Durham County Council Pension Fund

Debt Management and Write-Off Policy

Introduction

Durham County Council, in its role as Administering Authority to the Durham County Council Pension Fund is committed to providing a quality service to its customers in the most efficient and cost-effective way. A key aspect of this is the arrangements it has in place to manage the invoicing, collection and recovery of money owed to the Pension Fund.

Purpose

The purpose of this policy is to ensure compliance with regulatory and legislative requirements and to provide assurance to the Fund's Stakeholders that it has effective processes in place to aid the management of debt and provide a framework by which debt recovery processes will operate. It aims to:

- Provide assurance that the Fund manages debtors in a cost-effective manner and conducts fair recovery practises.
- Ensure that fair and equal consideration is given to individual circumstances and their ability to pay; to enable identification of those who will not pay, rather than those who cannot pay.
- Define the process of debt management within the Pension Fund.
- Define the process for the approval and management of write-offs.
- Ensure that all debts are managed in accordance with legislative provisions and best practise.

Scope

The policy applies to:

- All current and former scheme members
- Executors of the estates of deceased scheme members
- Beneficiaries of scheme members
- Scheme Employers and Admission Bodies
- Former Scheme Employers and Admission Bodies
- Pension Fund staff
- The Pensions Committee and Local Pensions Board

Types of Debt

This policy covers all debt and sums of monies owed to the Pension Fund, including, but not limited to:

- Overpayments of pension and lump sum benefits
- Overpayments arising due to the death of a scheme member
- Overpayment of dependant pensions
- Overpayments due to scheme employer error
- Overpayments due administration error
- Employee and Employer contributions
- Employer deficit contributions
- Pension Fund strain costs/capital costs
- Unfunded pension recharges
- Employer actuary fees and recharges

- Pension Fund miscellaneous debt

Approach

The Pension Fund will generally seek to recover all debt wherever possible, unless there are legal reasons and/or other circumstances which mean that the debt may not be recovered in whole, or in part. Each case will be assessed individually, and the Fund may take into consideration factors such as legally unrecoverable debt, reputational damage and potential to cause distress.

The type of recovery action taken will be dependent on the type of debt. Whichever action is taken, it is important that it is taken promptly before the debt can accrue. The larger the debt becomes, the more difficult it will be to recover or for the debtor to meet the payments required. The debtor is always encouraged to contact the Pension Fund as soon as they encounter any problem in making payment.

Overpayments of pension benefits and/or death benefits

Where an overpayment of pension or lump sum benefit occurs, the Fund will initially seek to recover any monies owed from future or further benefits due to the member, or deceased’s estate. This includes recovering pension overpaid to a deceased member from their survivor’s benefits, or from any death grant due.
If recovering from future pension payments, the Fund will always aim to recover over the shortest possible time period. Generally, the Pensions Team will always seek to recover any debt over £250.

The Limitation Act 1980
Under the Limitation Act 1980, if a 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.

However, 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 does not apply and Funds can reclaim all overpayments made.

Unauthorised Payments
Any overpayment of pension written off is deemed an unauthorised payment unless it falls within regulations 13 or 14 of the Registered Pension Schemes (Authorised Payments) Regulations 2009. 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 Tax Guide and the aggregate overpayment is less than £250, if this is waived by the Fund this is still classed as an unauthorised payment if relating to a period of more than 6 months following a pensioner's death, but does not have to be reported to HMRC, and HMRC will not seek to collect tax charges on it.

Where the overpayment is over £250, the Fund is able to write off any amount as long as the overpaid pension relates to a period of less than 6 months following the death. HMRC will not seek tax charges on these amounts.

Any overpayment which is written-off amounting to £250 or more and relating to a period of 6 months or more from the date of death, **is** classed as an unauthorised payment.

Where an overpayment is an unauthorised payment, both the individual member and the Fund will have to pay additional tax charges. These are as follows:

- The unauthorised payments charge - Where the unauthorised payment is made to or for a member, the member 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 or their representatives.

Durham County Council Pension Fund will apply to be discharged from the tax charge where it would not be just and reasonable for them 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.

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

Monthly Contributions, Deficit Contributions, Strain Costs and Unfunded Pensions

The Pensions Act 1995 and Regulation 16 of the Occupational Pension Scheme Regulations 1996 stipulate that monthly contribution payments must be paid to, and received by, the Pension Fund no later than the 22nd day of the month following the payroll deduction (or 19th if paying by cheque) Pensions and Finance Officers closely monitor contribution payments to ensure all Scheme Employers adhere to these regulations. Failure to make payment of contributions may result in the Fund reporting the Scheme Employer to The Pensions Regulator, who may investigate and potentially issue a fine to the Scheme Employer.

