Environment Agency
Pension Fund

December 2012

Environment Agency Pension Funds fraud policy

Background

The Environment Agency Board delegates the administering authority responsibilities in operating the Environment Agency Active and Closed Pension Funds to its Pensions Committee.

It should be noted that the risk of fraud in member transactions is fairly low, with the incidence of unreported pensioner deaths being much lower than those reported by other local authority pension funds. The Environment Agency Pension Funds' (EAPF) investments are also protected by controls and indemnities in our contracts with the service providers, together with annual external audit and assurance by National Audit Office.

Policy

The Pensions Committee takes fraud very seriously. Our policy is to take appropriate action to prevent fraud and to deal with all cases where fraud is suspected. We will investigate all cases of actual or suspected fraud and initiate appropriate recovery action and/or criminal proceedings where fraud is identified.

The Pensions Committee has identified the likely areas for potential fraud and taken action to ensure it has mitigated these risks. The Pensions Committee will keep in place and maintain fraud policies and processes to deal with issues that arise and ensure clear accountability for actions.

In relation to member related fraud, the Pensions Committee will generally seek to recover all overpayments of pensions in excess of £400. (Amounts under £400 will generally be uneconomic to pursue and are most likely to be a part month's pension paid following a member's death which it would be insensitive to pursue).

In relation to service providers, the Pensions Committee's will seek indemnities from the EAPF administrator, custodian and investment managers to protect the Funds in the event of negligent or fraudulent activity by any of those parties.

The Pensions Committee will keep its controls under review with the aim of ensuring a higher level of control than that required by the Local Government Pension Scheme (LGPS) Regulations.

Effective date

This policy was approved by the Pensions Committee on 28 September 2010 and effective from 1 October 2010. It was reviewed and updated to take account of agreed process changes in December 2012.

Review

This policy will be reviewed annually and updated as necessary. Updates will be approved by the Pensions Committee and published following that approval.

Enquiries

Any enquiries in relation to this Fraud Policy should be sent to:

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Email: info@eapf.org.uk
Tel: 0117 9344600

Risk management and controls

Risk management tools - Annex 1 contains an outline of the process by which the Pensions Committee manages its exposure to fraud risk and considers the actions required to mitigate that risk.

Member related fraud - Annex 2 contains the policy and procedure that the Pensions Committee operates for member related fraud. It was initially developed in 2004 and has been refined in the light of experience and advice from Internal Audit, our scheme administrator, Capita and our lawyers, Osborne Clarke.

Service provider fraud - Annex 3 contains a summary of the means by which the Pensions Committee mitigates risks relating to service providers including Fund custodian, investment managers and administrator.

Annex 1 – Risk management tools

Introduction

The Pensions Committee takes the management of all risks very seriously and has taken a number of steps to mitigate the various risks that it has identified. These are summarised below.

Governance Compliance document

Governance matters form an important part of the training of Pensions Committee members and each Pension Committee meeting. The EAPF maintains a Governance Compliance statement (as required by the LGPS regulations) that sets out:

- Whether the administering authority delegate its function or part of its function in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the administering authority.

If it does:

- The terms of reference, structure and operational procedures of the delegation.
- The frequency of any committee or sub-committee meetings.
- Whether the committee or sub-committee includes representatives of employing authorities (including non-Scheme employers) or members, and if so, whether those representatives have voting rights.

Scheme of delegation

The Pension Funds Scheme of Delegation (SoD), which forms a part of the Governance Compliance document, sets out the Pensions Committee's responsibilities related to fraud and the levels of authority for writing off debts where recovery is not possible. The relevant sections are shown below:

Pensions Committee responsibilities

Fraud and Irregularity	Authorised Body or Officer
Approval of Policy and procedure for handling pension fund benefit fraud including fraud prevention measures.	PC
Reporting of all fraud and financial irregularity immediately on discovery in accordance with the Agency's SoD. (Form M)	HoPFM & HoHR
Acting on pension fund benefit fraud in line with agreed policy and procedure including eg. Approval of repayment plans, notification to Department for Work & Pensions and Police.	HoPFM
Submission of proposed write-offs over £10,000 to DoF for approval.	HoPFM

