

Ombudsman's Determination

Applicants	Mr and Mrs D
Scheme	Bic UK Pension Scheme (the Scheme)
Respondent	Trustees of the Bic UK Pension Scheme (the Trustees)

Complaint Summary

1. The complaint concerns the Trustees' decision to recover overpayments through recoupment from future pension payments following the Court of Appeal's decision in *BIC v Burgess* [2019] 051 PBLR 026 (**Burgess (CA)**).¹
2. The Trustees are seeking to recoup the sum of £31,413 from Mr D's pension, at a monthly rate of £121.76, over the period of 21 years and six months that the overpayment accrued (**Recoupment Plan One**).
3. The Trustees are also seeking to recoup £16,408 from Mrs D's pension, at a monthly rate of £62.62, over the period of 21 years and 10 months that the overpayment accrued (**Recoupment Plan Two**).

Summary of the Ombudsman's Determination and reasons

4. The complaint is partly upheld against the Trustees, I am satisfied that:-
 - 4.1. It is not equitable for the Trustees to recoup the overpayments that built up before 1 April 2020. Furthermore, Mr and Mrs D have a defence of laches to the recovery of the overpayments that built up to 31 March 2020. It follows that the Trustees shall refrain from taking any recovery action in respect of the overpayments of Mr D's pension that built up between 1 March 2000 and 31 March 2020, which amounts to £30,870.64. The Trustees shall also refrain from taking any recovery action in respect of the overpayments of Mrs D's pension that built up between 1 October 1999 and 31 March 2020, which amounts to £16,095.10.
 - 4.2. Mr and Mrs D have sustained non-financial injustice (distress and inconvenience) as a consequence of the maladministration by the Trustees in

¹ The High Court decision on the question of whether the pension increases were validly granted was reversed by the Court of Appeal in *BIC v Burgess* [2019] 051 PBLR (026) on 10 May 2019.

making the overpayments. Mr D is entitled to a distress and inconvenience award of £1,000; Mrs D is entitled to an equivalent award.

Detailed Determination

Material facts

5. Mr and Mrs D were employed by Bic UK Limited (**BIC UK**) and are receiving their pension from the Scheme.
6. The factual background to *Burgess (CA)* and the impact of the CMG Decision² on the question of whether the Ombudsman is a competent court³ is set out in the Pensions Ombudsman's (**the PO**) Determination of Mr E's complaint [CAS-55100-G3W9] (19 April 2024) (**the Lead Case**). I do not intend to repeat those facts in detail in this Determination.
7. On 18 February 1991, the then Trustees of the Scheme resolved that pensions in payment would increase in line with the Retail Prices Index (**RPI**) or 5% whichever was the lower (**the Trustee Resolution**). The Scheme had individual trustees, who included the managing director and two directors of BIC UK.
8. At the time, the rules of the Scheme did not provide for increases to be granted automatically on pensions in excess of the guaranteed minimum pension (**the GMP**) in respect of pensionable service completed before 6 April 1997. The rules, however, did give the Trustees a discretion to increase pensions in payment if BIC UK agreed and sufficient funds were available.
9. On 19 March 1992, an announcement (**the March 1992 Announcement**) was issued for and on behalf of the Trustees. It explained that "all pensions commencing after 6th April 1992 will be increased each year by 5% or the Retail Prices Index, whichever is the lower" and that "the increase will be applied to the part of the benefit in excess of the Guaranteed Minimum Pension" (**the Pre 97 Increases**).
10. Mr and Mrs D were members of the Scheme at the time and would have been sent a copy of the March 1992 Announcement. An announcement was also issued in December 1992 (**the December 1992 Announcement**) which said:

"Pension increases

The way pensions are increased in payment is described in the Explanatory Booklet and an announcement dated 19th March 1992.

The Trustees have power if the company agrees and if sufficient funds are available to provide further increases.

² *The Pensions Ombudsman v CMG Pension Trustees Ltd and CGI IT UK Limited* [2022] EWHC 2130 (Ch)

³ for the purposes of section 91(6) of the 1995 Act

Under these powers all pensions in payment were increased on 6th April 1992 in line with increases in the Retail Prices Index for each year since the pension started to be paid.”

11. At the time, the Explanatory Booklet referred to in the December 1992 Announcement would not have referred to the fact that increases in payment would be granted on the pension in excess of the GMP. However, it referred to the Trustees’ discretion to increase pensions in payment if the company agreed and sufficient funds were available.
12. New trust deed and rules were subsequently executed on 29 May 1993 (**the 1993 Deed and Rules**). Rule 9(a) and paragraph 8 of Part III of the 1993 Deed and Rules provide that pension increases only apply to the portion of the pension which represents the GMP (and not the excess).
13. Mrs D drew her pension in October 1998. The retirement illustration that was issued to Mrs D in June 1997, showed that an increase of 5% per annum would be payable on her pension. The accompanying notes included the following information:-

 “Notes About Your Benefits

 The annual rate of 5% is limited to a maximum of the increase in the retail prices index each year. If increases in this index fall below this rate the increases to the pension will be adjusted to reflect this.

 ...

 For further information about the scheme, please refer to the explanatory booklet or you may write to the trustees...”
14. Mr D subsequently drew his pension from the Scheme in March 1999.
15. Atkins & Co (**Atkins**) has provided administration and actuarial services to the Scheme on behalf of the Trustees since 2011. Dalriada Trustees Limited (**Dalriada**) is a former independent trustee of the Scheme.
16. In December 2011, BIC UK challenged the validity of the Pre 97 Increases after a potential issue concerning the validity of the Trustee Resolution was identified. The subsequent Court of Appeal decision in *Burgess (CA)* concluded that the Pre 97 Increases had been improperly paid in breach of the Scheme Rules.
17. Between 6 April 1992 and March 2013, increases in payment were granted by the Scheme on the basis described in the Trustee Resolution and March 1992 Announcement.
18. On 22 February 2013, the Scheme membership was informed that the Trustees and BIC UK had received opposing advice concerning the Pre 97 Increases (**the February 2013 Announcement**). Consequently, there was uncertainty as to whether pensioners were entitled to the level of pension in payment at that time. The

February 2013 Announcement explained that further increases would be suspended until the matter had been resolved; and advised that:

“The Company has agreed that there should be no deductions, at this time, for the increases already applied, that may not be in accordance with the Scheme rules.”

