



**BRIEFING PAPER**

Number CBP-4919, 25 April 2018

# Public sector pensions: GMP-related overpayments

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## Summary

In December 2008 the Government announced incorrect payments had been made affecting some 95,000 (or 5 per cent) members of five public service pension schemes. Overpayments amounting to an estimated £126 million had been made over 30 years. A small number of people had been underpaid. The reason was that Guaranteed Minimum Pension (GMP) entitlement had been incorrectly recorded, with the result that the schemes did not apply correct annual increases.

The UK Government decided not to recover money already paid to individuals but to correct ongoing payments from April 2009. This meant that “some pensioners would have their payments reduced and others will see increases in their payments in 2009 which are less than the annual inflation uprating.” Those who had been underpaid the arrears in full, with interest. ([HC Deb, 16 December 2008, c111-2WS](#))

The Scottish Government decided to protect current levels of pension for Scottish local government, police and fire pensioners but was unable to do so for members of the teachers and NHS schemes ([Scotland Government Press Release, ‘Public pension overpayments’, 16 December 2008](#)).

The NAO published the report of its [Review of Errors in Guaranteed Minimum Pension Payments](#) on 16 July 2009. It said that no-one had taken responsibility for overseeing the whole process and that it had therefore broken down in a number of ways:

Despite the complexity of the administrative processes involved and the known history of problems – some of the parties involved raised concerns about the process as far back as the mid 1990s – few checks and controls were in place, which meant that missing information on the Guaranteed Minimum Pension went undetected, in some cases for over 20 years. No one party has taken responsibility for overseeing the whole process, ensuring it runs smoothly and resolving errors. The process therefore broke down in a number of ways.

A GMP reconciliation exercise is currently underway and is expected to end by December 2018. Further overpayments are being identified as part of this. The decision on whether to recover is one for the relevant government department or local authority:

Where a ministerial department is responsible for the appropriate pension scheme, it is for them to determine, in accordance with [Managing Public Money](#) (July 2013, Annex 4.11), whether and how overpayments are to be recovered. If departments determine that it is not feasible to recover overpayments, they will need to bring the resultant losses to parliament’s attention. In the case of the local government pension scheme, decisions on whether and how to recover overpayments are matters for the relevant local authority ([PO 133859, 29 March 2018](#)).

Private sector schemes in which people have accrued GMP rights are also identifying incorrect payments due to the GMP reconciliation exercise.

# 1. Background

## 1.1 What is a GMP?

The State Pension for people who reached State Pension age before 6 April 2016 had two tiers - the basic State Pension (which was flat-rate and dependant on individuals' NI record) and the additional State Pension – which was partly earnings-related.

It was possible to contract out of the additional State Pension into an occupational pension scheme that met set criteria. Where an employee was contracted-out, they and their employer paid a reduced rate of National Insurance (NI), to reflect the fact that they were foregoing additional State Pension rights for that period.

Between 1978 and 1997, contracted-out schemes were required to provide a Guaranteed Minimum Pension (GMP). Since 1997, a different test has applied but contracted-out schemes still have to provide a GMP for rights accrued between 1978 and 1997.<sup>1</sup>

The option to contract-out having ended for defined contribution pension schemes in April 2012, it was ended for salary-related pension schemes from April 2016 when the new State Pension was introduced.<sup>2</sup>

## 1.2 How are GMPs increased annually?

Pension schemes are required to index GMP rights accrued between 1988 and 1997, in line with prices, subject to a 3% cap. The increase required by schemes each year is provided for in a Statutory Instrument – the *Guaranteed Minimum Pension Increase Order*.

There is a link between the GMP and the additional State Pension in that, when a person reaches pensionable age, the total amount of GMP is subtracted from the total amount of additional state pension built up between 1978 and 1997, and any net amount is paid. This is referred to as a 'contracted-out deduction'. It reflects the fact that reduced National Insurance (NI) was paid during the period of contracting out in return for meeting legislative requirements. This calculation is performed each year that the pension is payable.