Employer deficit contributions are invoiced annually and are payable by the end of the financial year in which they are due.
Unfunded pension recharges and employer strain costs are invoiced each month with a payment term of 30 days.
All of these types of debt will be chased within the usual debt recovery process. However, any unpaid amounts of this type will be reported in the next Fund Valuation and will have a negative impact on the Scheme Employer's funding position, resulting in a less favourable future employer contribution rate.

Recharges and Miscellaneous Debt

Where the Fund invoices a company who is not a participating employer, invoices will be raised with a payment term of 30 days. If payment is not made, the Council's full debt recovery process will be followed. If the process is exhausted and the debt remains unpaid then enforcement proceedings may be initiated.
These types of debt could include invoices to other Local Authorities for unfunded pension recharges and recharges of Actuary Fees.

If the debt is owed by an Admission Body, who received a guarantee from a participating Scheme Employer, the Fund may seek to recover the debt from the relevant Scheme Employer, if the Admission Body fails to make payment.

Prevention

The Fund has numerous processes in place to minimise the risk of overpayments occurring in the first instance.

- The Fund actively participates in the biannual National Fraud Initiative which conducts a comparison of the Fund's database with the Department for Work and Pension's database of deceased individuals.
- The Fund commissions a monthly mortality screening service which compares the Fund's database to a national register of deaths.
- Participation in the government's 'Tell Us Once' service, which allows bereaved families to report a death to most government organisations via the registrars' service.

All three of the above exercises are designed to eliminate or reduce overpayments occurring following the death of a scheme member.

Other preventative exercises include:

- The Fund conducts annual life certification with overseas pensioners in order to keep in touch and not lose contact with those living abroad. This ensures pensions are still being paid correctly and is particularly important due the restrictions on recovering debt from those living overseas.
- Pensions Staff perform monthly investigations into all returned communications and returned pension payments. Any future payments are immediately suspended until investigations are completed, or the Fund receives contact from the scheme member. This is to ensure the welfare of scheme members and to protect the Fund from possible overpayments.
- Annual payroll reconciliation between the pensions system and payroll system.
- Monthly reconciliations by Pension Fund Accounting Team who investigate all Pension Fund transactions.
- All pension calculations are processed through a task management system, with Pensions Officers checking and authorising calculations produced by Pensions Assistants. Subsequent payments are authorised by the Pension Team Leaders.

Write Off Policy

Aged debts will be monitored quarterly. This process will identify any debt which could be considered for write-off and will be reported to the Head of Pensions.

Enforcement proceedings will not normally be initiated as part of the standard procedure for any Pension Fund debt arising from an overpayment of pension to scheme members or deceased scheme members. Generally, only when recovery action has been attempted will the Fund consider writing-off debts and will take into consideration factors such as financial hardship, debtor vulnerability, reputational damage and distress.

If a debtor is traced following a write off, then consideration will be given to the debt being re-instated to enable recovery action to continue, if economically viable and within the statute of limitations.

Overpayments of pension benefits to current members

The Fund will only consider writing-off overpayments if there is a special circumstance. The usual approach will be to recover any amount of overpayment from future benefits.

Overpayments of pension benefits to deceased members

The Fund will not seek to recover any overpayment of pension to a deceased member, where there are no further death benefits due, and the amount of debt is less than £250.

If recovery action has failed in its attempts, the Fund may consider writing off amounts over £250 where the overpayment related to a period of less than 6 months following a member’s death (otherwise an unauthorised payment tax charge will be payable)

The Fund may also consider reducing the amount of the invoice by writing off the first 6 months of overpayment but may continue to pursue any amount of pension paid after this.

Only if its then deemed uneconomical will the Fund then consider writing off any pension relating to a period after 6 months from death. Such a write-off is likely to incur an unauthorised payment tax charge.

Scheme employer debts
Recovery action should be exhausted, however any debts remaining unpaid at the end of a valuation period may be considered for write-off if the debt will be included in the Scheme Employer's Fund valuation and will negatively impact the Employer's funding position and their employer contribution rate.

The same approach may be taken for debt owed by an admission body, where the Scheme Employer has provided a guarantee.

Unreasonable to pursue recovery
In certain situations, the Fund may decide that it is 'unreasonable' to pursue a debt. This could be instances where debt is caused by admin errors where the recipient could be deemed as being reasonably unaware of the mistake. The circumstance which caused the debt will be considered and approved by the Head of Pensions.

