



Recovering Overpaid Pensions

Have you overpaid pensions entitlements? - Pinsent Masons can help

Overpaid and incorrect pension payments are not uncommon, even where trustees believed that robust systems were in place. Mistakes happen, systems break down, software fails and sometimes deception and fraud play a part.

Our team has been involved in a number of projects across the full spectrum of pension provision: working with large and small self-administered pension schemes, major pension providers and both private and public sector schemes.

Trustees need to resolve errors in 'overpaid pensions' promptly and efficiently to protect the interests of legitimate claimants and meet the trustees' own obligations. Our extensive experience in developing and overseeing 'overpaid pension' recovery exercises means that we can offer

- a range of tailored solutions,
- reliable advice about thresholds below which it would be uneconomical to pursue, and
- streamlined processes through the use of template letters and market leading use of decision analysis tools.

Pursuing recovery of overpaid pensions is not the only aim. Trustees will also want to minimise any risks around copycat cases, while meeting their statutory duties to identify and mitigate the risk of unjustified allegations of maladministration. Our team's experience means that we can readily support such supplementary aims.

Recent projects

Some of the recent pension overpayments projects that we have been involved with are set out below. Details are confidential, due the sensitivities involved, but these are all substantial plc or FTSE 100 pension arrangements.

- Managing an overpayments recovery programme in respect of hundreds of pension overpayments resulting from incorrect pensionable salaries being used by scheme administrators.
- Advising a scheme on the recovery of overpayments in respect of deceased pensioners (where the scheme had not been given timely notice about pensioner deaths).
- A large scale exercise covering many hundreds of overpayment cases - leading to an industry lobbying initiative that resulted in some changes in 'A-Day' pensions legislation.
- Advising on the overpayment of £40,000 to one member, due to administrative error.

We tackled these projects using the most appropriate form of resolution. We use mediation and negotiation, including visits and offering (following agreement with the scheme or pension provider) a repayment plan or a reduction in future pension payments to the pensioner. We ensure full confidentiality, with litigation as a last resort. All this helps contain costs and minimises the risk of reputational damage for schemes and those paying the pensions.

Our focused approach

Trustees and pension providers do not want to write-off overpayments. However, they need to be careful about reducing pensions as this can result in an unauthorised payment tax charge levied by HMRC. This needs to be balanced against the cost of legal action where irrecoverable costs may equal or exceed the value of the recovery. A recovery project must focus on outcomes where the benefits justify costs - hence our *mediation and negotiation* approach.

Scheme administrators may also want to adopt a 'debt-by-debt' approach based on investing an agreed proportion of the overpaid pensions in the costs of recovery.



Pinsent Masons is a full service commercial firm with a team of over 900 lawyers and more than 1,600 staff in the UK and internationally.

Our Pensions Group is one of the leading pension teams in the UK. We have more than 60 pensions specialist spanning our UK offices and providing day-to-day advice to clients.

We also have wide experience of the industry as a whole and play a leading role in many of the industry bodies. Members of our team

- were influential in discussions with HMRC, leading to some changes in A-Day pensions legislation, in particular relaxations in the unauthorised pension payment rules relating to overpaid pensions, and
- form part of various DWP working groups
- provided secondments to the Pensions Regulator.

In addition, via Trustee Solutions Limited, Pinsent Masons acts as independent trustee to over 50 pension schemes. Being responsible for large numbers of pensions in payment means we have on-the-ground experience of developing robust preventative and recovery procedures for overpayments, whether caused by fraud or administrative mistake.

Pinsent Masons takes a comprehensive and integrated approach to advising clients on employee matters from rights and risks to rewards and retirement and spanning employment law, pensions, share plans and other benefits. We would be delighted to discuss this range of services with you.

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**For more information please call your usual Pinsent Masons adviser or
Simon Laight, Tel: 0121 260 4058 (simon.laight@pinsentmasons.com) who will be able to assist you further**

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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