So, although schemes are not required to provide increases on GMP rights accrued between 1978 and 1988, or in excess of 3% on rights accrued between 1988 and 1997, the additional State Pension built up during that period is subject to increases. When the contracted-out deduction is subtracted, the remaining additional State Pension includes an increase linked to prices. The effect is that, an amount broadly equivalent to the GMP, but which is in fact additional State Pension is subject to an increase.<sup>3</sup>

For more detail, see

Library Briefing Paper  
SN-04956  
[Guaranteed Minimum Pension \(GMP\) increases](#) (February 2017)

<sup>1</sup> *Pension Schemes Act 1993*, Part 3; *Social Security Contributions and Benefits Act 1992*, s4

<sup>2</sup> [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(SI 2011/1245\); Pensions Act 2014](#), s24 and Sch 13 See RP 13/37 [Pensions Bill](#) (June 2013), s2.4

<sup>3</sup> [HC Deb, 6 January 2014, c51W](#)

## 1.3 How do public service pensions take account of this?

Public service pensions are increased under powers in the *Pensions (Increase) Act 1971* and the *Social Security Pensions Act 1975* (s59 and 59A). This provides for them to be increased each year by the same percentage as additional pensions (State Earnings Related Pension and State Second Pension) i.e. in line with prices – currently estimated using the Consumer Prices Index.<sup>4</sup> However, there are arrangements to prevent double pension increase on the GMP element:

11.8 To prevent double pensions increase on the GMP element, section 59(5) of the 1975 Act limited public service pensions increase to the part of the public service scheme pension which exceeds the GMP (which is either in effect uprated by DWP, or, in respect of GMP earned between 6 April 1988 and 5 April 1997, wholly or partly uprated by the scheme under general occupation pensions legislation). Where the Additional State Pension paid by DWP equals or exceeds the GMP element in payment in a public service pension, the GMP entitlement is deducted from the public service pension before any pensions increases are applied at the next annual uprating.<sup>5</sup>

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<sup>4</sup> HM Treasury, [Guidance on the operation of pensions increase legislation for public service pension schemes](#), April 2016

<sup>5</sup> Ibid

## 2. Overpayments identified in 2008

In debate on the Queen's speech on 15 December 2008, the then Liberal Democrat Treasury spokesperson Vince Cable said that he had been informed that overpayments had been made to members of public sector pension schemes. He asked for an explanation, details of the numbers involved and the approach the Government intended to take. The then Chancellor of the Exchequer, Alistair Darling, explained that people would not be required to repay money wrongly paid to them but that things would need to be "put right from next year."<sup>6</sup>

A more detailed explanation was provided the following day by the then Chancellor of the Duchy of Lancaster, Liam Byrne. He said that the GMP information for some public service pensioners had not been correctly recorded, with the result that their full pension had been index-linked, rather than the adjusted amount:

Public service pensions are uprated in April each year in line with the Retail Prices Index. The occupational pension scheme pays for all the uprating before state pension is claimed, but thereafter part of the uprating is paid with the state pension, depending on the GMP entitlement.

To enable the correct pension increases to be applied, pension scheme administrators need accurate GMP information derived from the individuals' National Insurance contribution record. Our investigations have revealed that in 95% of cases this information is correctly recorded. But, in some cases it is not. In those cases schemes have paid the annual increase on the full pension each year instead of on an amount adjusted to reflect the GMP entitlement.<sup>7</sup>

Home Office circular 031/2008 gave the following explanation for members of the Police Pension Scheme:

1. In 2008 it became apparent that several public service pension schemes had been overpaying a minority of pensions because of the incorrect indexation of the Guaranteed Minimum Pension (GMP) element. In some cases the overpayments go back several years.