19. In March 2017, the Independent Trustee issued an announcement to the Scheme membership (**the March 2017 Announcement**). It advised that the Trustees had applied to the Court for a ruling on whether the Pre 97 Increases were validly granted and whether the members were entitled to those increases. It also advised that the case would be heard by the High Court in 2017, and that the “Trustees will update the Scheme membership in due course and in particular once the High Court proceedings have concluded and the judgment is delivered in that case”.
20. The pension payable to Mr and Mrs D increased each year on the assumption that the Pre 97 Increases should apply. As a result of these increases, by 1 March 2013 Mr D’s pension had increased to £7,535 per annum (gross). As at 1 March 2013, Mrs D’s pension amounted to £3,666 per annum (gross) (See Appendix 4 and 5). After 1 March 2013, further Pre 97 Increases were suspended and increases were only applied to the GMP.
21. The Trustees of the Scheme are responsible for ensuring that the correct benefits are paid in accordance with the Scheme rules. In their role as the Scheme Administrator, for UK tax purposes, they are responsible for ensuring that the correct tax is deducted under the Pay as You Earn (**PAYE**) system.
22. Mr and Mrs D would have received a payslip each month setting out their respective pension entitlement and the amount of income tax deducted from their pension. They would also have received an End of Year Certificate (**P60**) each year setting out the total pension and the income tax deducted. Both the payslips and P60s would have been issued on behalf of the Trustees, as the Scheme Administrator.
23. The Pensions Ombudsman (**TPO**) has reviewed copies of payslips pre-dating and post dating the February 2013 Announcement. It has also seen documentary evidence that payslips and P60s were issued, on behalf of the Trustees, by Alexander Forbes and then Atkins since at least 2004. The payslips and P60s are not qualified and do not contain any warnings or reservations or indicate that the pension is subject to certain conditions or reservations.
24. On 10 May 2019, the Court of Appeal overturned the High Court decision in Burgess⁴.
25. In May 2019, Atkins issued an announcement to members (**the May 2019 Announcement**). It explained that the Trustees were in discussions with their legal

⁴ On 17 April 2018, the High Court ruled in *Burgess v BIC UK [2018] 054 PBLR (040) (Burgess)* that the increases were validly granted.

advisers concerning how to implement the *Burgess (CA)* decision and would contact the members impacted in due course. The May 2019 Announcement did not explain or warn that the overpayments made both before and after the date of the February 2013 Announcement would or could be recovered by deduction from future pension payments.

26. On 30 March 2020, the Trustees notified Mr and Mrs D separately that, after taking legal advice, they had to reduce their pension to the correct level in respect of future payments (**the Notification**). Briefly, the Trustees explained that:-
 - 26.1. The High Court had found that the Pre 97 Increases had been validly granted. However, this was overturned by the Court of Appeal.
 - 26.2. The Court of Appeal ruled that the Pre 97 Increases were not validly granted. The Trustees had to implement this decision.
27. The Trustees informed Mr D that they would reduce his pension from £7,961 (gross) to the correct level of £5,858 (gross) with effect from 6 July 2020. The Trustee said that they would recoup the overpaid pension from 6 October 2020, at a rate of £121.76 per month, unless Mr D disputed the Trustees' power to recover the money.
28. The Trustees informed Mrs D that they would reduce her pension from £3,670 (gross) per annum to the correct level of £2,417 (gross) per annum with effect from 6 July 2020. The Trustee said that they would recoup the overpaid pension from 6 October 2020, at a rate of £62.62 per month, unless Mrs D disputed the Trustees' power to recover the overpayments.
29. Mr and Mrs D subsequently complained under the Scheme's internal dispute resolution procedure (**IDRP**) regarding the Trustees' decision to recoup the overpayments.
30. On 11 August 2020, the Trustees replied to Mr D under the IDRP and issued a separate response to Mrs D. The Trustees did not consider that they could reduce the rate of recovery they had proposed under Recoupment Plan One or Recoupment Plan Two. However, the Trustees advised that recoupment would be suspended until the PO had reached a decision on their complaints.
31. Mrs D held a weekly cleaning job until March 2019. She also held a separate post, and worked variable hours, until November 2019. She is no longer in employment.
32. A breakdown of Mr and Mrs D's monthly household income and expenditure is set out in Appendix 1. Based on this information, their monthly outgoings exceed their income by £226. Their outgoings include £83 per month spent on eating out and other social activities.
33. Mrs D has provided TPO with copies of their bank statements, which cover the period December 2017 to October 2020 (**the Bank Statements**).

34. Mr and Mrs D have a “rainy day fund” (**Account One**⁵) which they use as their main bank account. Mrs D has advised that it was set up before 2017. Their pension is paid into a second bank account (**Account Two**) and they transfer money into that account from Account One. Mrs D has advised TPO that over the last two years, they have opened two regular savings accounts, which they have funded from Account One. At the end of the twelve month period, the money they have accrued in their regular savings is then transferred into Account One.
35. Mr and Mrs D have made several significant purchases over the last two years using some of the funds held in Account One, which are summarised in Appendix 2. Mrs D has advised that they also spent some of the money on day to day living expenses; the money they now hold in their joint names amounts to £11,608.
36. Mrs D’s monthly credit card statement dated January 2023, indicates that she has a direct debit in place to cover any outstanding balance.
37. Mrs D has advised TPO that Mr D is in poor health. TPO has seen documentary evidence that he has several health conditions. It confirms that he has experienced deterioration in a major health condition from moderate to severe. Mrs D has also advised that Mr D has a Blue Badge for parking and that she is providing care to help support him.
38. **Summary of Mr and Mrs D’s position**
- 38.1. In February 2013, they were notified separately that pension increases, on a certain element of their pension, would be frozen. However, the letter did not advise that they had been overpaid; they were made aware of this on 30 March 2020. Consequently, it would not have been possible for them to have been aware of the overpayments at the time. They trusted that their pension was being administered correctly by the Trustees and the administrators that had been appointed by the Trustees. They planned their retirement around the pension figures in good faith.
- 38.2. The balance in Account One is now diminishing. They have had to replace household appliances that were wearing out. More recently, they have had to replace their gas boiler. The increase in the cost of living has also diminished their savings.
- 38.3. They cannot afford to carry out regular household maintenance, go on holiday, or upgrade their car which is now 13 years old. They would like to purchase a newer car. However, they would need to take out a loan. They do not think they can afford it as things stand and they may end up without a car. They scrapped their second car as they could not afford the repairs. Their only pleasure is going out to garden centres for a meal.

⁵ The account balance for Account One is set out in Appendix 2.

- 38.4. They no longer have weekends away with friends because they cannot afford it. They find this upsetting because their friends keep asking them when they will be able to go away. They are too proud to say they cannot afford it.
- 38.5. They are not to blame for the overpayments. This situation is entirely the fault of BIC UK, the administrators of the Scheme and the Trustees. They were living within their means on their pensions, which they expected to get for the rest of their lives.
- 38.6. Any further reduction in their pension would cause them considerable financial hardship. They are too old to secure employment to make up the shortfall in their pension. If the overpayments are recouped, they will fall into financial poverty and will be unable to make ends meet.
- 38.7. The Scheme has been administered by various companies at different times. Those companies did not spot the overpayments; so they question why they should have been expected to.
- 38.8. They are getting older; and the ongoing uncertainty concerning the overpayments is affecting their health. They are being punished for the overpayments and being denied the opportunity to enjoy the remaining years of their retirement.

39. Summary of the Trustees' position

- 39.1. The Trustees gave Mr and Mrs D's complaints very careful consideration. However, the Trustees decided that they could not amend the pension figures advised in the Notification.
 - 39.2. The Trustees have not commenced the recoupment process, which should have been effective from 6 October 2020, pending the outcome of TPO's investigation.
 - 39.3. In the event of their death, the Trustees will not seek recovery of any of the overpayments from their respective estate.
40. On 2 May 2025, I issued a joint Preliminary Decision partly upholding both complaints.

