Northamptonshire Firefighters' Pension Scheme(s)

(1992, 2006, 2015)

Overpayments of Pension Policy

2018

1. Introduction

1.1 This is the Overpayment of Pension Policy for Northamptonshire Firefighters' Pension Scheme(s), which are managed by the Office of the Police, Fire and Crime Commissioner of Northamptonshire (the Scheme Manager).

1.2 LGSS Pensions, a joint partnership of Cambridgeshire County Council, Northamptonshire County Council and Milton Keynes Council, are the administrators of the Northamptonshire Firefighters' Pension Scheme(s).

1.3 Overpayments of pension can occur for a variety of reasons. It is important that the scheme has a clear policy on how overpayments of pension are managed once they are identified.

1.4 The Scheme Manager recognises the need to take a pro-active approach to identifying potential fraudulent activity and overpayments.

2. Purpose of the policy

2.1 The policy is designed to provide assurance to stakeholders that:

- all overpayments are treated in a fair and equitable manner;
- the Scheme Manager will seek to recover overpayments that have occurred but acknowledges that there may be legal reasons and/or other circumstances which mean that an overpayment may not, in practice, be able to be recovered (in whole or in part); and
- there are steps in place to prevent, and also investigate, potential fraudulent activity.

3. Effective date and reviews

3.1 This policy was reviewed as appropriate by the Local Pension Board on 10 September 2018. The Scheme Manager approved this policy on 10 September 2018. The policy came into force on 10 September 2018.

3.2 This policy will be reviewed annually and, if necessary more frequently, to ensure it remains robust and relevant.

4. Scope

4.1 The policy applies in relation to payments made under the following legislation as it applies following amendment from time to time:

- the Firemen's Pension Scheme Order 1992,
- the Firefighters' Pension Scheme (England) Order 2006,
- the Firefighters' Pension Scheme (England) Regulations 2014 and
- the Firefighters' Compensation Scheme (England) Order 2006.

4.2 It applies to:

- All Scheme(s) members, which in this policy includes former members, survivor members and pension credit members of the Northamptonshire Firefighters' Pension Scheme(s) who have received one or more payments;
- Those former firefighters that were not pension scheme members but have received one or more payment under the Injury Award provisions of the Firemen's Pension Scheme Order 1992 or the Firefighters' Compensation Scheme (England) Order 2006.
- Executors of the Estates of deceased scheme members and former firefighters with an injury award.
- Beneficiaries of the schemes' members and former firefighters with an injury award where those beneficiaries have received one or more payments.
- The Scheme Manager
- Administrators of the scheme; and
- The Local Pension Board

5. Managing overpayments of pension on death

5.1 Certain pension payments are paid monthly in advance; in the month that someone in receipt of such a pension dies, the part of such a month's payment in respect of the period from date of death to the end of that month is **not** an overpayment and would not therefore be recovered.

5.2 Understandably, notification of a death of a someone in receipt of a pension does not always happen immediately and should an overpayment occur, the Scheme Manager will generally seek to recover overpayments that are greater than £250.00 (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 £250.00 (gross) or less in the instance of the death of a pensioner has been deemed by the Scheme Manager as uneconomical to pursue.

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

5.4 An invoice will be raised by LGSS Pensions to recover an overpayment which is greater than £250.00 (gross) upon the death of a scheme member.

6. Managing overpayments of children's pensions failing to reduce or cease at the appropriate time

6.1 The legislation governing the Firefighters Pension Schemes (1992,2006 & 2015) and Firefighters' Compensation Scheme sets out certain circumstances when a child's pension would be required to reduce or cease.

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

6.3 Should an overpayment of pension occur as a result of late notification of change of circumstances, the Scheme Manager will generally seek to recover overpayments that are greater than £250.00 (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 £250.00 (gross) or less has been deemed by the Scheme Manager as uneconomical to pursue.

6.4 An invoice will be raised by the LGSS Pensions to recover the overpayment which is greater than £250.00 (gross) 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.

7. Managing overpayments of pension following incorrect information supplied by the Northamptonshire Fire and Rescue Service in respect of the scheme member

7.1 Should an overpayment of pension occur as a result of inaccurate information provided by the Fire and Rescue Service on retirement, review or death of a scheme member, LGSS Pensions will generally seek to recover monies that are greater than £250.00 (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 £250.00 (gross) or less has been deemed by the Scheme Manager uneconomical to pursue due to the administrative time involved.

7.2 Where practical, overpayments that are greater than £250.00 (gross) in value will be recovered through the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will be reduced to the correct level for the next available monthly pension payment after a 6 week notice period. The scheme member will be notified in writing of the error and the course of action to be taken.

