

## Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the <b>Scheme</b> )
Respondent	Teachers' Pensions

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by Teachers' Pensions.

## Complaint summary

2. Mr N says that Teachers' Pensions' administrative failings caused the overpayment of his widower's pension.

## Background information, including submissions from the parties

3. Mr N was married to a member of the Scheme and is a member of the Scheme in his own right as a teacher.
4. The relevant regulations are the Teachers' Superannuation (Consolidation) Regulations 1988 (the **Regulations**) which says:

Commencement and duration of long-term family pensions

E28.- (1) A pension under Regulation E25 payable to a surviving spouse or a nominated beneficiary ("an adult pension") is to be paid-

- (a) from the day on which any short-term pension that became so payable under regulation E23 ceases to be payable, or
- (b) if no short term pension became payable, from the day after that of the death.

(2) Subject to paragraph (3), an adult pension is payable for life.

(3) Unless the Secretary of State determines otherwise in the particular case, and subject always to regulation E1(3)(c) and (d) (guaranteed minimum

pension for surviving spouse), an adult pension is not payable during or after any marriage or period of cohabitation outside marriage.”

5. Following the death of his wife in December 1995, Mr N was awarded a widower's pension from the Scheme of £981.48 a year.
6. At the time, Teachers' Pensions says that Mr N would have completed form TFB50 (the **Form**) to claim his widower's pension. Teachers' Pensions no longer holds a copy of the exact form that would have been completed by Mr N, but has provided a generic copy.
7. The Form said:

“This memorandum outlines the procedure for payment of compensation to widows...when you have read it, please complete and detach Part 2 and send it to the Paymaster General's Office...You should keep this Part 1 by you for reference.

...

#### CONDITIONS OF PAYMENT

Payment of Widows', Children's and the nominated Dependents' allowances is subject to the following rules

##### Widows' Pensions

- (1) A Widows' allowance begins on the day following the last payment of a short-term widow's allowance where no such allowance is payable, the day following the death of the widow's husband unless she is then cohabiting with a man.
  - (2) A widow's allowance ceases on the widow commencing to cohabit with a man to whom she is not married and, unless the Secretary of State otherwise decides, on her remarriage.”
8. Mr N remarried on 28 July 2001. He says that he wrote to Teachers' Pensions at the time to ask that his pension should be paid into a joint account.
  9. In 2006, Mr N commenced taking his own member benefits and asked for his pension to be paid into his joint account. The application was under Mr N's personal reference number.
  10. Towards the end of 2014, Teachers' Pensions started an audit exercise to check the status of adult beneficiaries by contacting them to complete a declaration.
  11. In July 2016, Teachers' Pensions wrote to Mr N asking if his circumstances had changed. Teachers' Pensions asked him to complete a declaration to update his current status. Teachers' Pensions sent a reminder to Mr N in September 2016.
  12. Teachers' Pensions received a completed declaration from Mr N in September 2016, in which he informed Teachers' Pensions of his remarriage in July 2001.

13. In October 2016, Teachers' Pensions established that Mr N's widower's pension should have ceased from 28 July 2001 and that an overpayment had arisen. Teachers' Pensions informed Mr N of an overpayment of the pension amounting to £19,925.07 and asked for repayment.
14. Mr N complained to Teachers' Pensions about the overpayment demand. He said that he always understood the widower's pension to be payable for life. He added that Teachers' Pensions has had information about his remarriage since it occurred in 2001, as his widower's pension has been paid into his joint account since then. He considered that the responsibility and liability for the overpayment lay with Teachers' Pensions.
15. Teachers' Pensions did not uphold the complaint. It said that Mr N would have completed the Form when he claimed the widower's pension. The Form explained that the widower's pension would cease on remarriage or cohabitation. Teachers' Pensions says that, since 2004, it sends a P60 and newsletter to all pensioners every year. The newsletters contain information that the pensioner should inform Teachers' Pensions if they receive a widower's pension and they remarry or co-habit.
16. Mr N disagreed with the decision and said that he was unable to make the repayment. He said that he had no recollection of completing the Form and that Teachers' Pensions should have discovered the overpayment in 2006 when he applied for his own member benefits on retirement. He said that his application included details of his joint account, which his current wife's pension was also paid into. He also said that when he remarried in 2001, he asked Teachers' Pensions to pay his pension into his joint account. He said that the general newsletters sent by Teachers' Pensions were not specific to overpayments and were thrown away without being read.
17. Teachers' Pensions considered Mr N's complaint but maintained the stance in its initial decision. It provided samples of the newsletters produced by Teachers' Pensions, which contains a section regarding changes it needs to know about. This mentions that the pensioner should inform Teachers' Pensions if they receive a widow, widower or civil partner pension and if they remarry, enter a civil partnership or live with another person as husband and wife. Teachers' Pensions also said that its website provides information that the widower's pension is only payable if the widower does not remarry, form a civil partnership or co-habit. Teachers' Pensions said that it now writes to members annually, asking them to provide a declaration about any change in circumstances.
18. Mr N then appealed to the Department for Education (**DfE**). It also did not uphold his complaint. DfE said that Mr N was not entitled to receive a widower's pension after his remarriage in 2001 and Teachers' Pensions is obliged to recover any such overpayment, regardless of how it may have occurred.
19. Mr N insists that he thought the widower's pension was for life; he says at the time he completed the Form, he was severely distressed and he has no recollection of it; he