Levels of authority for write off

Treatment of underpayments and overpayments of benefits	Authorised Body or Officer
Agreement of procedures for handling underpayments and overpayments.	HoPFM
Treating all underpayments and overpayments in accordance with the latest version of the process for handling underpayments and overpayments in the Procedures Manual, including: Overpayments of pension and lump sum: £400 or less – to be written off automatically. Over £400 where there is a continuing pension – recovery from the continuing pension. Over £400 where there is no continuing pension – a debtor's account will be raised. Overpayments of refunds of contributions: £100 or less – to be written off automatically. Over £100 – a debtor's account will	Capita
Overpayment of transfer values: £200 or less – to be written off automatically. Over £200 – a debtor's account will be raised.	
To authorise approval of write-offs of overpayments in all other circumstances, having followed the requirements of the procedures note, such as initial action to aim to reclaim overpayment. Up to and including £500 Up to and including £10,000. Up to and including £100,000 Up to and including £500,000 Over £500,000.	 Capita HoPFM DoF PC Board

Risk register

The EAPF has developed a detailed risk register that includes identified governance, benefit and investment related risks together with mitigating actions identified, taken and planned. The relevant portions are discussed at every BSG and ISG meeting and the Pensions Committee reviews high risk items as necessary and at least once a year. Officers are charged with actively maintaining the risk register and taking appropriate actions between meetings. Further details are available on request.

Member related fraud

The key area of fraud related to members that we can actively manage is unreported pensioner deaths that lead to overpayment of pension. The process by which this risk is managed is set out in Annex 2.

Another area where there is potential for fraud is where the recipient of a Tier 3 ill health pension fails to inform the administering authority where he/she has taken up gainful employment and continues to receive the pension. As the LGPS regulations set the recovery process as an employer responsibility, it is not covered in this policy document.

Service providers - Third Party Administration, Custody of assets and Investments

The Pensions Committee expects all EAPF service providers to have anti fraud policies and procedures in place. These are monitored in several ways including audits, service reviews and reviews of compliance documents. As an example, the Funds' custodian produces a regularly updated risk management overview (available on request) which sets out all of the controls that they have in place for their own and sub- custodian activities.

In addition, all EAPF contracts/management agreements drawn up by the Pensions Committee's legal advisors contain clauses that indemnify us against negligent or fraudulent activity by the service provider or any related parties. Further information is included at Annex 3.

Future plans

Although good controls are in place, the Pensions Committee is not complacent and keeps the fraud policy constantly under review with the aim of ensuring that it covers the full range of potential fraud activities the Funds may be exposed to and the mitigating actions required to manage those situations.

Annex 2 – Member related fraud/Overpayments – Policy and Procedure

Pensions Committee responsibility

The administering authority has a responsibility to pay only those benefits to which members and other beneficiaries are entitled.

Pensions are paid monthly, in arrears, on the last working day of each month.

Scope of policy

This document sets out the Pensions Committee's policy for dealing with pension payments made after the death of the pensioner or other beneficiary as a result of a delay or failure in notifying the Funds' administrator of the death. It also outlines HM Revenue and Customs rules related to authorised/ unauthorised payments because continued payment of a pension can become an unauthorised payment in certain circumstances.

Its aim is to prevent future occurrence and provide a framework for handling cases that may arise.

It does not cover other situations where a benefit may be overpaid as these are dealt with on a case by case basis with legal advice being taken where appropriate.

Policy

The Environment Agency Pensions Committee will seek to recover all overpayments of pensions in excess of £400. It will also take appropriate action to prevent fraud and deal with cases where fraud is suspected.

The most likely fraud scenario is where a pensioner's death is not reported and the pension continues to be collected by a third party, who is often a relative.

The Pensions Committee will seek to recover monies from those individuals/others who defraud or seek to defraud Environment Agency Pension Funds (Active or Closed) either voluntarily or, where necessary, via the courts.