7.3 Where there is no ongoing pension from which to deduct the overpaid amount, or recovery from the ongoing pension is impractical due to size or duration of the recovery required, an invoice will be arranged by LGSS Pensions to recover the overpayment which is greater than £250.00 (gross) in value.

8. Managing overpayments of pension as a result of the incorrect rate of pension paid by LGSS Pensions and the member could reasonably have been expected to be aware of the overpayment.

8.1 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.

	Type of overpayment	How overpayment has occurred
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	Re-employment where abatement affects rate of pension due	Re-employment not notified and within the terms of the Scheme Manager's policy on the exercise of their discretion relating to abatement, the member's annual pension should have been reduced or suspended due to the level of earnings in the new employment. Identified through NFI exercise or other means.
3	Entitlement to pension ceasing	Non notification that a child's pension is no longer payable as the child has ceased full-time education and is in paid employment, has married or entered into a civil partnership, is aged 18 or above and is no longer in full time education or attending a course of at least a year's duration, or has attained the age of 23.
4	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.
5	Failure to action an alteration to the payroll record/reduction in pension	Failing to implement the change from the higher short term dependants pension to the lower long term rate.
6	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 had membership before 1 April 1980).

8.2 If the scheme member has been notified of the correct rate of pension in writing and is receiving a higher amount, it can be said that the member can reasonably be aware that they are being overpaid as the scheme member has been notified of the correct rate in writing.

8.3 The Scheme Manager will therefore generally seek to recover monies that are greater than £250.00 (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 £250.00 (gross) or less has been deemed as uneconomical to pursue due to the administrative time involved.

8.4 Where practical, the amount will be recovered from the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will also be reduced to the correct level for the next available monthly pension payment after a 6 week notice period and will be notified in writing of the error and the course of action to be taken.

8.5 Where there is no ongoing pension from which to deduct the overpaid amount, or recovery from the ongoing pension is impractical due to size or duration of the recovery required, an invoice will be arranged by the LGSS Pensions to recover the overpayment which is greater than £250.00 in value.

9. Managing overpayments of pension following an incorrect rate of pension being paid by the LGSS Pensions and it can be said that the member cannot have known of the overpayment

9.1 The table below illustrates how an overpayment of a member's pension can occur without the member being aware. It should be noted that the table below is not an exhaustive list;

	Type of overpayment	**How overpayment has occurred**
1	Administration error upon calculation and notification of benefit entitlement (includes dependants' pensions)	Incorrect (overstated) rate of pension input onto payroll record and member informed in writing of the, incorrect, rate of pension to be paid.
2	Incorrect level of Guaranteed Minimum Pension (GMP) being paid	New information from HMRC leads to a revised rate of GMP to be used which, due to the different way cost of living increases are applied to GMP and the excess over GMP, means that, overall, a lower level of pensions increase should have been paid.
3	Pensions Increase	Pensions Increase inaccurately applied to the elements of a pension in payment.

9.2 In these circumstances the Scheme Manager will generally seek to recover monies that are greater than £250.00 (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 £250.00 (gross) or less has been deemed as uneconomical to pursue due to the administrative time involved.

9.3 Where practical, the amount will be recovered from the scheme member's ongoing pension as this allows for the appropriate adjustment for tax. The pension will also be reduced to the correct level for the next available monthly pension payment after a 6 week notice period. The scheme member will be notified in writing of the error and the course of action to be taken.

9.4 Where there is no ongoing pension from which to deduct the overpaid amount, or recovery from the ongoing pension is impractical due to size or duration of the recovery required, an invoice will be arranged by LGSS Pensions to recover the overpayment which is greater than £250.00 (gross) in value.

10. Discretion to write off overpayments

10.1 For all scenarios mentioned above, the Scheme Manager has the ability to exercise discretion in the event of legal reasons and/or exceptional circumstances and to ensure no individual is unfairly treated. If pursuing recovery of an overpayment was to cause significant distress and/or if there are legal reasons as to why the overpayment may not be recovered (in whole or in part) this would be taken into account as would the cost effectiveness of recovery. All applications made to write off of an overpayment will be investigated on a case by case basis and final decision will be made by the Scheme Manager.

10.2 The Scheme Manager has discretion to write off any amount under £250.00 (gross) in line with HM Revenue and Customs authorised payments limits and the analysis of the cost effectiveness of pursuing the claim conducted.

11. Recovery

11.1 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 a Scheme Manager 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.