did not read any of the newsletters sent to him and treated them as junk mail; he informed Teachers' Pensions of his remarriage in 2001 by asking it to pay his pension into his joint bank account.

20. Mr N says that he regarded the widower's pension as part of his income and spent it with that in mind. He has very little savings, some money in a joint bank account, and a credit card bill of about £5,000. With reasonable diligence, Teachers' Pensions could have realised that the widower's pension was being paid into a joint account and avoided the overpayment. Moreover, Teachers' Pensions has admitted that its previous reliance on newsletters was ineffective, and now sends individual letters annually. Teachers' Pensions has not displayed a duty of care by having internal systems to identify and process information available to it. He also considers that Teachers' Pensions cannot recover the overpayment as, under the Limitation Act 1980 (**the Act**) it did not use reasonable diligence to discover its mistake in 2006 when he asked it to pay his benefits into his joint account.
21. Teachers' Pensions says that Mr N should have been aware of the requirement to inform it of his change in circumstances, but there is no record that he did. Furthermore, when Mr N applied for his retirement benefits, his application included his joint account details, but the application was made under his personal reference number. The application also did not mention that he was already receiving a widower's pension under his late wife's unique reference number.

## **Adjudicator's Opinion**

22. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers' Pensions. The Adjudicator's findings are summarised below:-
  - The Adjudicator considered whether Mr N had a defence against recovery of the overpayment. The common defences against recovery are: change of position; estoppel and contract. The Adjudicator considered whether any of these arose in Mr N's case.
  - The most common defence against recovery of an overpayment is referred to as "change of position", meaning the applicant has changed his position such that it would be unjust to require him to repay the overpayment either in whole or in part. However, the Adjudicator was not persuaded that the requirement of good faith was satisfied because Mr N would have needed to complete the Form to apply for the widower's pension. As the Form said that the widower's pension would cease on remarriage, Mr N ought to have been aware that the pension was not payable for life and may cease in the future.
  - The Adjudicator said that Mr N spent the funds on general living expenses, so his spending is not what can be considered as exceptional. This meant a change of position defence would not succeed.

- The information made available to Mr N via the annual newsletters should have been sufficient to cause him to at least question his continuing entitlement to receiving the pension. Although Mr N admits to not reading the newsletters and may not have seen the notices, Teachers' Pensions cannot be responsible for his omission. The Adjudicator said that Mr N was responsible for notifying Teachers' Pensions of the change in his marital status.
- The Adjudicator's opinion was that Mr N ought to have reasonably been aware that the widower's pension was not payable for life and of the need to inform Teachers' Pensions of his remarriage.
- The Adjudicator acknowledged that Mr N did not attempt to hide his remarriage. Mr N says that his letter to Teachers' Pension was to request a change of account details. The Adjudicator was of the opinion that Mr N did not specifically inform Teachers' Pensions that he was receiving a widower's pension and had remarried. Also, Mr N's application for his own benefits in 2006 did not specifically mention that he was receiving a widower's pension and had remarried. The Adjudicator did not consider that these instances would be sufficient for Teachers' Pensions to have become reasonably aware of Mr N's remarriage.
- The Adjudicator then considered whether Mr N had a defence under the Act against the amount that can be recovered. Under the Act, Teachers' Pensions has six years from the date of each overpayment to bring its claim, or six years from the date on which the mistake was discovered (or should have been discovered with reasonable diligence). For the purposes of the Act, time started running from the date that the overpayment first occurred in 2001 and subsequently upon each further overpayment occurring.
- However, relying on the case of *Webber v Department for Education* [2016] EWHC 2519 (Ch), the Adjudicator found that Teachers' Pensions could not have become aware Mr N was being overpaid before October 2016. The letters from Mr N to Teachers' Pensions were solely concerned about changing his payment details. The fact that Mr N's widower's pension was to be paid into a joint account was insufficient to say that Teachers' Pensions should have become aware of Mr N's remarriage and possible overpayment.
- Teachers' Pensions therefore had six years from October 2016 to make its claim for recovery. As its claim was made on 9 July 2018, the Adjudicator was of the view that it had done so in time to recover the entire overpayment and the Act does not apply.
- The Adjudicator considered that the Scheme is one of the UK's largest publicly funded schemes. So, matching data across two different types of benefits would likely have been difficult. Until fairly recently, Teachers' Pensions relied on members to keep it informed of changes in circumstances. This supports the view that it was unable to match different records within its internal