We recognise that in many cases a delay in reporting is not a deliberate attempt to defraud the pension funds and recovery in such cases is likely to be straightforward. All overpayments must be handled sensitively in the initial stages.

Taxation – authorized / unauthorised payments

The Finance Act 2004 sets out a list of the payments which a registered pension scheme is authorised to make to members. Payments which do not fall within the list will be unauthorised and could result in three tax charges applying: (1) an unauthorised payments charge on the recipient of the payment (2) an unauthorised payments surcharge on that recipient and (3) a scheme sanction charge on the scheme.

1. The Registered Pension Schemes (Authorised Payments) Regulations 2009 ("Regulations") applies to any overpayments made on or after 6 April 2006.

2. Under Regulations 15, a pension paid after death to a member or dependant will constitute an authorised payment if:

- The payment is made no later than 6 months after the date of the person's death.
- The payment would not have been unauthorised if it had been made on the day immediately preceding the person's death and either:
- Capita did not know and could not reasonably have been expected to know, that the person had died before the payment was made.
- If it was known by Capita that the person had died before a payment was made, but Capita took reasonable steps to prevent the payment being made, or to prevent the payment being made in that amount.
- A payment made six months or more after the date of the person's death will constitute an unauthorised payment and legal advice should be sought.

Fraud prevention measures

National Fraud Initiative (NFI) – This is an exercise run by the Audit Commission every two years. It compares files of pensioners and deferred members with the Department for Work and Pensions database of the deceased and highlights matches for investigation. We have participated since 2004 and intend to continue to participate in future exercises. Files of our data are submitted in October with results being returned the following January. This is a low cost option and cannot be manipulated by members.

Annual mortality screening – This was introduced from 2011 as one of the enhancements in the 2010 pension administration contract and is undertaken via Capita Tracing Solutions in the years when there is no NFI. It covers all pensioner members. This comprehensive tracing service includes the screening of pensioner members against the Disclosure of Death Registration Information (DDRI) database with additional data cleansing against the General Registry Office (GRO), Post Office Address Files (PAF) and HALO databases, the review in year 1 also included an historic check. This should further reduce overpayments.

Monthly pensioner mortality screening – This was introduced in November 2012 alongside the removal of pensioner payslips and is carried out by Capita Tracing Solutions using the same data sources as the annual screening. This will lead to quicker identification of unreported deaths and should further reduce overpayments of pension.

Life Certificates – These are sent every year to pensioners living abroad, in residential and nursing homes or where a third party holds Power of Attorney. The Pensions Committee recognises that this will not prevent deliberate fraud where signatures are forged but it does regularly prompt those who have overlooked reporting. Where a witnessed certificate or other appropriate communication has not been received after three reminder letters, the pension will be suspended.

Internal controls – The Pension Funds administrator seeks proof of identity including original birth and marriage/civil partnership certificates before making any pension payments.

Publicity – Many of our publications for pensioners include a reminder that changes of circumstances or deaths must be notified immediately. They also include details of anti fraud exercises we participate in, such as the National Fraud Initiative.

Further action – we continue to seek further opportunities to identify possible frauds.

Benefits of pursuing the debt

A visible fraud prevention and recovery program deters others from attempting to defraud the Funds, which will help to minimise losses to the Funds.

It also provides a valuable communication/PR opportunity to demonstrate to honest members and pensioners that their Fund is well managed and protected from loss by fraud.

Procedure in the event of overpayment/suspected fraud

The outline procedures described below are followed in cases of suspected or confirmed overpayments/frauds.

The procedures are for use internally by the Environment Agency and the Pension Funds Administrators - Capita, with the assistance of the Pension Funds' lawyers.

More detail, including reporting requirements, a range of standard letters and internal processes at Capita for handling potential frauds as well as small underpayments or overpayments that are not linked to potential fraud is available on request.

Initial action to be taken on suspicion of overpayment/fraud

- Capita to confirm the death of the pensioner.
- Capita to suspend payment of pension.
- Capita to confirm value of pension 'overpayment'.
- Capita to contact the individual still collecting the pension to establish reasons and ask for repayment of the full amount.