11.2 Therefore the Scheme Manager 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).

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

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

12. Length of time to recover overpayment

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

13. Claims of inability to repay overpayments

13.1 In cases where it is claimed that an overpayment cannot be repaid, LGSS Pensions will enter into negotiations with the individual overpaid/their representatives or next of kin and an analysis of the cost effectiveness of pursuing the overpayment will be undertaken on a case-by-case basis. For large overpayments, where appropriate the Scheme Manager will seek legal advice. This approach will reduce the number of Internal Dispute Resolution Procedures applications and referrals to the Pensions Ombudsman. For any cases that do reach the Pensions Ombudsman, the Scheme Manager would have demonstrated engagement and negotiation with the complainant.

14. Monitoring repayments

14.1 In cases where recovery is not being made through the pension payroll and an invoice has been raised, the responsibility for chasing the payment rests with the LGSS Debt Recovery Team. If a final reminder is issued, officers are notified and a decision is made by the Scheme Manager as to whether to take legal action, taking into consideration the amount and circumstances against the potential of legal action.

15. Reporting to HM Revenue and Customs and effects on the Authority and individual

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

15.2 Regulation 13 says 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;
- Scheme Manager believed the recipient was entitled to the payment and;
- Scheme Manager believed the recipient was entitled to the amount of pension that was paid in error.

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

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

15.5 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.

15.6 Payments made in the period between notifying the member of an overpayment and the point at which the correction to the right level of pension is made will be regarded under the above legislation as an unauthorised payment. If the total amount of pension paid at the incorrect rate from point of notification to date of reduction to the correct rate is greater than £250 (gross) it would be subject to tax charges 1) and 3) and possibly 2 as set out in section 17.5.

16. Prevention

16.1 The Scheme Manager has in place processes in order to minimise the risk of overpayments occurring.

16.2 The National Fraud Initiative is conducted every two years; it compares files of pensioners with the Department for Work and Pensions database of the deceased and highlights matches for investigation. The Scheme Manager actively participates in this initiative.

16.3 The Scheme Manager participates in overseas life existence checks to ensure only legitimate pensions are being paid and to reduce the likelihood of fraudulent activity.

16.4 A report is run periodically on the pension administration system to identify individuals in receipt of a child’s pension, further investigations are then carried out for children that are identified as over the age of 18 to ensure they are still entitled to receive a pension.

16.5 All correspondence sent to scheme members includes reminders that LGSS Pensions must be advised of changes in circumstances or the death of a scheme member. LGSS Pensions also investigates any returned pensioner payslips and pension payments returned by banks and building societies to ensure the welfare of the scheme member and to protect the scheme.

16.6 Officers have a robust system in place for identifying changes to the payroll that need to be processed for a particular payroll month. The process incorporates payroll deadlines and ensures changes are made in a correct and timely manner. This would be in circumstances such as a change from a short term dependant’s pension to a long term pension.

Appendix 1 – Limitation Period Examples

Scenario	Limitation Period	Overpayment Period which can be claimed*
• Overpayments began in April 2008 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2010 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made for period between April 2008 and August 2010 • Formal claim** for recovery made in January 2015 (the Cut Off Date as referred to in *Webber v Department for Education*)	• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6 year period after the Discovery Date • Claims are therefore valid and should proceed	• Overpayments back to when they began in April 2008 until August 2010 may be claimed
• Overpayments began in April 2003 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in November 2009 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made from April 2003 to November 2009 • Formal claim for recovery made in December 2011 (the Cut Off Date as referred to in *Webber*)	• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6 year period after the Discovery Date • Claims are therefore valid and should proceed	• Overpayments back to when they began in April 2003 until November 2009 may be claimed
• Overpayments began in January 1999 (the first Mistake Date) • Overpayments discovered or could have been discovered with reasonable due diligence in September 2016 (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) • Overpayments made for the period from January 1999 to September 2016 • Formal claim for recovery made in February 2017 (the Cut Off Date as referred to in *Webber*)	• No issues in principle with the Limitation Period as formal claim for recovery commenced within 6 year period after the Discovery Date • Claims are therefore valid and should proceed	• Overpayments back to when they began in January 1999 until September 2016 may be claimed
• Overpayments began in April 2006 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2009 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made for period between April 2006 and August 2009	• Issue with the Limitation Period as formal claim for recovery commenced more than 6 years after the Discovery Date • Claims are therefore out of time and should not proceed	• Overpayments cannot be claimed back as the formal claim for recovery was made more than 6 years after the Discovery Date