The Ombudsman's position on overpayment cases – trust based occupational pension schemes

- 41. Members of trust based occupational pension schemes who have been told that they are entitled to a higher level of pension benefits than the scheme rules provide for often argue that:
 - 41.1. their pension should not be reduced to the correct level going forward; and/or
 - 41.2. all or part of the past overpayments should not be recovered.

42. The Ombudsman recognises that under general trust law, trustees of an occupational pension scheme have an obligation to pay the correct benefits provided for under the rules of the scheme and any overriding legislation. If an error is discovered, trustees will generally have a duty to reduce the pension to the correct level under the scheme rules in respect of future payments.
43. In very limited circumstances, an applicant may be able to successfully argue that the trustees are estopped (legally prevented) from denying that he/she is not entitled to the higher pension. However, it would be highly unusual for the courts (or the Ombudsman) to determine that an estoppel gives a right to continuation of a higher level of pension benefits than they would otherwise be entitled to under the trust deed and rules of the scheme.⁶
44. In some circumstances, the member may be able to demonstrate that:
- 44.1. he/she has been given inaccurate statements as to his/her pension entitlement on which it was reasonable for the member to rely; and
- 44.2. he/she has suffered a loss as a result of his/her reliance on those statements.
45. An applicant may then have a claim for financial injustice/damages in negligent misstatement, against the party that made the statement, for any monetary loss he/she has sustained. This does not mean that the overpayments cannot be recovered but the applicant may be entitled to be compensated for monetary loss, which he/she can set against the claim for the overpaid benefits. The measure of loss for negligent misstatement, however, is to seek to put the member in the position he/she would have been in if the negligent misstatement had not been made. An inaccurate statement of entitlement does not give a member an entitlement to the promised benefit.
46. In relation to past overpayments, in general, money paid in error can be recovered, even if the party responsible for the error has been careless. However, there are circumstances where the recipient may not be required to repay some or all of the overpayments; those circumstances are where a defence against recovery applies.
47. Trustees also may have power to compromise claims in certain circumstances where there is uncertainty on whether the defences may apply.⁷ In some cases, trustees may be advised that they are not required to seek recovery of all or part of the overpayments.

⁶ See *Catchpole v Alitalia Pension Trustees* at [47] to [58] for an example of where an estoppel was held to give a right to a benefit but noting that this would only be appropriate in unusual circumstances.

⁷ Trustees of trust based occupational pension schemes governed by English law generally have power to compromise claims under section 15 of the Trustee Act 1925 subject to the requirements of the Trustee Act 2000 (Schedule 1, paragraph 4). There may also be an express power to compromise claims in the trust deed and rules.

48. Trustees of trust based occupational pension schemes generally have two methods of recovery. Namely:-
- 48.1. Repayment - making a claim for repayment directly from the member on the grounds of unjust enrichment; and/or
 - 48.2. Recoupment - recovering the overpayments from future payments of pension under the principles of equitable recoupment, which the courts consider to be a self-help remedy although equitable recoupment can only commence with an order of a competent court.
49. In general terms, in relation to a claim for repayment of the overpayments on the grounds of unjust enrichment, trustees will have a right to recover the overpayments unless the applicant can show that he/she has one or more of the following defences against recovery:
- 49.1. change of position;
 - 49.2. estoppel by representation or convention;
 - 49.3. contract (namely, a contractual right to keep or continue to receive the mistaken payment); or
 - 49.4. a limitation defence under the Limitation Act 1980 (**the Limitation Act**).
50. Equitable recoupment is not available if it is inequitable (unfair) to rely on it as a remedy.⁸ The Ombudsman is comfortable that it is open to him when carrying out any enquiry about whether it is fair to deny equitable recoupment, to have regard to the underlying principles applied by the courts in determining whether to deny an unjust enrichment claim. This includes those relating to the availability of a change of position defence or, if it adds anything in the circumstances of the case, an estoppel defence.
51. The courts have confirmed⁹ that a limitation defence cannot apply to recovery of monies under principles of equitable recoupment but the defence of laches may be available as a specific defence to recovery of an overpayment under principles of equitable recoupment.
52. The Ombudsman's position is that section 91 of the 1995 Act does potentially apply when trustees seek to exercise a right of equitable recoupment. Accordingly, trustees should not commence recovery by exercising the right of equitable recoupment where there is a dispute as to the amount or timing of the recovery of the overpayment without an order of a competent court¹⁰. The Ombudsman is not

⁸ *Re Musgrave* [1916] 2 Ch 417

⁹ *Burgess v BIC UK* [2018] 054 PBLR (040), paragraphs [169] to [172]

¹⁰ In England and Wales this will normally be the County Court.

currently a competent court for the purposes of section 91 of the 1995 Act¹¹.

Consequently, following a Determination by the Ombudsman, trustees will still need an order of a competent court before starting to recover an overpayment from future pension payments under any right of set-off (including an exercise of a right to equitable recoupment). Obtaining the order of the competent court is purely administrative and the County Court does not exercise any judicial function at that stage in the process so the merits of the case will not be reconsidered.¹²

53. The Ombudsman's view, as a rule of thumb, is that generally a period of recovery at least equal to the period over which the overpayments arose is fair and appropriate. There may be circumstances where a shorter period is appropriate, for example where the applicant has invested a lump sum or paid it into a bank account. However, in some circumstances a longer period of recovery may be appropriate. For example, where the proposed period of recovery will cause the applicant hardship. In cases where a dispute cannot be resolved without the Ombudsman issuing a Determination, the Ombudsman will generally specify the rate of recovery in his directions so that the competent court can approve the commencement of the recoupment of the overpayments by the trustees at the rate he has specified in his Determination.
54. In cases where the Ombudsman determines that there has been maladministration in making the overpayments, the Ombudsman has power to make a reasonable award for any distress and inconvenience (non-financial injustice) sustained in consequence of the maladministration.
55. The above sets out the Ombudsman's views very generally on the recovery of overpayments in relation to trust based schemes by reference to the Ombudsman's understanding of the current law. It is for guidance only, but sets the context in which the Ombudsman approaches overpayment cases in respect of trust based schemes. Each case will turn on its own facts.

Legal analysis and conclusions

Legal issues arising in this particular case

56. The legal background and factual circumstances of this case are broadly the same as in the Lead Case.
57. As a matter of law, I am not bound by my own Determinations, or those of the PO or a previous Ombudsman. However, where a complaint shares similarities with a complaint that has been determined I would generally determine the complaint on similar lines.

¹¹ *Pensions Ombudsman v (1) CMG Pension Trustees Limited and (2) CGI IT UK Limited (CA)* at paragraphs 153-160. However, it was announced in the King's speech in July 2024 that the law will be changed so that TPO will be treated as a competent court for the purposes of section 91 of the 1995 Act. Once the new legislation is in force this will reverse this aspect of the CMG decision.