### **Why did this happen?**

2. Public service pensions are contracted out of the State Second Pension (and SERPS before it). To allow for this, there needs to be a way of ensuring that pensioners will be at least as well off in their occupational schemes as they would have been under S2P/SERPS. Between 1978 and 1997 the way this was done was to require the schemes to provide a Guaranteed Minimum Pension (GMP).

3. Public service pensions are uprated in April each year in line with the RPI. Public servants tend to retire before State Pension age (SPA). The scheme pays for the all the uprating before SPA is

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<sup>6</sup> [HC Deb, 15 December 2008, c856](#)

<sup>7</sup> [HC Deb, 16 December 2008, c111-2WS](#)

reached but thereafter part of the uprating is paid with the State Pension, depending on the GMP.

4. To enable correct pension increases to be applied when an individual reaches SPA, the scheme or its administrator use GMP information supplied by HMRC. Investigations have revealed that schemes do not always have this information recorded and as a result have, in some cases, been applying a higher uprating than they should have done.

#### **Source of the error and putting it right**

5. The precise source of the errors is not always the same for each individual. But the interaction between the State Pension system and occupational pension schemes is particularly complex, with a split responsibility for uprating. Hence it is vulnerable to error unless the procedures for passing information are robust. The process by which pension schemes receive GMP information is complex and is dependent on timely actions being completed by a number of organisations and individuals. The Department for Work and Pensions, HMRC, employers, pensions administrators, pension payroll providers and pension scheme members themselves all need to take action to ensure that schemes receive notification of GMP information at the right time so that they can apply the correct increase to individuals' pensions.

6. It seems clear that the problem has no single cause. Further work is required before we can be confident that the process, from start to finish, is working properly. This will include a review of the process and policy for GMP uprating in public service schemes.

#### **The extent of the problem in the police pension scheme**

7. Indications are that the public service pension schemes which are not administered centrally (the Firefighters Pension Scheme, the Local Government Pension Scheme and the Police Pension Scheme) are not affected by this problem to the same extent as the centrally-administered schemes because of the systems which they have in place to check an individual's GMP entitlement. Information provided by police authorities bears this out: many have reported that they have no pensioners who have been overpaid because a GMP record is lacking. However, regardless of the procedures in place it cannot be assumed that there are no problems and police authorities which have not already done will need to carry checks to confirm whether they have any cases of overpayment.<sup>8</sup>

Information was also provided for members of other schemes:

- [Teachers' Pension Scheme](#)
- [NHS Pension Scheme](#)
- [Armed Forces Pension Scheme](#)

And the Pensions Advisory Service provided some information on its [website](#).

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<sup>8</sup> Home Office circular 031/2008; See also NHS Pensions, '[Your Pension Payments leaflet](#)', 16 December 2008

## 2.1 How did this happen?

The NAO was asked by the Government to conduct “a review of the end-to-end process to pin-point accountabilities.” It found a complex and fragmented administrative process, prone to error. No one party had taken responsibility for overseeing the whole process, ensuring it ran smoothly and resolving errors. It had therefore broken down in a number of ways:

A review by the National Audit Office of overpayments to public service pensioners totalling £90 million has found a complex and fragmented administrative process, prone to error, and for which there is no clear overall responsibility. The process requires effective joint working between the parties involved (the five public service pension schemes, HM Revenue and Customs (HMRC), and the Pension, Disability and Carers Service (PDCS)) but they have failed to achieve this.

The overpayments, and a smaller number of underpayments, have affected over 90,000 retired soldiers, doctors, nurses, teachers and civil servants. The errors occurred because the pension schemes did not have Guaranteed Minimum Pension information recorded for these members, which meant that the schemes did not apply correct annual cost of living increases [...]