systems. While the Adjudicator empathised with Mr N's position, on balance the Adjudicator was satisfied that Teachers' Pensions could not reasonably have discovered that Mr N was being overpaid until October 2018. Consequently, Mr N had no defence under the Act.

- The Adjudicator was not persuaded that other possible defences against repayment were available to Mr N. There was no evidence of a clear unambiguous statement that he would continue to receive his widower's pension irrespective of any changes in his personal circumstances.

23. Mr N did not accept the Adjudicator's Opinion and made the following comments:-

- The Adjudicator has inferred a lack of good faith by Mr N on the basis that Mr N must have remembered what the Form said regarding remarriage. This presumes the ability by Mr N in 2001 to remember what happened in 1995 when his first wife died. A subjective and not objective test should be applied when assessing what Mr N knew. The burden of proof is on Teachers' Pensions to show bad faith.
- Under the Act, the time limit for overpayments is six years unless Section 32 of the Act applies. The burden is on Teachers' Pensions to establish that it could not have discovered the mistake without taking exceptional measures which it could have reasonably been expected to take. Mr N provided information in 2006 when he applied for his benefits which included his full name, address, date of birth, his second wife's details and the date of his second marriage. Any reasonable observer, provided with the same information Teachers' Pensions had, would have determined that Mr N had remarried. Teachers' Pensions must bear the consequences of its decision if it chose not to adopt administrative systems which would allow it to cross-refer.
- Teachers' Pensions could have discovered the mistake from the information in its possession by cross-referencing. Teachers' Pensions now has such a system and the question is whether the introduction of such a system would have involved exceptional measures which it could not have been expected to make. Mr N suggests that the introduction of such a system was simple and essential. The Ombudsman has previously criticised Teachers' Pensions in PO-86179/1 paragraph 41 - "I agree with Mr Fitzgerald that TP's systems were lax, in that there were two departments within TP, one dealing with pensionable service and the other with abatements, but neither department communicated with each other as it should have." And "I do not think it is reasonable for a member to know that they need to contact separate departments dealing with different aspects of related issues, particularly when this is not well advertised by TP." Mr N accepts that a different issue was at stake in that case but feels that the same sentiment should apply.
- In 2008, Teachers' Pensions identified numerous instances of overpayment when it wrote to members who may have been re-employed. So, Teachers'

Pensions became aware in 2008 that its systems needed improvement, it was not receiving sufficient information from its members, it was possible to write to members and changing to specific letters identified numerous instances of overpayment. If Teachers' Pensions had implemented a similar system for those receiving widow'/widower's pensions, then a similar result would have been achieved. It would not have taken exceptional measures for Teachers' Pensions to have updated its systems in 2008. It was a large publicly funded organisation and had both the resources and staff to introduce improved procedures.

- Teachers' Pensions did not display reasonable diligence which would have identified the overpayment and prevented further debt.
- Any payment made before 9 July 2012 is statute barred.