¹² *Pensions Ombudsman v (1) CMG Pension Trustees Limited and (2) CGI IT UK Limited* at paragraph 56

58. Mr and Mrs D accept that their pension should be reduced to the correct level under the Scheme rules going forward. However, they have argued that they have sustained non-financial injustice (distress and inconvenience) as a consequence of alleged maladministration by the Trustees, the administrators of the Scheme, and BIC UK. Further, they dispute that the past overpayments should be recovered.
59. In this particular case, the Trustees have confirmed that they are not seeking repayment of the overpayments directly from the applicants on grounds of unjust enrichment. The Trustees have also confirmed that they will not seek to recover any outstanding overpayments from the estate on the death of the applicants.
60. Given that the Trustees have indicated that they are not seeking to recover the overpayments by way of repayment directly from Mr and Mrs D on grounds of unjust enrichment, it is only necessary to consider the Trustees' right of recovery on grounds of equitable recoupment.
61. Mr and Mrs D have not specifically set out any particular legal defences to recovery by way of recoupment. However, the following potential defences need to be considered to determine the complaint:-
- 61.1. Whether it is equitable to recoup the overpayment in whole or in part.
- 61.2. Laches.
62. Limitation is not available as a defence in relation to an equitable recoupment claim.¹³

Future pension payments

Reduction of pension to correct level going forward

63. Mr and Mrs D accept that the Trustees were entitled to correct their pension going forward following discovery of the overpayments. Consequently, I do not need to consider this issue further.

Past overpayments

General equitable defence to equitable recoupment claim

64. Equitable recoupment is an equitable remedy and can only be exercised where it is equitable to do so (see section on "The Ombudsman's position on overpayment cases – trust based occupational pension schemes" above).
65. There is little case law setting out when it may be equitable to deny recoupment. However, I am comfortable that it is open to me when carrying out any inequity enquiry to have regard to the underlying principles applied by the courts in

¹³ *Burgess v BIC* [2018] 054 PBLR (040) at paragraph [172] and [178] and *Re Robinson* [1911] Ch 502

determining whether to deny an unjust enrichment claim.¹⁴ Since the Lead Case there has been a case, called *British and Malayan Trustees Ltd v Tabib* [2024] SGHC 203 (**the Singapore Case**), where English Common law applied, which considered whether recoupment of an overpayment in the context of a private trust was equitable. This is potentially persuasive authority on the English Courts, and on me as the Deputy PO, as well as on the PO.¹⁵

66. In the Singapore Case, it was concluded that an estoppel could not be relied on as a defence to an equitable recoupment claim and change of position could only be relied on in limited circumstances (following the analysis in *Lewin on Trusts* (Twentieth Edition) on this issue at paragraph 42-013). However, this did not mean that trustees should exercise recoupment regardless of the circumstances and there may be circumstances when it is inappropriate or inequitable for trustees to seek to recoup. The analysis (if the UK courts follow the same approach) does not in my view impact on the PO's conclusion in the Lead Case that equitable recoupment should only apply where it is equitable to recoup (confirmed in *Re Musgrave*) and that it is open to me to apply similar principles to those developed by the Courts in unjust enrichment or estoppel cases in carrying out any inequity analysis in determining whether equitable recoupment is available to the Trustees as a method of recouping the overpayments.

Unjust enrichment

67. The starting point in this type of case is that where an individual has been overpaid, generally it is fair or equitable that they should repay the overpayments otherwise they will be unjustly enriched. There can however be circumstances when it is equitable that the money should not be repaid in whole or in part. This includes, in particular, circumstances where the court might find a change of position defence applies in an unjust enrichment case if similar underlying equitable principles were applied. And, if relevant, an estoppel defence.¹⁶

The underlying principles of change of position by analogy

68. For the purposes of any inequity enquiry, it is necessary in this case to consider whether a change of position defence would be available in relation to the recovery of all or part of the overpayments. To succeed in a change of position defence, it is generally considered necessary to show:

68.1. **Good faith** - the recipient of the overpayment must be acting in good faith;

¹⁴ The PO's Determination of the Lead Case includes a detailed explanation of the legal basis by which the Ombudsman takes into account the principles underlying the defences to repayment claims, when deciding whether recoupment is equitable for the purposes of *Re Musgrave*.

¹⁵ The case referred to analysis in an article by Charles Mitchell and Jessica Hudson - *Trustee Recoupment: A Power Analysis* (2021) 35(1) *Trust Law International* 3 and among other things cited *Re Musgrave* [1916] 2 Ch 417) which the PO relied on in the Lead Case.

¹⁶ *Lipkin Gorman (a firm) v Karpale* [1991] 2 AC 548 as per Lord Goff at paragraph [580C]. Lord Goff set out this principle in general terms and the courts have subsequently developed principles about where such a defence applies.

- 68.2. **Detriment** - their circumstances must have changed detrimentally as a result of the overpayment or in anticipation of receiving it. Generally, this means that the money must have been spent and the expenditure cannot be legally or practically reversed, or any asset bought with the overpayment sold; and
- 68.3. **Causation** - there must be a causal link between the change of position and receipt of the overpayment (as a minimum it is necessary to show at least that but for the mistake the applicant would not have acted as they did).
69. If the above tests are met, it will generally be inequitable (unfair) for the trustees or administrators of the scheme to recover the money. The burden of proof to demonstrate all aspects of a change of position defence is on the person seeking to rely on the defence.
70. Unlike the position in relation to an estoppel defence (see paragraph 105 to 108 below) it is not necessary for the member to receive an unequivocal representation of entitlement to the overstated benefit for a change of position defence to be available.

Good faith

71. To demonstrate that the recipient has acted in bad faith it is generally necessary to show that the recipient of an overpayment had actual or Nelsonian knowledge that he/she has been overpaid. If the recipient had good reason to believe that he/she was being overpaid but did not check the position with the trustees or administrators this will amount to bad faith.¹⁷
72. However, good faith does not require the making of inquiries which a reasonable person would have realised should be made but which the recipient did not realise should be made¹⁸. Mere carelessness or negligence is not enough to establish bad faith.
73. Bad faith is not synonymous with dishonesty. It can simply mean that, if the recipient knew or had grounds for believing that the payment had been made in error, but could not be sure, the defence would not be open to them. In making a judgment as to the recipient's knowledge of the circumstances in which his/her pension should cease, or reduce, it is not a question of deciding what he/she should have known; rather, it is a question of what the recipient did know.

Detriment

74. Detriment can normally be demonstrated by the fact that the recipient has spent the money on items which the recipient would not otherwise have bought but for the

¹⁷ See *Webber v Department for Education, Teacher's Pensions* [2012] EWHC 4225 (Ch) and *Webber v Department of Education* which applied the earlier test in *Niru Battery Manufacturing Co v Milestone Trading Ltd* [2002] EWHC 1425 (Comm) in a pensions context.

¹⁸ See for example *Abouh Ramah v Abacha* [2006] EWHC Civ 1492 *Armstrong DLW GmbH v Winningham Networks Ltd* [2012] EWHC 10 (Ch) at [110]

overpayments. However, it is also possible to demonstrate detriment by making gifts in some circumstances.