The following are the most likely scenarios:

- Short term accidental failure to report death
- Long term deliberate failure to report death
- Deliberate fraud with forged signatures on life certificate

In the case of a short-term accidental failure the full funds may be available for immediate repayment, in most other cases further action will need to be considered.

Capita to report full details to the EA at this stage for appropriate next steps to be considered
At this stage EA to provide initial report to Pensions Committee, Defra, Pensions lawyer and Police as appropriate.

In all cases where immediate full repayment is not forthcoming, it is necessary to establish the individual's personal circumstances and available assets (using credit referencing agencies, enquiry agents as necessary) and then consider the most appropriate next steps (see below).

If the individual's whereabouts are not known, tracing options include trying electoral role checks, contacting the bank to which the pension is made or making use of any other clues in the member's records. If unsuccessful, consider using enquiry agents to try to trace the individual so that personal circumstances can be investigated and recovery options can be considered.

Next Steps – Recovery Options

Options include recovery without litigation, recovery/partial recovery after obtaining judgement, criminal prosecution and write off. Each case must be considered separately, depending on the individual's circumstances and legal advice, and taking into account the principles below.

Set off against death benefits or ongoing dependants' pensions – the Pensions Committee recognises that it has no automatic right to offset overpayments against death benefits due to the member's estate or ongoing dependants' benefits. However, it does support reaching an agreement with the recipients of any death benefits or ongoing benefits to such offsetting.

Decisions to cease pursuing overpayments – where such a decision is made because recovery options have been exhausted, due care must be take to identify where the overpayment constitutes an unauthorised payment under HMRC rules. Cases where an unauthorised payment exists must in the first instance be referred to the Pensions Manager for review.

Repayment plans – must be referred to the Pensions Manager for agreement. Where recovery can be made via a repayment plan over a 'reasonable' period of time lawyers generally recommend accepting the plan and only resorting to legal action should the plan fail.

'Reasonable' is normally be defined as no longer than the period of the overpayment (i.e. repayment to be at least at the same monthly rate as the original pension payments). Lesser amounts may be accepted depending on the individual circumstances.

Where repayment plans are agreed Capita issue invoices and monitor repayments, sending regular summaries of payments received. Defaults are reported to the EA and then followed up via lawyers/debt collectors.

Monitoring repayment plans - Debtors are contacted every 12 months to verify their circumstances and ensure we can take advantage of any change that would enable them to increase their payments.

Larger debts – the Pensions Committee may wish to obtain judgement on debts over £10k that cannot be immediately repaid.

Charging of interest – the Pensions Committee will reserve the right to claim interest on any sums owed to the Environment Agency Pension Funds.

Other circumstances - In other circumstances the following will be applied:

Circumstance	Step 1	Step 2	Step 3
Individual has some assets or a steady job.	Review the facts of the situation and potentially instruct lawyers to obtain judgement on the debt.	Commence enforcement procedures.	Receive outstanding monies.
Individual has no assets and no steady job.	Consider value of debt compared to likely cost of pursuing.	Where appropriate instruct lawyers to obtain judgement on the debt.	Consider enforcement procedures (costs can be high so the likelihood of recovery needs to be considered).
Fraud e.g. where individual has deliberately forged signature on a Life Certificate.	Prepare file for the police to investigate.	Instruct lawyers to obtain judgement on the debt.	Consider enforcement procedures (costs can be high and recovery is only likely where the individual has some assets).

Approval/reporting of Recovery/repayment plan or Write-off

For smaller amounts (up to £400) write off may be the prudent option because there are costs attached to chasing a debt. However, for any amounts over £400 every practical effort will be made to recover a debt before considering write off, which will always be a last resort and must be authorised as prescribed by the Pension Funds' Scheme of Delegation.

As at 18 March 2013 the approval limits are:

Up to and including £500	Capita
Up to and including £10,000	Head of Pension Fund Management
Up to and including £50,000	Director of Finance
Up to and including £100,000	Pensions Committee
Over £100,000	Board

Repayment plans and write-offs will be reported to the next Pensions Committee meeting.