Despite the complexity of the administrative processes involved and the known history of problems – some of the parties involved raised concerns about the process as far back as the mid 1990s - few checks and controls were in place, which meant that missing information on the Guaranteed Minimum Pension went undetected, in some cases for over 20 years. No one party has taken responsibility for overseeing the whole process, ensuring it runs smoothly and resolving errors. The process therefore broke down in a number of ways.<sup>9</sup>

## 2.2 How many people were affected?

The Government’s initial estimate was that 95,000 people across five schemes had been overpaid an estimated £126 million:

...I wish to alert the House to new checks which have uncovered a problem with payments to an estimated 5% of public service pensioners paid, by successive administrations dating back as much as 30 years, by the NHS, Teachers, Armed Forces, Judicial and Civil Service pension schemes, as a result of the incorrect indexation of an element known as the Guaranteed Minimum Pension or GMP...

The five schemes mentioned are administered by central government departments. Scheme administrators and HMRC have now checked more than 2 million pension records.

An estimated 95,000 people are currently affected across the five schemes. This represents around 5% of the total number of pensioners in those schemes. The total amount of overpayments made by successive administrations over the 30 years since 1978 to these pensioners is estimated at £126m. There are separate NHS and teachers schemes in Scotland and Northern Ireland and a separate civil service scheme in Northern Ireland. Separate

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<sup>9</sup> NAO Press Release, 16 July 2009, [Review of errors in Guaranteed Minimum Pension Payments: NAO. Review of Errors in Guaranteed Minimum Pension Payments, July 2009](#)



statements are being made in respect of these schemes by the Scottish and Northern Ireland Executives today.<sup>10</sup>

The NAO found that over 90,000 public service pensioners had been affected. 31,208 would receive a lower pension in 2009-10 than in 2008 as a result:

5 At the time of our report, the five pension schemes had identified overpayments totalling some £90 million to 85,509 people, and also a much smaller number of underpayments (Figure 1). The total number of people affected so far represents six per cent of scheme members over state pension age. The schemes are working to resolve some 26,000 further cases, which are not included in these figures, and expect final data to be available by August 2009.

6 The majority of people affected were overpaid and their corrected pensions for 2009-10 are lower than they would have expected. Despite the five per cent annual cost of living increase, 31,208 of the overpaid pensioners are receiving a lower pension in 2009-10 than they did in 2008-09. The smaller number who were underpaid are receiving, in 2009-10, money to which they were entitled in previous years.<sup>11</sup>

A table on page 5 of the report gave a breakdown by scheme. Its press release said:

The overpayments, and a smaller number of underpayments, have affected over 90,000 retired soldiers, doctors, nurses, teachers and civil servants...

The errors, which affect six per cent of pensions being paid to members over state pension age in the five schemes, occurred over many years. So far, the pension schemes have identified 85,509 individual overpayments totalling £90.2 million, and 4,917 underpayments totalling over £191,000. The pension schemes are still working to resolve more than 26,000 cases and so these figures are likely to rise.<sup>12</sup>

## 2.3 How did Government respond?

Liam Byrne explained that it was unlikely to be cost effective to recover amounts already overpaid. However, ongoing payments would be corrected from April 2009:

The advice of the Accounting Officers of the five schemes is that it is unlikely to be cost-effective to attempt recovery of these monies from individuals. Correct pension payments will be ordered immediately from April 2009. This means that some pensioners will have their payments reduced and others will see increases in their payments in 2009 which are less than the annual inflation uprating.

Scheme administrators for the five schemes mentioned have written to all those pensioners affected and will write again with full details in the new year. Helplines to respond to their questions and concerns have been set up and advice and guidance has been placed on scheme websites. Support will include advising people

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<sup>10</sup> [HC Deb, 16 December 2008, c111-2WS](#)

<sup>11</sup> NAO, [Review of errors in Guaranteed Minimum Pension overpayments](#), July 2009

<sup>12</sup> NAO Press Release, 16 July 2009, [Review of errors in Guaranteed Minimum Pension Payments](#)

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to enquire what additional state benefits they may be entitled to.<sup>13</sup>

A small number of people had been underpaid. They would all “receive their pension arrears in full, with interest.”<sup>14</sup>

The Scottish Government announced that it would take action to protect current levels of pension for Scottish local government, police and fire pensioners but that it was unable to do this for members of the teachers and NHS schemes:

The UK Government has decided to correct the overpayment from April 2009, and some pensioners will see a fall in their pensions next year as a result.