75. It is not always necessary to show, on the balance of probabilities, that the overpayment has been spent on particular items which the member would not otherwise have bought, or to precisely match the expenditure to particular items. For example, in circumstances where as a result of the overpayments, the member increases their standard of living over a number of years above what it would otherwise have been.
76. It has been established in a number of cases that a rise in a defendant's general standard of living can demonstrate detriment in a change of position or estoppel defence. It has also been confirmed that general household expenditure could give rise to an estoppel where the overpayments enabled the complainant to improve the lifestyle of his/her family in very modest ways¹⁹. This is the case even if the defendant was not able to point to a particular item of expenditure purchased as a result of the overpayments. However, the complainant was able to demonstrate that his/her general pattern of expenditure was higher than it would otherwise have been but for the overpayments.²⁰
77. As a change of position defence is not limited to cases where funds have been spent on specific identifiable items of expenditure, it may not be right for the Court (or the Ombudsman) to apply too demanding a standard of proof when an honest defendant says he/she has spent an overpayment on improving his/her lifestyle but cannot produce too detailed accounting.²¹

Causation

78. There also needs to be a causal link between the overpayments and the change of position defence the defendant is relying on. As a minimum, the defendant generally needs to show that but for the overpayments he/she would not have spent the money, or increased his/her standard of living, or that his/her circumstances would not have changed in some other way²².

The period up to the date of issue of the February 2013 Announcement

79. For the purposes of any inequity enquiry, it is necessary in this case to consider whether a change of position defence would be available in relation to the recovery of the overpayments.
80. In relation to the overpayments made up to the date of issuance of the 2013 February Announcement, I am satisfied that Mr and Mrs D acted in good faith as they did not, on the balance of probabilities, have actual or Nelsonian knowledge of the fact they were being overpaid. Given the circumstances in which the overpayments

¹⁹ See *Scottish Equitable v Derby* [2000] PLR 1 (CA) at [33]

²⁰ *Phillips v Collins v Davis* [2000] 3 All ER case (cited with approval in *Scottish Equitable Derby*)

²¹ *National Westminster Bank plc v Somer International UK Limited* [2002]

²² *Scottish Equitable v Derby* [2001] 3 All ER 818, *Harrison J* at paragraphs [37]-[41]

had arisen, they would have had no reason to suspect, and could not have known, that they were not entitled to the Pre 97 Increases and should not be spending the money. The evidence supports the view that Mr and Mrs D are in a very similar position to Mr E, the applicant in the Lead Case. Mr and Mrs D were also notified that the Pre 97 Increases were due and were issued with payslips on behalf of the Trustees which supported this. It follows that they would have conducted their financial affairs on the basis that they were entitled to the money.

81. I need to consider whether, on the basis that they acted in good faith, Mr D and Mrs D have suffered material detriment as a consequence of receiving the overpayments to the date of the February 2013 Announcement.
82. I note that the pension from the Scheme was paid into Account Two and used towards general living expenses. Account Two remained in credit over the entire period covered by the Bank Statements. It is clear from the evidence that Mr and Mrs D are prudent pensioners.
83. On reviewing the Bank Statements, I am satisfied that they have sustained detriment because their pattern of expenditure was higher than it would otherwise have been, but for the overpayments that have accrued to the date in question.
84. The evidence indicates that Mr and Mrs D live within their means and save money in Account One to provide a contingency fund for extraordinary purchases and unexpected increases in day to day living expenses. While I have not been able to examine bank statements over the total period of the overpayments, I am satisfied that a prudent pensioner, like Mr D, would not have built up a debt of £31,413. Similarly, a prudent pensioner, like Mrs D, would not have built up a debt of £16,408 that has arisen in Mrs D's case.
85. Regarding the funds held in Account One, I am comfortable on reviewing the evidence that it has not built up as a result of the overpayments.
86. Consequently, I find that Mr D has a change of position defence in relation to recovery of £15,494.77 of the total overpayments of pension of £31,413 that built up over the period March 2000 to February 2013. Mrs D also has a change of position defence in relation to recovery of £7,217.23 of the overpayments of her pension that built up from October 1999 to February 2013.
87. It is necessary for me to consider the position on good faith in respect of the periods after the date of issuance of the February 2013 Announcement as a separate enquiry.

The period after the date of issuance of the February 2013 Announcement to May 2019

88. Mr and Mrs D would have received the February 2013 Announcement notifying them that the Pre 97 Increases would be suspended from 6 March 2013.

89. The February 2013 Announcement is, in effect, claiming to reserve the Trustees' position to make deductions at a future date but does not go on to explain the implications of those rights being reserved. For example, that an amount may have been overpaid and there was a possibility that the Trustees may need to seek recovery of that amount in the future. In the PO's Determination of the Lead Complaint, he contemplated that a lay pensioner receiving the February 2013 Announcement may reasonably have understood the following:
- 89.1. the pension increase rule may not have been applied correctly in the past;
 - 89.2. the pension needs to stop increasing until the correct position is determined;
 - 89.3. BIC UK is proposing that there should be no deductions, at this time, for the increases already applied up to the date of the February 2013 Announcement (but not that it may also catch payments made after that date); and
 - 89.4. if it later transpires that the increases were correctly applied, the pension will receive backdated increases.
90. The PO concluded that the February 2013 Announcement was poorly drafted and did not explain that overpayments were continuing to build up, even after the suspension of further increases to Mr E's pension, and may have to be repaid. Having considered the individual circumstances of Mr and Mrs D's complaint, I see no reason to reach a different view on this point, as I agree with it.
91. Although the February 2013 Announcement warned that "*The Company has agreed that there should be no deductions, at this time, for increases already applied,*" I am not persuaded that Mr and Mrs D would have understood that further overpayments were being included in ongoing pension payments and that these might lead to future deductions. In the PO's Determination of the Lead Case, the PO further concluded that:
- "The wording, in my view, suggests that the 'wound had been staunched', when in fact, as a result of the baked-in increases, the blood continued to flow. Given its importance and implications for the pensioners, the Trustees should have explained this much more clearly and also highlighted the fact that if the Court concluded the increases had not been properly granted, any overpayments which would need to be repaid would extend to both (a) overpayments built up until the date of the February 2013 Announcement and (b) those continuing to build up as a result of "baked in" increases made after the issue of the February 2013 Announcement. By painting an unclear or over-optimistic description of the situation there was a real risk that the pensioners could be seriously prejudiced".
92. Notably, it is unclear whether the reference to "increases already applied" included any element of payments made after the date of the February 2013 Announcement. I find that it was not made clear that the increases already applied still formed part of payments made after that date.

93. It remains a key consideration that the February 2013 Announcement does not explain that by continuing to pay their pension at the existing rate, pensioners were continuing to build up further overpayments. Had the Trustees clearly explained the position at the time, it would have provided Mr and Mrs D with the opportunity to factor this into their future spending.
94. I agree with the PO's view that it was incumbent on the Trustees to explicitly state the position. Ideally, with at least an estimate of the quantum of pension at risk which may have to be reclaimed. As articulated in the PO's Determination of the Lead Case, a lay member should not be expected to read into a communication of such importance.
95. On the basis that Mr and Mrs D continued to receive payslips, showing the same level of their respective pension, I am comfortable that they would have conducted their financial affairs on the basis that they were entitled to it.
96. As observed in the PO's Determination of Mr E's complaint, the payslips that were issued after the date of the February 2013 Announcement did not contain any additional reservations or warnings that would have alerted pensioners to the fact that some of their pension was linked to past increases, the validity of which was uncertain. "There was no warning that he should put some of the money aside in anticipation of a possible claim for recovery".
97. Had the February 2013 Announcement been clearer, or other communications reinforced the message that the Trustees seemingly wanted to convey, my view may have been different. However, it was not clear. Consequently, Mr and Mrs D did not have actual or Nelsonian knowledge that overpayments were still being made and they were not told they should not spend any of the additional pension payments that continued to be paid to them.
98. I am satisfied that Mr and Mrs D have sustained detriment in relation to the overpayments that built up over the period in question, as their expenditure was higher than it would otherwise have been but for the overpayments. As I have already observed in paragraph 83 and 85 above, Mr and Mrs D are prudent pensioners. It is likely that their day to day expenditure was higher, than it would otherwise have been, but for the overpayments.

