

## **FORFEITURE AND RECOVERY OF OVERPAYMENTS**

### **Report of the County Treasurer**

**Recommendation:**               **That the Committee notes the contents of the report.**

#### **1. Introduction**

- 1.1. It is rare for cases of fraud to be an issue in the course of administering the pension scheme, in particular where benefits are fraudulently claimed. Scheme members may have committed an offence whilst still in employment with a scheme employer and the LGPS regulations do make some provision for the scheme employer to reclaim overpaid benefits or recoup losses due to fraud, criminal offence or misconduct.

#### **2. Forfeiture**

- 2.1. The Local Government Pension Scheme (LGPS) Regulations 2013 sections 91-95 allow an application for pension forfeiture to be made if the scheme employer has suffered a financial loss as a result of the member of the LGPS committing an offence in connection with their employment, and they subsequently leave that employment..
- 2.2. If the scheme member is convicted of a relevant offence, under Regulation 91 the former scheme employer can apply to the Secretary of State for a Forfeiture certificate where the offence:
- A) was gravely injurious to the State or
  - B) is liable to lead to a serious loss of confidence in the public service

A relevant offence is defined as 'an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment'.

Where a forfeiture certificate has been issued by the Secretary of State, the scheme employer can direct that any rights under the Pension Regulations be forfeited.

The application for a forfeiture certificate must be made within a period of three months beginning with the date of conviction. A direction can only be given if the loss cannot in the first instance be recovered under the provisions made in Regulation 93, unless it can be shown that the time taken to make a recovery under that route is unreasonable or incurs a disproportionate cost.

- 2.3 A discretion under regulation 93 allows a scheme employer to recover money owing to it where a person has left its employment, as a result of grave misconduct, or, of a criminal, negligent or fraudulent act and owes money to the scheme employer arising out of such misconduct.

In such cases, an application is made to the Fund Actuary who will produce a forfeiture certificate indicating the reduction in pension rights necessary to repay the amount lost.

The scheme employer must give the member at least three months notice of the amount to recover and the effect on their benefits.

### **3. Overpayments due to mistakes**

- 3.1 Overpayment made due to administration errors can and unfortunately do occur albeit rarely. There are no provisions as such in the LGPS regarding recovery of overpaid benefits, only the fact that the members are only entitled to benefits as per the regulations.
- 3.2 The general guideline is that the Ombudsman would usually expect any recovery of an overpayment to take place over no shorter period of time than the mistake has gone undetected.
- 3.3 Under Section 5 of the Limitation Act 1980, a claim to repayment of money paid by mistake cannot be brought later than six years after the right to make that claim first arose (i.e. when the mistaken payment was made). However, under section 32 of that Act, that six year period will not start to run until the claimant discovers the mistake for the first time, or could (with reasonable diligence) have discovered it
- 3.4 Under S32 Limitation Act 1980, where any fact relevant to the cause of action has been deliberately concealed from the Claimant by the Defendant, the 6 year period for bringing a claim does not start until the Claimant has discovered the concealment, or could have done so with reasonable diligence.

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Electoral Divisions: All

Local Government Act 1972

List of Background Papers - Nil

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