The Scottish Government has vigorously lobbied UK Ministers to ensure no pensioner loses out as a result of errors that rest with others. However, on December 12, the Treasury refused consent for Scottish Ministers to amend the Scottish NHS and Teachers schemes in order to consolidate overpayments going forward.

Where decisions ultimately rest with Scottish Government – in relation to the Local Government, Police and Fire schemes – we will act to protect current levels of pension, while applying the correct increases going forward. Any past overpayment will be written off.

Helpline for NHS and Teachers’ pensioners 01896 892 463<sup>15</sup>

An estimated cost to the Scottish Executive was reported in the *Scotsman*:

Continuing to make the overpayments will cost the Scottish Government £6 million over ten years, which averages out at £600,000 a year. The UK government will also claw back £5 million from the Scottish Government for the overpayments.<sup>16</sup>

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<sup>13</sup> [HC Deb, 16 December 2008, c111-2WS](#)

<sup>14</sup> [HC Deb, 25 March 2009, c562W](#)

<sup>15</sup> [Scotland Government Press Release, ‘Public pension overpayments’, 16 December 2008](#); The Scottish Parliament’s decision in SSI 2009/184, SSI 2009/185 and SSI 2009/186

<sup>16</sup> Hamish Macdonell, ‘Public pension overpayments to remain for Scots, says SNP’, 17 December 2008

## 3. Post April 2016 -GMP reconciliation

The option to contract-out ended for defined benefit (DB) pension schemes from April 2016 when the new State Pension was introduced.<sup>17</sup> To support this, DB schemes have been required to conduct a reconciliation exercise to make sure that members' entitlements resulting from contracted-out employment are protected.<sup>18</sup> This involves checking their data on individual's contracting-out records with that help by HMRC by December 2018.<sup>19</sup>

**For more detail, see**

Library Briefing Paper CBP-[The new State Pension – background](#) (August 2016) section 5.8

### 3.1 Approach to overpayment recovery

Overpayments of public service pensions have been identified as a result of this exercise. Decisions on whether and how overpayments are to be recovered will be a matter for the relevant department or local authority, in line with Treasury guidance:

Where a ministerial department is responsible for the appropriate pension scheme, it is for them to determine, in accordance with [Managing Public Money](#) (July 2013, Annex 4.11), whether and how overpayments are to be recovered. If departments determine that it is not feasible to recover overpayments, they will need to bring the resultant losses to parliament's attention. In the case of the local government pension scheme, decisions on whether and how to recover overpayments are matters for the relevant local authority.<sup>20</sup>

The Cabinet Office has said that amounts already overpaid to Civil Service Pension Scheme members will not be reclaimed:

1.65 Work on the Guaranteed Minimum Pension reconciliation exercise, required as a result of the end of Contracting Out in 2016, continues. MyCSP has raised almost 200,000 queries (out of a possible 360,000) with HMRC for pensioner and deferred members. The review concluded that an estimated £22 million of overpayments have been made; these will not be reclaimed, consistent with the approach across the rest of the public sector.<sup>21</sup>

A [June 2017](#) note for Local Government Pension Scheme administering authorities recommended waiting "for evidence from the reconciliation exercise on the extent of overpayments. This would give more information on whether there will be value for money in recouping the overpayments." <sup>22</sup>

<sup>17</sup> [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(SI 2011/1245\); Pensions Act 2014, s24 and Sch 13](#) See RP 13/37 [Pensions Bill](#) (June 2013), s2.4