The period shortly after the date of issuance of the May 2019 Announcement to the date of issuance of the Notification

99. At paragraph 168 of the PO's Determination of the Lead Case, the PO stated the following:

"I have considered carefully whether it can be said Mr E ceased to act in good faith by continuing to spend the money on or after May 2019, when the outcome of the *Burgess (CA)* decision was known. However, the May 2019 Announcement...did not properly explain the implications of the decision. In my view, it was not until March 2020, that it was properly explained to Mr E

that he had continued to build up further overpayments after the date of the February 2013 Announcement and that these additional overpayments... would have to be repaid as well as the earlier overpayments”.

100. I note that Mr and Mrs D are in an identical position to Mr E. I am satisfied that they were also acting in good faith by continuing to spend the money following issuance of the May 2019 Announcement. On the balance of probabilities, they would not have appreciated the implications of *Burgess (CA)* at that point in time.
101. Accordingly, I find that Mr D also has a change of position defence in relation to recovery of £1,808.98 of the total overpayments of pension of £31,413 that built up over the 10 month period from 1 June 2019 to March 2020. Similarly, Mrs D has a change of position defence in respect of the overpayments of pension amounting to £1,044.46 that accrued over the same period. It follows that it is not equitable for the Trustees to recoup the overpayments in respect of this period.

The period from the date of issue of the Notification

102. I am satisfied on reviewing the evidence that Mr and Mrs D acted in good faith by continuing to spend the pension up to the date of the announcement of the *Burgess (CA)* decision. There is nothing in the evidence to suggest that they had actual or Nelsonian knowledge that they were not entitled to the additional overpayments that were still building up.
103. The PO concluded in the Lead Case, that once the outcome and implications of *Burgess (CA)* was known, and Mr E was notified that any past overpayments would be recovered, a change of position defence could no longer apply as he would have had actual knowledge that he was not entitled to the money. Consequently, any further overpayments made by the Trustees from 31 March 2020 onwards at the latest would be recoverable, unless any other defences apply ²³.
104. This also applies in the case of Mr and Mrs D, as they received the Notification. The Notification made it sufficiently clear that any past overpayments would be recovered.

The underlying principles of estoppel by analogy

105. Broadly, an estoppel defence prevents (or ‘estops’) a party from departing from a statement or promise that it has previously made to another party. In this case, it would prevent the Trustees from going back on what they told Mr and Mrs D regarding their pension entitlement and recovering the overpayments. There are two types of estoppel that may be relevant here, I will consider these separately:-
- 105.1. estoppel by representation which can apply where one party has made a false statement or representation to the other, and

²³ these principles were applied to the general equitable enquiry I am required to make under *Re Musgrave*.

105.2. estoppel by convention, which can apply where both parties have been dealing with each other on an understanding of fact which turns out to be false.

Estoppel by representation

106. Estoppel by representation is very similar to change of position. Broadly, it is necessary to have (a) a clear representation or promise on which it was reasonably foreseeable that the applicant will act; (b) an act on behalf of the complainant which was reasonably taken in reliance on the representation or promise and (c) after the act has been taken, the applicant is able to show that he/she will suffer detriment if the defendant is not held to the representation or promise.
107. For similar reasons to those set out in detail in paragraph 172-193 of the PO's Determination of Mr E's complaint, I consider that Mr and Mrs D have an estoppel by representation defence to the overpayments of pension up to the date of issue of the February 2013 Announcement but not after this date. I am not convinced that Mr and Mrs D subsequently received sufficiently clear representations from the Trustees that they were entitled to the full amount of the payments made to them after that date to give rise to an estoppel by representation defence. Also considering the equitable principles underlying estoppel by convention, it would not assist in my inequity analysis.

Conclusion on whether it is appropriate to deny recoupment under general equitable principles

108. Having regard to the facts, and the various equitable issues considered above, I conclude in the case of Mr D that £542.69 of the overpayments of £31,413 are recoverable by the Trustees under principles of equitable recoupment (**Recoverable Amount 1**). I similarly conclude that £313.34 of the overpayments of Mrs D's pension are recoverable by the Trustees (**Recoverable Amount 2**).
109. In this connection, I would note that if a claim had been brought on grounds of unjust enrichment, Mr and Mrs D would have had a change of position defence but an estoppel claim would fail in relation to any overpayments made after the date of issue of the February 2013 Announcement. The requirements to demonstrate estoppel by representation are more stringent than those applicable to change of position. However, I do not consider this precludes me finding that it is inequitable to permit equitable recoupment in the circumstances.

Laches

110. For completeness, I will also cover the defence of laches. Laches may be available as a specific defence to equitable recoupment although a limitation defence under the Limitation Act cannot apply.²⁴

²⁴ *Burgess v BIC UK* [2018] 054 PBLR (040) at paragraphs [173] – [176] and [178]

111. Laches generally requires:

111.1. knowledge of the relevant facts on the part of the claimant where there is a waiver of the claimant's rights (however, see the paragraphs that follow for further consideration of whether this is always the case under the more modern formulation of laches); and

either:

111.2. acquiescence on his part; or

prejudice or detriment to the defendant.

112. In deciding whether laches could be used as a defence a court (or the Ombudsman) needs to consider the length of the delay and the nature of the acts done during the interval (such as change of position or loss of evidence by the trustee or managers) which might affect either party and cause a balance of injustice in allowing or not allowing the remedy.²⁵ More recent cases have established that the court or the Ombudsman should not enquire whether the circumstances match previous decisions but ask whether the claimant's actions make it inequitable to grant the relief that is sought ²⁶.

The Court of Appeal ²⁷ said:

"The question for the court in each case is simply whether, having regard to the delay, its extent, the reasons for it and its consequences, it would be inequitable to grant the claimant the relief he seeks."

113. The defence of laches is considered in detail in the PO's Determination of the Lead Case²⁸. I am satisfied, for the same reasons as stated in that Determination, that it would be equitable to allow a defence of laches in the current case. It follows that it is unconscionable for the Trustees to be permitted to assert their right of recovery of the overpayments that built up in respect of the period up to and including 30 March 2020. In taking this view, I have considered the fact that the overpayments have arisen in circumstances that are identical to those the PO has set out in detail in his Determination of Mr E's complaint.

