

## **Recovery of Overpayments**

As the administration of the Police Pension Scheme is being gradually farmed out to private companies, so on transfer, pension details are being recalculated to ensure accuracy. This trawl of past calculations is in some cases throwing up examples where members have been overpaid and it is timely that you should be aware of the law and practice relating to requests for the repayment of money.

The legal position is quite clear. In every case where an individual has been overpaid, regardless of whether or not the individual has acted in good faith and regardless of whether or not the action that led to the overpayment was a mistake of law or of fact, the individual will most likely be asked to repay the overpayment. The reason for this is because in law, receipt of such an overpayment is regarded as "unjust enrichment".

Pension Scheme Administrators or anyone else for that matter cannot unilaterally deduct this overpayment without informing the Scheme Member or without having regard to the circumstances leading to the error. The first step should be for the individual to be notified in writing of the amount of the overpayment and its cause. At the same time the individual will be invited to repay the full amount. No further action should be taken to recover the money until the individual has responded to that invitation or has been given a reasonable time to do so. However, if a person does not reply within a reasonable time or ignores the invitation to repay, they will be sent a reminder. If there is still no response, the Scheme Administrators will send a no doubt even stronger worded reminder. The relevant procedures are contained in the Government Accounting 2000 rules, as amended March 2003.

In most cases, if the overpayment is accepted, then suitable recovery arrangements can be made either by lump sum, deduction from pension, or by an agreed instalment period. If the individual appears unable to pay back the overpayment in one lump sum, the individual should be invited to complete a Statement of Financial Means and Expenditure, so that a reasonable recovery plan can be determined that would not be detrimental to the welfare of the individual. In extreme cases, this might mean that the scheme managers have to accept that the scheme will not get all its money back where the instalments are set at a rate where the individual is likely to die before full recovery can be achieved.

In some cases however, an individual may have some doubt about the accuracy of the calculation, or the appropriateness of any recovery at all. If the former, the individual should request a full statement as to how exactly the over-payment has been calculated and over what period, if necessary checking with personal bank receipts. Any errors or misunderstandings can then be sorted out. The calculation should also take into account any

adjustments for overpaid tax. Some cases may involve substantial amounts, incurred over a long period, and without the knowledge of the individual, causing much anxiety to both our member and the family. Typical circumstances are where a pension rate has been calculated in error at the beginning of an award and perhaps after a few early fluctuating payments, the final rate put into payment was difficult to spot; another where the RPI figure [another small amount] was duplicated into an updated payment and the compounded error continued for a lengthy period.

In each case where the individual wants to challenge the appropriateness of recovery, they must, essentially, be able to establish that they had no grounds for suspecting that they might be being overpaid; or that they had taken all reasonable steps to alert the paying authority to any such suspicions. Even then, recovery action can properly follow. However, there are some specific steps which can be taken to prevent recovery.

One of the main defences concerns change of position. This is where the person receiving an overpayment in good faith has significantly altered their standard of living or entered into commitments that they would not have otherwise done relying on the overpayment. The fact that the recipient has spent the money does not in itself mean that the pension department should not ask them to repay it.

The second main defence is estoppel-. To claim this defence against recovery the member would need to demonstrate [a] the payer must have made a representation of fact that the member was entitled to the payment [b] the member must have changed their position in good faith and [c] the payment must not have been caused primarily by the member's fault.

If an individual feels that there are very strong grounds as to why they should not be required to repay an overpayment, irrespective of their financial means to repay, they can make this explanation to the paying authority.

Sometimes it is just a question of anything that is a fair repayment plan, acceptable to all parties, but occasionally the particular circumstances may be that our member should not be held liable for recovery at all, or at least, not for the total overpayment. If, after full consultation you cannot agree to any recovery, the member can apply for a decision under the Internal Disputes Resolution [IDR] procedure.

Under the Pensions Act 1995, all occupational pension schemes must operate IDR as a formal way of resolving disputes. Briefly, IDR contains two formal stages.

The first stage is the right to receive a decision made by the scheme administrator in response to a written complaint. In overpayment cases the Scheme Administrator normally

does this. The second stage is the right of appeal to the Home Office against the scheme administrator. There is also a further right of appeal to the Pensions Ombudsman, whose determination is legally binding on all parties.

The Pensions Ombudsman's address is 11 Belgrave Road, London, SW1V 1RB, Tel 0207 834 9144

[enquiries@pensions-ombudsman.org.uk](mailto:enquiries@pensions-ombudsman.org.uk)

Should the Ombudsman uphold a decision that an overpayment should be repaid, he would usually expect any such recovery to take place over at least no shorter a time than the mistake had gone undetected. Returning to overpayment recoveries, our aim must be to minimise the risk of these occurring at all. Paying departments have their own responsibility for ensuring accuracy. For our part, in general, from our award documents and annual statements, we should know what our pension amounts ought be [although occasionally the award notice itself is wrong!], so a monthly check of our pension payment into the bank should give assurance that all is in order, and that we are receiving the amount which we believe is correct.

Should there be, however, any unexplained deviation, seek an immediate explanation taking a copy of any correspondence, reminding as necessary. Overpayments are more likely to occur at initial award time, or on change of rate on widow/widower hood, or when a pension is revised following a change in circumstances, so it is particularly important to reconcile, on these occasions, actual amounts received against actual amounts notified as due, or what we believe to be reasonably correct.

Under the Limitation Act 1980, if the Pension Scheme Administrator's claim is for relief from the consequences of a mistake, then the six year limitation period would not start running until the mistake is discovered or reasonably should have been discovered.