<sup>18</sup> [The Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No. 2\) Regulations 2015 \(SI 2015/1677\)](#); DWP consultation, [Occupational pension schemes: abolition of defined benefit contracting-out](#) May 2014

<sup>19</sup> [HMRC: pension schemes and reconciliation services](#); DWP, [Occupational Pension Schemes – abolition of defined benefit contracting-out. A consultation on draft Regulations](#), Public consultation, May 2014

<sup>20</sup> ['Public sector pensioners face cash clawback, FT adviser, 24 April 2018](#)

<sup>21</sup> Cabinet office, [Civil Superannuation Account 2016-17](#), HC 643, December 2017

<sup>22</sup> LGPS Administering Authority Information Note, [Contracted-out reconciliation: pensioner overpayments](#), June 2017

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The Scottish Public Pensions Agency said a decision would be made at the end of the reconciliation exercise in late 2018:

In common with public service schemes across the UK a number of overpayments are expected to be identified from the reconciliation exercise where current GMP data held by schemes is incorrect. This will have resulted in schemes paying too much annual indexation to affected pensioners where all or part of the GMP indexation has also been paid by DWP.

A similar exercise undertaken in 2008/09 identified schemes were found to be holding incorrect GMP data. Scottish Ministers chose to allow the pension in payment to remain unadjusted going forward for affected pensioners in the LGPS, Police and Firefighter schemes. This was achieved by introducing legislation that provided for a new scheme award known as an increased Pension Entitlement (IPE) which reflected the GMP related overpayment. It was not possible to introduce an IPE for either the Teachers' or the NHS scheme as this would have required HM Treasury consent which was not given.

Scottish Ministers have decided that a similar approach should be taken for GMP related overpayments that arise from the current reconciliation exercise. Again this means that affected pensions in the LGPS, Police and Firefighter schemes will see their existing level of pension maintained by the award of an IPE and regulations to provide for this award will be consulted on during 2018. However as in 2008/9 it will not be possible to apply an IPE to affected Teachers' and NHS pensioners as to provide a similar approach requires HM Treasury consent for the necessary legislative changes.

A decision on how any accrued overpayments will be handled will be decided by the scheme's Accountable Officer as soon as the total number and amount of overpayments are known. There may also be a small number of cases where the incorrect GMP data has led to an underpayment of pension. In these cases the affected pension will be corrected going forward with any arrears being paid to the pensioner.

SPPA will not be able to identify which pensioners are affected until the reconciliation exercise concludes in late 2018 so cannot communicate directly with affected members at this time. This will be done at the conclusion of the reconciliation along with a decision on how accrued GMP related overpayments will be managed. In the meantime the following Q&A aims to address some of the questions that may arise.

[Q&A: GMP overpayments arising from a scheme's reconciliation exercise](#)<sup>23</sup>

The trade union Prospect said there were good reasons for not reclaiming these overpayments. Many would have "spent the money already and they couldn't be expected to know that they were being overpaid at the time."<sup>24</sup>

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<sup>23</sup> SPPA website, [GMP overpayments arising from a scheme's reconciliation exercise](#)

<sup>24</sup> [Public sector pensioners face cash clawback](#), FT Adviser, 25 April 2018

## 3.2 Experience in the private sector

Schemes in the private sector in which people have accrued GMP rights are also identifying overpayments due to the GMP reconciliation exercise. An article in *FT adviser* said that: “as many as 43,600 pensioners could have to give back up to £50,000 already received from their company pensions as schemes update their data. Former Pensions Minister, Sir Steve Webb said the problem had arisen “due to data from 30 or 40 years ago coming from an era where it was submitted manually, and keyed in by somebody else.” According to the Pensions Administration Standards Association (PASA), 13 per cent of schemes in rectification are recouping the payments. Reasons for not recovering include the fact that people would not have known they were being overpaid and would have spent the money.<sup>25</sup>

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<sup>25</sup> [Thousands face demands for pension cash back, FT adviser, 7 March 2018](#)

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