²⁵ *Lindsay Petroleum Oil & Co v Hurd* (1974) LR PC 221 at [66] as approved in *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cases and applied in *Re Sharpe* [1982] 1 Ch 154 Ch

²⁶ See *Frawley v Neill* [2000] CP Reports 20 The Times April 5 1999 and *Schulman v Hewson* [2002] EWHC 855 (Ch) at [44]. See also *J J Harrison (Properties) Ltd v Harrison* [2001] 1 BCLC 158 which also adopted the more modern formulation in a systematic way looking at the various factors which may or may not make it equitable to allow a laches defence. See also *Patel v Shah* [2005] EWCA Civ 157 where the Court of Appeal endorsed the more modern approach that laches does not require an enquiry about whether the circumstances can be fitted into a preconceived formula derived from old cases but a broad approach should be taken to ascertain on whether it is unconscionable for the party to be permitted to assert his beneficial rights.

²⁷ *PO Nedlloyd BV v Arab Metals Co* [2006] EWCA Civ 1717 applied in *Sheffield v Sheffield* [2013] EWHC 3927 (Ch) at [100], [106], [119]

²⁸ Mr E [CAS-55100-G3W9] see paragraph 209 to 234.

Contract

114. I have not been able to identify the necessary elements for a contract to exist, that is offer, acceptance, consideration and an intention to create legal relations (of a contractual nature) and certainty of terms. In particular, I cannot see that there was an intention on the part of the Trustees to enter into a legal relationship outside of the Scheme rules which was designed to give an entitlement to benefits otherwise than in accordance with the rules.

Commencement of recoupment plan

115. As noted in the section 'The Ombudsman's position on overpayment cases – trust based occupational pension schemes:' trustees cannot commence recovery of overpayments by way of recoupment without an order of a competent court and the Ombudsman is not a competent court for this purpose. Please also see the PO's factsheet on this issue, which is available on TPO's website.

116. This does not however preclude the Ombudsman determining whether an overpayment is recoverable, in full or in part, and the appropriate period of recovery. My usual policy is to specify the period of recovery in my Determination.

117. It is then necessary for the Trustee to apply to the County Court or the Sherriff in Scotland for an order authorising commencement of the recovery of the overpayments. This is an administrative paper based step and does not involve the competent court revisiting the merits of the Determination.

Period of recovery of overpayments

118. As stated in paragraph 52 above, generally, as a rule of thumb, the Ombudsman considers that a period of recovery which is at least equal to the period the overpayments arose is appropriate. However, in some circumstances, it may be appropriate to depart from this.

119. In my Preliminary Decision, I concluded that it would be appropriate to recover Recoverable Amount 1 over a period of 24 months by recouping them from Mr D's future pension payments at the rate of £22.61 per calendar month. In Mrs D's case, I concluded that it would be appropriate to recover Recoverable Amount 2 over the same period, but at a rate of £13 per calendar month. Based on my analysis of their income and expenditure, I considered that recovery at a higher rate would likely cause them undue hardship.

120. I also concluded that, if at a future date, Mr and Mrs D could demonstrate that their financial circumstances had deteriorated, and recovery of the overpayments at the rate I had specified was unaffordable and would cause them hardship, the Trustees should reconsider the matter.

121. In response to the Preliminary Decision, Mr and Mrs D agreed that their distress and inconvenience award (see paragraph 125 below) should be applied towards reducing the amount of the overpayment that is recoverable. This would effectively result in full

recovery of Recoverable Amount 1 and Recoverable Amount 2. The Trustees have agreed to proceed on this basis.

122. Consequently, section 91 of the 1995 Act will not apply because the Trustees are no longer seeking to recover the overpayment from future pension payments under any right of set-off.

Distress and inconvenience award

123. The Ombudsman has power to make reasonable awards for non-financial injustice (distress and inconvenience) arising as a consequence of maladministration.
124. The overpayments have arisen because of the failure on the part of the then Trustees to document the increase rule and/or to apply the increase rule correctly. The subsequent failure to adequately explain the situation in the February 2013 Announcement, and resolve the uncertainty concerning the increase rule within a reasonable timeframe, also amounts to maladministration. The consequence of these failures is that Mr and Mrs D have both experienced serious distress and inconvenience over a prolonged period. The Trustees shall pay an award to remedy the non-financial injustice Mr and Mrs D have experienced. An award of £1,000 is appropriate in each case for the serious distress and inconvenience they have sustained in connection with this matter.

Directions

125. Within 28 days of the date of this Determination:
- 125.1. the Trustees shall apply the distress and inconvenience award of £1,000 to Recoverable Amount 1, and pay Mr D the sum of £457.31, in respect of the balance of his award.
- 125.2. the Trustees shall apply the distress and inconvenience award of £1,000 to Recoverable Amount 2, and pay Mrs D the sum of £686.66, in respect of the balance of her award.
126. £30,870.64 of the total overpayments of £31,413 (net) that has arisen in Mr D's case, is not recoverable as he has valid defences in law to the recovery of this part of the overpayments.
127. £16,095.10 of the total overpayments of £16,408 (net) that has arisen in Mrs D's case, is not recoverable as she has valid defences in law to the recovery of this part of the overpayments.

CAS-52149-F8K1

Camilla Barry
Deputy Pensions Ombudsman
20 June 2025

Appendix 1

HOUSEHOLD INCOME	Annual Total	Monthly Total
Scheme pension (net) – Mr D	£6,146.64	£512.22
Scheme pension (net) – Mrs D	£2,418.72	£201.56
State Pension – Mr D	£7,938.32	£661.56
State Pension – Mrs D	£4,459	£371.58
Winter Fuel Payment	£200	£16.66
TOTAL	£21,162	£1,763
HOUSEHOLD EXPENDITURE	Annual Total	Monthly Total
Food/Laundry/Cleaning	£5,400	£450
Council Tax	£2,480	£206.67
Water Rates	£336	£28
Gas	£966	£80.50
Electricity	£966	£80.50
Clothing	£800	£66.67
House Repairs/Upkeep	£2,200	£183.33
Gardening/Window Cleaner	£1,000	£83.33
Insurance - Home	£382.68	£31.89
Insurance - Water Softener	£252	£21
Insurance - Boiler/Pipes/Electrical	£474	£39.50
Medical Costs - Mr D	£420	£35
Phones/Broadband/Netflix/Prime	£1,655	£137.92
Car - Road Tax	£141.76	£11.81
Car- Insurance	£429.12	£35.76
Car - Servicing, Repairs/MOT	£560	£41.66
Petrol	£2,080	£173.33
Credit Cards	£1,200	£100
Other - Haircuts	£208	£17.33
Other - Savings for Grandchildren	£240	£20
Other - Socialising	£996	£83
Other - spectacles (Mr and Mrs D)	£300	£25
Other - Conservative Party Membership (Mr and Mrs D)	£50	£4.17
Other - British Legion Membership	£35	£2.92
Other - Golf Club Membership	£120	£10
Other - Postcode Lottery	£120	£10
Other - Ambulance Lottery	£51.96	£4.33
TOTAL	£23,864	£1,979
Income over Expenditure	(£2,702)²⁹	(£226)

²⁹ The Trustees are seeking to make a monthly deduction of £121.76 from Mr D's pension and make a separate deduction of £62.62 from Mrs D's pension. This would result in a total deduction of £184.38 from their household income.

