority when writing off overpayments:

Total value of overpayment	Authority to write off overpayment
Up to £250	Pensions Payroll Senior Officers
Between £250 - £5,000	APF Service Manager
Above £5,000	Head of Pensions

Any sum which is written off is treated as a liability against the scheme member's former employer.

Where any guidance regarding the write off of overpaid pension is provided for the Local Government Pension Scheme (LGPS) as a whole (for example in relation to the rectification of benefits due to the McCloud), the Administering Authority will follow such guidance as long as this does not contradict other Bath and North East Somerset Council policies which override such guidance.

## 11. 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.

The Administering Authority understands 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 the Administering Authority will engage with His Majesty's Revenue and Customs (HMRC) to resolve the issue and establish any resulting tax charges. The Administering Authority is obliged to report any unauthorised payments to HMRC each year in their annual event report. We do not expect Regulation 14 to apply but it is expected that the conditions of Regulation 13 would apply in most cases i.e.:

- the payment was genuinely intended to represent the payment of a pension under the LGPS regulations
- the payer believed that the recipient was entitled to the payment, and
- the payer believed that the recipient was entitled to the incorrect amount.

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 Administering Authority this is an unauthorised payment but does not have to be reported to 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 charges are as follows:

### **The unauthorised payments charge**

Where the unauthorised payment is made to or for a member, it's the member who 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 or not the unauthorised payments charge has been paid by the member.

The Administering Authority will apply to be discharged from the tax charge where it would not be just and reasonable for the Fund to pay the tax, e.g. where the Administering Authority has been misled or given incomplete information leading them to assume that the payment was an authorised payment.

Where the member could not reasonably have known of the overpayment, the Administering Authority may offer to pay the member tax charge on behalf of the member. The Administering Authority will require the member to provide written authorisation to do this. This will be set out clearly in any correspondence to the overpaid member. As the LGPS regulations do not explicitly address compensation for direct financial loss, any such case will be raised with the Council and assessed under their powers pursuant to the Localism Act 2011.

A deceased person has no unauthorised payments tax liability.

Further details on unauthorised payments are available on His Majesty's Revenue and Customs website: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm131000>.

## **12. Policy adoption and review**

This Overpayment and Underpayment of Pension Scheme Benefits and Contributions Policy is effective from (INSERT DATE) and was approved by the Pensions Committee on 22 March 2024.

Bath and North East Somerset Council will periodically review this policy in response to any changes in the LGPS or other relevant legislation. Additionally, it will be subject to a formal triennial review and be updated as required. An annual light-touch review by officers will ensure ongoing appropriateness. Any significant updates will be subject to consideration and approval by the Pensions Committee, and the revised policy will be published as a public document following approval.

When undertaking a review of this policy the Council will have regard to the current legislation and the extent to which the exercise of the policy could lead to a serious loss of confidence in the public service.

Bath and North East Somerset Council reserves the right to amend this policy at its discretion provided it republishes the modified policy at least one month in advance of the changes taking effect.

## **13. Further Information**

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

Avon Pension Fund

Bath and North East Somerset Council

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## 14. Policy approval and version control schedule

Policy approval and version control schedule:

Version	Updated by	Reason for change	Approved by	Date