• Formal claim for recovery made in January 2017 (the Cut Off Date as referred to in Webber)		
• Overpayments began in April 2006 (the first Mistake Date) • Overpayments discovered, or could have been discovered with reasonable due diligence, in August 2009 (the Discovery Date under Section 32 of the Limitation Act 1980) • Overpayments made for period between April 2006 and August 2016 • Formal claim for recovery made in January 2017 (the Cut Off Date as referred to in *Webber*)	• Issue with the Limitation Period as formal claim for recovery commenced more than 6 years after the Discovery Date • Claims for overpayments between April 2006 and January 2011 are therefore out of time and should not proceed • However, as each monthly overpayment is a separate overpayment, the effect of the Webber case is that overpayments made in the 6 years prior to the Cut Off Date (i.e. the overpayments made in February 2011 to August 2016) can be recovered	• Overpayments for the period April 2006 to January 2011 cannot be claimed back as the formal claim for recovery was made more than 6 years after the Discovery Date • Overpayments for the period February 2011 to August 2016 may be reclaimed.

* while 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 scheme 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 HM Revenue and Customs '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 accrued inappropriately 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 6 months of the member's death providing the payer was reasonably unaware the pensioner had died.

Clearly then, once the 6 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 6 months after death were made in error.

Genuine error - example 2

The tax rules normally require that a pension being paid to a dependent who is 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 allow for the continuation of their pension after that time, for example because of a disability, then the payer must make adequate arrangements to stop the pension in time. To this end they may give a clear and timely warning to the bank to stop payments from the necessary date but it can happen that the bank fails to act on those instructions and payments continue to be made in error.

In both of these examples, if the error was spotted and rectified (pension overpayments were repaid) as soon as reasonably possible, the inadvertent pension instalments (in the case of Example 1, only in respect of the instalments paid after the 6 month limit where the conditions otherwise apply) would not be unauthorised member payments.

However, there would be an unauthorised member payment if, despite the error being spotted, it is decided the repayment of the inadvertently overpaid pension instalments will not be pursued or the scheme does attempt recovery (in the case of Example 1, only in respect of the instalments paid after the 6 month limit where the conditions otherwise apply) but is unsuccessful and eventually decides to write off the overpayment (even though the decision might be taken on administration costs grounds or out of sensitivity). The exception to this will be if - as may often be the case - one of the categories of authorised payments introduced by the Registered Pension Schemes (Authorised Payments) Regulations 2009 can then be looked to in relation to payments made in genuine error but left in place.
The date of the unauthorised payment for the purpose of having to make a report of that payment would be 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, as the case may be.
Where the overpayment is not pursued or, otherwise, not successfully pursued and the total of such overpaid pension instalments paid after 5 April 2006 (overpaid instalments paid before 6 April 2006 do not count for this purpose) to, or in respect of, a particular member does not exceed £250:

- for its own reasons of cost administration, under its Collection and Management powers, HM Revenue & Customs will not seek to collect the tax that, in strictness, 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 HM Revenue & Customs, and

- the unauthorised payment does not have to be returned on the recipient's Self-Assessment tax return or, otherwise, be notified to HM Revenue & Customs.

If the aggregate overpayment exceeds £250, then all of the overpayment is chargeable as an unauthorised payment (i.e. one cannot deduct £250 as if it were an allowance, which it is not).

For this purpose, the £250 threshold applies to the aggregate of the overpayments actually received by, or in respect of, the member.

Where the conditions would otherwise apply in respect of pension instalments paid later than 6 months after the death of a pensioner except that the pension instalments have been paid later than 6 months after the pensioner's death, the £250 threshold applies in respect of the aggregate of the pension instalments paid after the expiry of the 6 month time limit only. The pension instalments paid up to the 6 month time limit would not be.

Overpayment of lump sums

The conditions described above apply equally where an overpayment of a lump sum occurs, such as a pension commencement lump sum or serious ill-health lump sum. So the limit of £250 will apply, but any lump sum in excess of that amount, where recovery cannot be made, will be an unauthorised payment to the extent that the amount is not an authorised payment.

For example, a pension commencement lump sum of £100,000 is due to be paid under the scheme rules, but £105,000 is paid in error. The scheme administrator is unable to affect a recovery of the excess. Under the tax rules, the pension commencement lump sum of £100,000 is the permitted maximum, so the whole excess of £5,000 is an unauthorised payment (i.e. one cannot deduct £250 as if it were an allowance, which it is not).

Note that a payment of a lump that is intended to be a pension commencement lump sum but ends up 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 6 months before and ending 12 months after the member becomes entitled to the lump sum and linked pension. However, due to an error within the administration department of the pension scheme, the lump sum payment is not made by that deadline. If the lump sum is paid after the deadline it will not be a pension commencement lump sum and (unless it falls within the definition of one of the other authorised lump sums) will be an unauthorised member payment.