

Making overpayments easier

May 2016

Introduction

There are a number of reasons why trustees may pay a member too much, such as an administrative slip-up, a misunderstanding of what the scheme rules say or a delay in finding out that a member has died. What should trustees do when they discover what has happened?

9 steps to understanding overpayments

1. When trustees have paid a member too much they must usually ask for the money back, even if the trustees are to blame for what has happened.
2. Trustees may decide not to ask for the money back if the legal and administrative costs involved are likely to exceed the amount they will actually recover from the member concerned. Trustees may take into account the potential distress the request for repayment may cause the member.
3. Members may have the right to keep the extra money if they spent more than normal because the overpayment led them to believe they could afford it. However, members must still pay back the money if, for example:
 - They spent the extra money on home improvements, but they had been planning to make those improvements anyway.
 - They used the extra money to book a holiday, but they had the opportunity to cancel that holiday once the overpayment came to light.
 - They should have suspected that they had been paid too much, eg because the amount was more than indicated in previous benefit statements.
 - They were responsible for the overpayment, eg by claiming to be older than their true age in order to receive a pension early.
4. Trustees may usually reduce a pension in payment to recover an overpayment, but they must give the affected pensioner sufficient notice before they do so.
5. All communications with members should be polite. The Pensions Ombudsman has criticised trustees for aggressively demanding money from members.
6. Trustees should generally allow members to pay back the money over a period no shorter than the period during which the overpayments were made. Members should give reasons if they do not think the proposed rates are reasonable.
7. Trustees cannot generally recover any payments made more than six years before the overpayment came to light. That restriction does not apply where trustees are able to recover the overpayment by reducing a pension in payment.
8. Certain overpayments give rise to a tax charge because HMRC treats them as 'unauthorised payments'. Trustees should check the position with their lawyers.
9. Trustees should consider seeking compensation from their administrators if the overpayment was their fault. The trustees will first need to consider the potential costs of claiming compensation, the likelihood of success and the potential damage to the trustees' relationship with the administrators. The administrators are likely to insist on the trustees first trying to get the money back from the members concerned.

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Further reading

The Pensions Advisory Service publishes [guidance on mistakes and overpayments](#).

Pensions law can be tricky... but it doesn't have to be. These 'making it easier' guides explain key issues in simple terms, giving practical help to trustees and employers.

The series is growing; additional copies can be downloaded from www.pinsentmasons.com

Current topics include: Using advisers; Scheme changes and Becoming a trustee

Comments and ideas for further topics are welcome...

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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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