Unrecoverable Debt

Pension Staff will need to mindful that certain debts are unrecoverable, for example:-

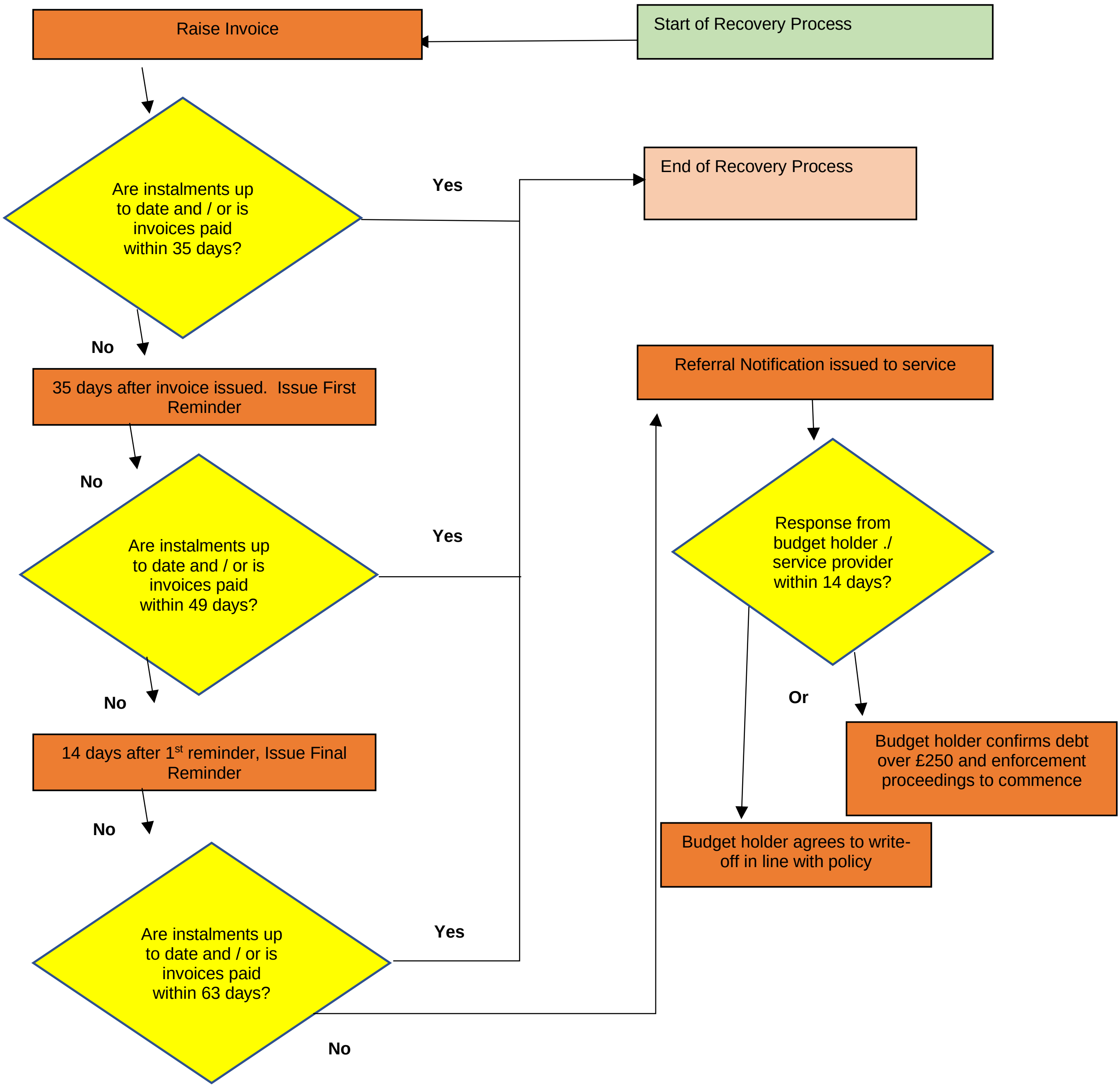
- Debt is over 6 years old – Statute barred (Limitations Act)
- Bankrupt – Bankruptcy order prevents action.
- Abroad – Recovery action is not possible for overseas debtors.
- Insolvent – Liquidation/Administrative/Receivership – company ceasing to trade.
- No trace – enforcement agents unable to trace debtor.
- Deceased – no funds or estate to clear debt.
- Uneconomical – enforcement proceedings will have no value.

Responsibility and Write-Off Approval

Within the Council's constitution the authority to write-off Pension Fund debts sits with the Corporate Director of Resources, who delegates this authority to the Head of Pensions (LGPS).

Amounts up to £250 following bereavement will automatically be written off where there are no further benefits due from the Fund. Amounts of Pension Fund debt under £2,500 can be authorised by the Pensions Team Leader, providing this does not result in an unauthorised payment tax charge. Any amounts greater than this, or, any debt write-off which results in a tax charge, must be authorised by the Head of Pensions.

Invoiced Pension Debtors Flow Chart (Company)



Invoiced Pension Debtors (Deceased) Flow Chart