Costs of pursuing debt

Steps taken by Capita form part of their administration role and as such will not attract additional charges.

Lawyers/debt recovery agents charge in a variety of ways but some indicative charges as are detailed below:

Initial enquiries on individual	£60 - £200 for an enquiry agent
Reviewing file and recommending action	£110 per hour

Letter before action	£80
Issuing proceedings/obtaining judgement	£500 + disbursements (approx £50 - £600 for claims up to £50k)
Bankruptcy fees: **Issuing Statutory Demand Bankruptcy petition**	£225 + disbursements (approx.£250-£400)
Enforcement of debt Charging order **Attachment of earning order**	£400+disbursements
Collection	£110 per hour

Annex 3 – Service providers - Pension Funds Administration, Custody of assets and Investments

Pensions Committee responsibility

The Pensions Committee as administering authority has overall responsibility for the management of the administration of the Funds, investment management and custody of assets.

Scope of policy

This document sets out the Pensions Committee's policy for dealing with the management of fraud by its service providers. In particular it covers the Funds' key agreements which are the Pension Funds administration agreement with Capita, the agreement for custody of assets with Northern Trust and the investment management agreements with our Fund Managers.

Policy

The Pensions Committee requires all its service providers to provide us with details of their business processes and procedures on fraud prevention. Where these are not produced our auditors request completion of an internal control questionnaire to obtain reasonable assurance that the supplier has suitable controls in place.

In addition, the Pensions Committee seeks indemnities from it's Pension Funds administrator, custodian and investment managers to ensure that the Funds are protected in the event of negligent or fraudulent activity by any of those parties.

The investment management agreements and the agreement with our custodian all contain clauses that indemnify us against negligent or fraudulent activity by managers, custodian or any related parties.

Authorised signatory/email account lists are maintained, in line with the Scheme of Delegation to cover the authorising of all transactions undertaken.

Fraud prevention measures

The measures that the Pensions Committee has in place differ between providers but all apply the principles outlined above. Specific details are shown below for each of the key providers.

All providers

We require all providers to supply details of their internal fraud risk policies/procedures as well as annual AAF01/06 or SAS 70 documents, which are audited annual documents detailing business processes and procedures on fraud prevention. Where these are not produced our auditors request completion of an internal control questionnaire to obtain reasonable assurance that the supplier has suitable controls in place.

All the agreements with providers include indemnity clauses drafted by the Pensions Committee's legal advisors to protect the Funds in the event of any fraud and require segregation of duties and internal control frameworks to be in place for all of the Funds' activities. Annual audits take place via internal and external auditors.

The Pension Funds' Scheme of Delegation sets out the delegations of responsibility for sign off/approval of invoices and transactions with authorised signatory lists, which are reviewed quarterly maintained for EAPF officers, Capita and Northern Trust.

Any material financial transactions with the Environment Agency, as a related party, are fully disclosed in the Annual Report and Financial Statements under FRS8. The party is named, the relationship is defined, the transaction is described and the amounts involved disclosed. This, for example, would include any amounts rechargeable between the related parties at year end.

Pension Funds administrator (Capita)

Capita has its own Fraud Risk Policy which details all of the controls that it has in place including, for example, the separation between the authorisation of payment and the running of the pension payroll.

Our Pension Funds' administrator is required to participate in Cabinet Office security surveys.
Any changes to the bank mandates for the Pension Funds' bank accounts are managed by Capita and reported to the Pensions Committee. Cashflow and bank reconciliation information is included in Capita's monthly reporting.

Custodian (Northern Trust)

The global custodian of the Funds' assets has a comprehensive framework of internal controls in place that enables fraud prevention and risk mitigation at all levels of operation. For example, in addition to risk management activities at Board, global enterprise, corporate and business functional levels, there are several corporate policies that specifically address fraud (i.e. Anti-Fraud Policy and Programme, Code of Business Conduct and Ethics, Reporting Procedures and IT Risk Policy).

In addition, Northern Trust provides an in-depth Service Organisation Control (SOC-1) Report on a regular six-monthly basis that includes the results of an independent review by an Independent Services Auditor over the previous 12 months and in accordance with American Institute of Certified Public Accountants (AICPA) and International Standards.