24. Teachers' Pensions responded as follows:-

- It is required to seek repayment of an overpayment regardless of how it may have arisen. This is in line with HM Treasury's Managing Public Money (**MPM**). See appendix for Annex 4.11: Overpayments. It says the onus is on the recipient to show that it would be unfair to repay the money. MPM also refers to the defence of good faith but that alone is not sufficient to prevent recovery of an overpayment.
- It does not agree that the burden of proof is on it. Since 2004, pensioners have received newsletters asking them to inform Teachers' Pensions if they receive a widow's or widower's pension and they remarry.
- Section 32 of the Act allows for postponement of the limitation period in cases of fraud, mistake or concealment. As Mr N did not inform Teachers' Pensions of his remarriage until September 2016, the overpayment was recoverable.
- The Ombudsman has said in previous determinations that reasonable diligence includes informing members of the requirement to notify Teachers' Pensions of any change in circumstances.
- It does not agree with Mr N's comments regarding cross-referencing. Mr N did not inform Teachers' Pensions when he applied for his personal retirement benefits that he was already receiving a widower's pension under his first wife's unique reference number. The Form also says that the pension reference number should be quoted in correspondence with Teachers' Pensions.
- The decision to start writing to beneficiaries receiving widow's and widower's pensions supplemented the existing process of issuing the Form and annual newsletters. This was not recognition that the previous system was deficient or negligent. A previous Ombudsman determination acknowledged this view.

25. The complaint was passed to me to consider. I have noted the additional points made by Mr N but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

26. I recognise that Mr N claimed the widower's benefits in 1995 under what must have been traumatic circumstances. On its own, this might not be sufficient to satisfy the argument that Mr N was informed of the requirement to inform Teachers' Pensions of his remarriage. However, Teachers' Pensions sent annual newsletters to Mr N and these would have served as a yearly reminder of the requirement.
27. Though Mr N may not have remembered completing the Form in 1995, there were sufficient other recent reminders of the requirement. Mr N cannot reasonably claim ignorance of the requirement if he deliberately did not read the information provided to him. Moreover, the onus is on Mr N to prove he has a defence against recovery.
28. Both Mr N and Teachers' Pensions have mentioned the Act in support of their respective positions. The Act allows the recovery of an overpayment in circumstances where the discovery of the overpayment was delayed by fraud, concealment or mistake. Teachers' Pensions says that it only discovered the overpayment in 2016 when Mr N informed it of his remarriage. I agree with the Adjudicator's view that the previous correspondence from Mr N to Teachers' Pensions was insufficient to notify Teachers' Pensions of his change of marital circumstances such that it should have then noted his ineligibility for the widower's pension.
29. Mr N wrote to Teachers' Pensions in 2006 to claim his personal benefits from the Scheme, not to inform it of his remarriage. While Mr N may have mentioned his marital status and other personal details, this was to allow Teachers' Pensions to pay his own benefits. Mr N did not make any reference to his receipt of the widower's pension in addition to his own claim for benefits. It would have taken exceptional measures for Teachers' Pensions to presume every claim for benefits could also be in receipt of other benefits and to carry out additional checks. This would cause delays to the payment of benefits of all members just to identify any such cases.
30. Although, Teachers' Pensions had information received from Mr N in 2006 which, when added to other recorded information, could have amounted to knowledge of Mr N's remarriage, putting all the various data together in the case of every member applying for benefits would take considerable resources. Teachers' Pensions may be a large publicly funded organisation, but it does not have unlimited resources. Moreover, being publicly funded it has to be prudent in the use of its resources.
31. Both Mr N and Teachers' Pensions have quoted from previous Determinations. It remains the position that each case is decided on its own merits. Both parties agree on what the Act says regarding time limits, even though they may not agree on its application in this case. I find that Teachers' Pensions could not, with reasonable diligence, have discovered the error before September 2016, and the time started to



run from that point. Teachers' Pensions is entitled to seek recovery of the entire overpayment.

32. Mr N submits that Teachers' Pensions should have implemented its new systems much earlier as this would have prevented further overpayments from arising. Systems are often improved; it is not necessarily an admission that the previous systems were not fit for purpose, but another step forward in the evolution of the system. The decision by Teachers' Pensions to write to members in receipt of widow's/widower's pensions was to supplement the newsletters already sent, which in itself was sufficient notice to Mr N. The fact that Teachers' Pensions did not send the letter to Mr N until 2016 did not absolve him of the responsibility to inform Teachers' Pensions of his change of circumstances.
33. I do not find any justifiable defence against the recovery of the overpayment.
34. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
3 September 2020

## Appendix

### Teachers' Superannuation (Consolidation) Regulations 1988 (the Regulations)

E28 of the Regulations says:

Commencement and duration of long-term family pensions

E28.-(1) A pension under Regulation E25 payable to a surviving spouse or a nominated beneficiary ("an adult pension") is to be paid-

(c) from the day on which any short-term pension that became so payable under regulation E23 ceases to be payable, or

(d) if no short term pension became payable, from the day after that of the death.

(2) Subject to paragraph (3), an adult pension is payable for life.

(3) Unless the Secretary of State determines otherwise in the particular case, and subject always to regulation E1(3)(c) and (d) (guaranteed minimum pension for surviving spouse), an adult pension is not payable during or after any marriage or period of cohabitation outside marriage."