Appendix 2

Type of Purchase	Cost	Time of Purchase	Supporting Evidence provided to TPO?
New back door ³⁰	£950	2021	Yes
New boiler	£4,054	2022	Yes
New bed (orthopaedic)	£1,278	2023	Yes
New shower and fittings	£1,150	2022	No
New freezer	£408	2023	Yes
Private dental treatment – extraction	£1,093	2023	Yes
Hearing aids ³¹	£1,420	Post 2019	No
Eyewear – Mr and Mrs D	£600	Since 2022	No
Transfer to Mrs D (Mrs D is unable to recall the reason for the transfer)	£1,900	2023	No
Total	£12,853		

Account One		Balance
25 November 2024		£9,697 ³²
July 2023		£10,614
January 2023		£14,169
August 2022		£18,741
September 2020		£21,134 ³³

Monthly Saver – Mrs D		Balance
25 November 2024		£250

Monthly Saver (held in joint names)		Balance
25 November 2024		£461

³⁰ Replaced previous door, which was over 25 years old.

³¹ Mr D purchased private in ear hearing aids to replace those provided on the National Health Service (NHS). Mrs D has explained that the face mask he wore during the COVID-19 pandemic, would pull his hearing aids out every time he removed the mask and he lost one of his NHS aids.

³² Mrs D has advised that, as at 25 November 2024, their total funds amount to £11,608.

³³ The balance on 1 August 2019 was approximately £20,000.

Appendix 3

Joint Account Two				
	Opening Balance	Money In	Money Out	Closing Balance
25 November 2024				£461
September 2020 - October 2020	£697	£1,711	£1,573	£835
August 2020 - September 2020	£730	£1,751	£1,748	£697
July 2020 - August 2020	£836	£1,887	£1,993	£730
June 2020 - July 2020	£892	£1,609	£1,665	£836
May 2020 - June 2020	£1,269	£2,167	£2,544	£892
April 2020 - May 2020	£851	£2,166	£1,748	£1,269
March 2020 - April 2020	£1,601	£1,926	£2,677	£851
February 2019 - March 2020	£747	£2,041	£1,186	£1,601
January 2019 - February 2020	£37.44	£3,381	£2,671	£747
December 2019 - January 2019	£409	£1,094	£1,466	£37.44
December 2019 - December 2019	£1,115	£876	£1,582	£409
November 2019 - December 2019	£358	£2,554	£1,797	£1,115
October 2019 - November 2019	£615	£1,918	£2,175	£358
September 2019 - October 2019	£1,283	£2,111	£2,779	£615
August 2019 - September 2019	£493	£2,194	£1,404	£1,283
July 2019 - August 2019	£567	£2,790	£2,864	£493
June 2019 - July 2019	£725	£3,248	£3,406	£567
May 2019 - June 2019	£365	£2,660	£2,300	£725
April 2019 - May 2019	£491	£2,438	£2,564	£365
March 2019 - April 2019	£710	£2,106	£2,326	£491
February 2019 - March 2019	£602	£2,579	£2,470	£710
January 2019 - February 2019	£109	£2,907	£2,415	£602
December 2018 - January 2019	£332	£1,293	£1,515	£109
October 2018 - November 2018	£378	£2,726	£2,896	£208
30 December 2017 - December 2018	£236.77	£1,293	£1,515	£332.36

Appendix 4**Mr D**

Period of Payment		Pension Paid	Corrected Pension in Payment	Overpayment
From	To			
01/03/1999	29/02/2000	£5,153.28	£5,153.28	£0.00
01/03/2000	28/02/2001	£5,352.70	£5,154.29	£198.41
01/03/2001	28/02/2002	£5,447.08	£5,154.77	£292.31
01/03/2002	28/02/2003	£5,663.74	£5,155.87	£507.87
01/03/2003	29/02/2004	£5,797.25	£5,156.54	£640.71
01/03/2004	28/02/2005	£5,896.86	£5,157.05	£739.81
01/03/2005	28/02/2006	£6,202.84	£5,157.87	£1,044.97
01/03/2006	28/02/2007	£6,393.17	£5,158.81	£1,234.36
01/03/2007	29/02/2008	£6,563.11	£5,159.66	£1,403.45
01/03/2008	28/02/2009	£6,704.74	£5,160.83	£1,543.91
01/03/2009	28/02/2010	£7,039.61	£5,162.16	£1,877.45
01/03/2010	28/02/2011	£7,200.67	£5,227.84	£1,972.83
01/03/2011	29/02/2012	£7,200.67	£5,227.84	£1,972.83
01/03/2012	28/02/2013	£7,361.25	£5,295.39	£2,065.86
01/03/2013	28/02/2014	£7,535.79	£5,365.14	£2,170.65
01/03/2014	30/03/2014	£633.21	£452.32	£180.89
01/04/2014	30/03/2015	£7,670.36	£5,499.68	£2,170.68
01/04/2015	30/03/2016	£7,727.96	£5,557.26	£2,170.70
01/04/2016	30/03/2017	£7,748.45	£5,577.75	£2,170.70
01/04/2017	30/03/2018	£7,800.10	£5,629.38	£2,170.72
01/04/2018	30/03/2019	£7,879.52	£5,708.77	£2,170.75
01/04/2019	30/03/2020	£7,961.06	£5,790.28	£2,170.78
01/04/2020	30/06/2020	£2,007.03	£1,464.34	£542.69
Total				£31,413

Appendix 5**Mrs D**

Period of Payment		Pension Paid	Corrected Pension in Payment	Overpayment
From	To			
01/10/1998	30/09/1999	£2,405.76	£2,405.76	£0.00
01/10/1999	30/09/2000	£2,488.49	£2,406.23	£82.26
01/10/2000	30/09/2001	£2,521.63	£2,406.42	£115.21
01/10/2001	30/09/2002	£2,611.06	£2,406.93	£204.13
01/10/2002	30/09/2003	£2,661.35	£2,407.22	£254.13
01/10/2003	30/09/2004	£2,713.39	£2,407.52	£305.87
01/10/2004	30/09/2005	£2,788.25	£2,407.95	£380.30
01/10/2005	30/09/2006	£2,873.81	£2,408.44	£465.37
01/10/2006	30/09/2007	£2,950.20	£2,408.87	£541.33
01/10/2007	30/09/2008	£3,057.15	£2,409.48	£647.67
01/10/2008	30/09/2009	£3,177.84	£2,410.17	£767.67
01/10/2009	30/09/2010	£3,336.73	£2,411.08	£925.65
01/10/2010	30/09/2011	£3,336.73	£2,411.08	£925.65
01/10/2011	30/09/2012	£3,491.72	£2,411.96	£1,079.76
01/10/2012	30/09/2013	£3,666.30	£2,412.96	£1,253.34
01/10/2013	30/03/2014	£1,833.43	£1,206.76	£626.67
01/04/2014	30/03/2015	£3,667.14	£2,413.79	£1,253.35
01/04/2015	30/03/2016	£3,667.64	£2,414.29	£1,253.35
01/04/2016	30/03/2017	£3,667.82	£2,414.47	£1,253.35
01/04/2017	30/03/2018	£3,668.26	£2,414.92	£1,253.34
01/04/2018	30/03/2019	£3,669.16	£2,415.81	£1,253.35
01/04/2019	30/03/2020	£3,669.94	£2,416.59	£1,253.35
01/04/2020	30/06/2020	£917.63	£604.29	£313.34
Total				£16,408