The Funds' assets are not held in the name of Northern Trust and so are segregated from those of Northern Trust itself, safeguarding them in the event of a failure by Northern Trust. Only small amounts of cash are left on deposit at Northern Trust. The Northern Trust Global Cash Funds are rated AAA by Moody's and are invested in short term money instruments to preserve capital and liquidity. These cash funds are also closely monitored by Officers.

Regular service reviews are held with Northern Trust to ensure continuous monitoring of service against its service level agreement and they are annually externally audited by National Audit Office.

Clear controls are in place for all movements of cash/other investments which ensure that anti money laundering requirements are met.

Investment Managers

An example of the indemnity clauses that are included in the investment management agreements is shown below.

	Manager's warranties and liabilities
16.1	The Manager shall act in good faith and with all due skill, care and diligence and shall maintain sufficient resources and personnel to ensure it is able to actively manage the Fund with such skill, care and diligence and otherwise adequately fulfil its obligations under this Agreement at all times. The Manager accepts liability for any Relevant Loss to the Client to the extent that such loss is directly due to any material breach of this Agreement by the Manager (excluding breaches arising out of force majeure as set out in clause 27) or is due to the negligence, wilful default or fraud of itself or any of its Associates which are affiliated companies appointed pursuant to clause 5.1 or that of its or their officers, members or employees. Failure by the Manager to provide sufficient resources to allow it to manage the Fund on the agreed basis will, without limitation, constitute a material breach.
16.2	In no event shall the Manager be responsible for any indirect, special or consequential loss, however arising and whether or not the possibility or likelihood of such indirect, special or consequential loss has been communicated between the parties to this Agreement.
16.3	For the avoidance of doubt, clauses 16.1 and 16.2 shall not operate to exclude or limit any liability of the Manager for the Client's loss of profit, where such loss flows directly from a material breach of this Agreement or the negligence, wilful default or fraud of the Manager or its Affiliated Companies or that of its or their officers, members or employees.
16.4	Subject to clause 16.1, and provided it has complied with clause 5 the Manager shall not be liable for the default of any broker, bank, custodian or other Relevant Third Party or entity which holds money, investments or other documents of title on behalf of the Client (other than an Associate).
16.5	If the Manager becomes aware of any circumstances which may give rise to any claim, demand, action or proceeding relevant to this Agreement by (or against) the Manager against (or by) any Relevant Third Party, the Manager shall forthwith make full disclosure to the Client of such circumstances. To the extent the Client does not itself have a remedy in law against the Relevant Third Party the Manager shall consider a written request of the Client to pursue all appropriate legal remedies on behalf of the Client to recover any Relevant Loss or obtain compensation in lieu thereof. To the extent the Client does have such a remedy in law against the Relevant Third Party the Manager shall use all reasonable endeavours to assist the Client to recover or mitigate the Relevant Loss or obtain compensation in lieu thereof, including the provision of relevant available information. The Client shall pay all reasonable costs and expenses properly incurred by the Manager in connection with the pursuit of such remedies against the Relevant Third Party.
16.6	No warranty is given by the Manager as to the performance or profitability of the Fund or any part of it.

16.7	Nothing in this Agreement shall exclude any liability of the Manager to the Client arising under FSMA or the Investment Regulations (or any rules or regulations made under such statutes) or the FSA Handbook of Rules and Guidance. The Manager warrants that it is regulated by the FSA in the conduct of Regulated Activities and undertakes to notify the Client immediately on ceasing to be so regulated or if events occur which mean that it is likely to cease to be so regulated.
16.8	The Manager warrants that, to the best of its knowledge, information and belief, after having made all reasonable enquiries, at the date of this Agreement neither it nor any Associates nor any director, officer or employee thereof is currently, or has in the past 36 months been, the subject of any action, investigation or discipline by the FSA or any other regulatory body whether in the UK or elsewhere and undertakes to notify the Client immediately it becomes aware of any such action, investigation or discipline.