## Managing Public Money

### Annex 4.11: Overpayments

This annex discusses how, and how far, public sector organisations should seek to recover overpayments – one case of special payments outside normal parliamentary process (section 4.7). In difficult cases it is important to act on legal advice.

**A4.11.1** Even good payment systems sometimes go wrong. Most organisations responsible for making payments will sometimes discover that they have made overpayments in error.

**A4.11.2** In principle public sector organisations should always pursue recovery of overpayments, irrespective of how they came to be made. In practice, however, there will be both practical and legal limits to how cases should be handled. So each case should be dealt with on its merits. Some overpayment scenarios are outlined in box A4.11A. Where recovery of overpayments is not pursued the guidance in annex A4.10 should be followed.

## **A4.11A: possible reasons for overpayment**

### **Contractors and suppliers**

Overpayments in business transactions should always be pursued, irrespective of cause. It is acceptable to recover by abating future payments if this approach offers value for money and helps preserve goodwill. If the contractor resists, the overpaying organisation should consider taking legal action, taking account of the strength of the case, and of legal advice.

### **Grants and subsidies**

Overpayments to persons or corporate bodies should be treated as business transactions and a full refund sought. The overpaying organisation should ask recipients to acknowledge the amount of the debt in writing.

### **Pay, allowances, pensions**

Overpayments to: • civil servants • members of the armed forces • employees of NDPBs • retired teachers and NHS employees • and the dependants of any of these should be pursued, taking proper account of how far recipients have acted in good faith. Similar cases should be treated consistently. After warning recipients, recovery through deduction from future salary or pension is often convenient. Legal advice is often wise to make sure that proper account has been taken of any valid defence against recovery recipients may have.

**A4.11.3** When deciding on appropriate action, taking legal advice, organisations should consider:

- the type of overpayment;
- whether the recipient accepted the money in good or bad faith;
- the cost-effectiveness of recovery action (either in house or using external companies). Advice that a particular course of action appears to offer good value may not be conclusive since it may not take account of the wider public interest;
- any relevant personal circumstances of the payee, including defences against recovery; • the length of time since the payment in question was made; and
- the need to deal equitably with overpayments to a group of people in similar circumstances.

**A4.11.4** It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems and their operation. It is important to put failings right.

### **Payments made with parliamentary authority**

**A4.11.5** Sometimes overpayments are made using specific legal powers but making mistakes of fact or law. These are legally recoverable, subject to the provisions of the Limitation Acts and other defences against recovery (see below). The presumption should

always be that recovery should be pursued, irrespective of the circumstances in which it arose.

## **Good faith**

**A4.11.6** The decision on how far recovery of an overpayment should be pursued in a particular case will be influenced by whether the recipient has acted in good or bad faith:

- where recipients of overpayments have acted in good faith, eg genuinely believing that the payment was right, they may be able to use this as a defence (though good faith alone is not a sufficient defence);
- where recipients of overpayments have acted in bad faith, recovery of the full amount overpaid should always be sought.

**A4.11.7** Recipients may be inferred to have acted in bad faith if they have wilfully suppressed material facts or otherwise failed to give timely, accurate and complete information affecting the amount payable. Other cases, eg those involving recipients' carelessness, may require judgement. And some cases may involve such obvious error, eg where an amount stated is very different from that paid, that no recipient could reasonably claim to have acted in good faith.

**A4.11.8** In forming a judgement about whether payments have been received in good faith, due allowance should be made for:

- the complexity of some entitlements, eg to pay or benefits;
- how far the payment depended on changes in the recipient's circumstances of which he or she was obliged to tell the payer;
- the extent to which generic information was readily available to help recipients understand what was likely to be due.

## **Fraud**

**A4.11.9** If a public sector organisation is satisfied that the circumstances of an overpayment involved bad faith on the part of the recipient, it should automatically consider the possibility of fraud in addition to recovery action. For example, the recipient may have dishonestly given false information or knowingly failed to disclose information. If there is evidence of fraudulent intent, prosecution or disciplinary action should be undertaken where appropriate and practicable. A criminal conviction in such a case will not eliminate the public debt which had resulted from the overpayment, and so recovery of the debt should also be pursued by any available means.

## **Cost-effectiveness**

**A4.11.10** Public sector organisations should take decisions about their tactics in seeking recovery in particular cases on the strength of cost benefit analysis of the options. Decisions not to pursue recovery should be exceptional and taken only after careful

appraisal of the relevant facts, taking into account the legal position. The option of abating future payments to the recipient should always be considered.

### **Defences against recovery**

**A4.11.11** Defences which may be claimed against recovery include:

- the length of time since the overpayment was made
- change of position
- estoppel
- good consideration
- hardship.

### **Lapse of time**

**A4.11.12** There can be time limitations on recovery. In England and Wales, a recipient might plead that a claim is time-barred under the provisions of the Limitation Acts. Proceedings to recover overpayments must generally be instituted within six years (twelve years if the claim is against the personal estate of a deceased person) of discovery of the mistake or the time when the claimant could, with reasonable diligence, have discovered it.

**A4.11.13** When public sector organisations claim against a private sector organisation or people who ignore or dispute the claim, the organisation should take legal advice about proceeding with the claim in good time so that it does not become time barred.

**A4.11.14** If someone claims that they have overpaid a public sector organisation, they should be told promptly if the claim is time barred. But if, on its merits, the recipient organisation decides that there is a case for an ex gratia payment, it should obtain Treasury consent if the amount involved is outside the organisation's delegated powers. Similarly, there may be a case for ex gratia payments to make good underpayments to government employees unless they were dilatory in making their claims.

### **Change of position**

**A4.11.15** The recipient of an overpayment may seek to rely on change of position if he or she has in good faith reacted to the overpayment by relying on it to change their lifestyle. It might then be inequitable to seek to recover the full amount of the overpayment. The paying organisation's reaction should depend on the facts of the case. The onus is on the recipient to show that it would be unfair to repay the money. This defence is difficult to demonstrate.

### **Estoppel**

**A4.11.16** A recipient who has changed his or her position may also be able to rely on the rule of evidence estoppel if the paying organisation misled the recipient about his or her entitlement, even if the overpayment was caused by a fault on the part of the recipient. However, a mistaken payment will not normally of itself constitute a representation that the

payee can keep it. There must normally be some further indication of the recipient's supposed title other than the mere fact of payment.

**A4.11.17** The paying organisation can be prevented from recovery even where it has made no positive statement to the payee that the latter is entitled to the money received. If, following a demand for repayment, the recipient can give reasons why repayment should not be made, then silence from paying organisation would almost certainly entitle the recipient to conclude that the reply was satisfactory and that he or she could keep the money.

**A4.11.18** It is essential for public sector organisations to seek legal advice where change of position or estoppel is offered as defence against recovery.

### **Good consideration**

A4.11.19 Another possible defence against recovery is where someone makes a payment for good consideration, i.e. where the recipient gives something in return for the payment. For example, payment might be made to discharge a debt; or where the payment is part of a compromise to deal with an honest claim. If such payments are later found to be more than was strictly due, the extent to which the paying organisation was acting in good faith should be taken into account.

### **Hardship**

**A4.11.20** Public sector organisations may waive recovery of overpayments where it is demonstrated that recovery would cause hardship. But hardship should not be confused with inconvenience. Where the recipient has no entitlement, repayment does not in itself amount to hardship, especially if the overpayment was discovered quickly. Acceptable pleas of hardship should be supported by reasonable evidence that the recovery action proposed by the paying organisation would be detrimental to the welfare of the debtor or the debtor's family. Hardship is not necessarily limited to financial hardship; public sector organisations may waive recovery of overpayments where recovery would be detrimental to the mental welfare of the debtor or the debtor's family. Again, such hardship must be demonstrated by evidence.

### **Collective overpayments**

**A4.11.21** If a group of people have all been overpaid as a result of the same mistake, the recipients should be treated in the same way. However, that does not mean that recovery of all such overpayments should be automatically written off. For example, it may be legitimate to continue to effect recovery from those who have offered to repay, or some may not be subject to the same level of hardship.

**A4.11.22** Public sector organisations should decide how best to handle collective overpayments so that they do not inhibit the maximum recovery possible. If it is deemed impractical to pursue recovery from some members of an equivalent group, there should be no inhibition on pursuing others who may be able to pay. There is no obligation to inform the group generally about what action is being taken against particular members

since all have the same legal obligation. Any differential treatment should be based on advice.

**A4.11.23** If a public sector organisation is minded to forgo recovery of the whole or any part of a collective overpayment, it should consult the Treasury (or its sponsor department, as the case may be) before telling the recipients of the overpayments. The Treasury will need to be satisfied that a collective waiver is defensible in the public interest or as value for money. And any such waivers should be exceptional.