

# Overpayments

## The Pensions Ombudsman's approach

### Private sector pension schemes

Scheme members may contact the Pensions Ombudsman because they've been told that they have been overpaid and money should be paid back – sometimes by making deductions from future pension instalments.

If the overpayment is because their pension was wrongly calculated, then the pension provider may also say that future pension payments will be permanently reduced.

The Pensions Ombudsman will look at any dispute over whether there was an overpayment in the first place. If there was, the Ombudsman will investigate whether any or all of it must be repaid and if so, over what period.

If a pension is going to be reduced in future the Pensions Ombudsman will look at whether there is any reason it shouldn't be.

As a starting point the law says that generally any money received in error from a private sector pension scheme in the past must be repaid. But there may be valid legal defences that some or all of it need not be repaid.

### Who might be at fault?

It could be the scheme trustees, managers, administrators, or an employer if they gave incorrect information to the pension scheme.

### What does the Pensions Ombudsman look at?

In a private sector pension scheme when looking at whether the overpayment should be repaid under principles of "unjust enrichment" the Pensions Ombudsman will consider, among other things, whether they have a "change of position" defence. To have a change of position defence the Pensions Ombudsman will consider:

- (1) Whether the individual acted in good faith - generally an individual will not be acting in good faith if the individual knew there was an overpayment or may have been overpaid but failed to take steps to check the position (often called having "Nelsonian knowledge") and yet went onto spend the money
- (2) The individual's circumstances must have changed detrimentally and, in circumstances when they have spent the money, the expenditure is not irreversible
- (3) The change of circumstances must be caused by the overpayment

For example if the member did not know that they were overpaid (so they are acting in good faith) and spent money on a holiday or gave it away they may be able to keep it. If however the member would have gone on holiday anyway it may still have to be repaid.

If money was spent on a generally improved standard of living over a period in circumstances where the member did not know they were being overpaid or might be being overpaid (and failed to check) this may mean it doesn't have to be repaid.

But if it's been spent, for example, on paying off a loan or is still in the member's bank account or used to buy an asset that can be converted back to cash without loss, then the person's financial position hasn't changed overall and the money may have to be repaid.

There may also be other legal defences to repayment of any overpayment which the Pensions Ombudsman will consider.

If money does need to be paid back the Pensions Ombudsman will consider how long the wrong payments were made for. As a rule of thumb, the money shouldn't need to be paid back over a shorter period than it was overpaid but the Pensions Ombudsman will also have regard to the individual's circumstances in determining an appropriate period over which the money should be recovered.

For example, if someone was paid the wrong pension for a year, then generally the overpayment could be recovered by deducting it from their pension instalments for a year. In certain circumstances it may be appropriate to recover the overpayment over a longer or shorter period.

The Pensions Ombudsman will look at the whole picture, including what assets the person has, so the Ombudsman may ask for information about savings, investments and spending patterns.

And the Pensions Ombudsman will think about the way that repayment was asked for, including whether any unnecessary distress was caused.

If the person is being told that their future pension will be permanently reduced because it was wrong in the past, then the Pensions Ombudsman's approach is the same as when someone has been given inaccurate information about a future pension. Generally this means that the Ombudsman will only make an award for non-financial injustice for distress and inconvenience. The fact that someone is inaccurately told they are entitled to a higher pension does not generally give a member a right to the higher overstated pension. However, if inaccurate information has been given negligently about the level of a member's pension payments and the member can demonstrate that it was reasonably foreseeable they would rely on the information and they did in fact rely on this information to their detriment the Pensions Ombudsman may direct a payment of compensation if the member can show that they have suffered monetary loss.

### **What happens if the complaint is upheld?**

Typically, the Pensions Ombudsman might tell the pension scheme:

- that the money cannot be recovered
- that only some must be paid back
- that repayments should be over a different period

Whether or not the money has to be repaid, the Pensions Ombudsman may tell those responsible for the scheme to pay compensation for non-financial injustice, such as distress or inconvenience. Further information about awards for non-financial injustice can be found on the [investigating your complaint](#) page.

The Pensions Ombudsman cannot order the person who has received the overpayment to pay it back. But if the Pensions Ombudsman says that it should be repaid, then the pension scheme could start court proceedings as a last resort.

### **Public sector scheme overpayments**

In some public sector schemes (including the Government Unified Scheme, the Teachers' Scheme and the Police Scheme) the regulations governing those schemes give the PSPA a statutory right to recover any overpayments and defences available where overpayments are made in a private sector scheme may not be available.

In a public sector scheme where the scheme regulations give the PSPA a right to recover the overpayment, the PSPA will generally be able to recover the overpayment. The Pensions Ombudsman's understanding is that the PSPA will usually give the individual a reasonable period to do this. Often the overpayment will be recouped from deduction from future payments.

If inaccurate information has been given negligently about the level of a member's pension payments and the member can demonstrate that they have reasonably relied on this information to their detriment they may again, like in a private sector scheme, be entitled to a claim for compensation if the member can show that they have suffered monetary loss e.g. have entered into financial commitments they would not have otherwise entered into which cannot now be reversed. The member may also be able to make a complaint that they have sustained non-financial injustice as a consequence of maladministration if they can demonstrate that they have suffered distress and inconvenience as a result of the inaccurate information about their pension entitlement.

### **Overpayments example - UK Pensions Ombudsman case**

A couple of years after he retired Mr B was informed by the trustees of a private sector occupational pension scheme that the lump sum he had received was more than the maximum he should have been given by about £13,000, but that his pension would have been higher if he had not had the extra cash.

The trustees wanted to recover the overpayment by keeping his pension at the lower, wrong, level without inflationary increases until the overpayment had been recovered, which was expected to be in about eight years' time. In a private sector occupational pension scheme set up under trust there is generally a right to recoup overpayments from future payments of pension unless it is unfair (inequitable) to do so. If for example in reliance on the inaccurate statement Mr B, had changed his position to his detriment, in circumstances when it was unfair to make him repay the money for example if the transaction could not be reversed.

Mr B argued that he should not have to make any repayment. His case was that he had used the money (as well as other savings) to repay the mortgage on his partner's property.

Mr B said this was a gift to her and that as she was unable to return the money, he should not be liable for the overpayment.

The Pensions Ombudsman decided that it was reasonable for Mr B to have to repay the money as the redemption of the mortgage was to his benefit as well.

Mr B lived in the property, contributed to the outgoings (including to the mortgage when it existed) and had relieved his partner of a considerable liability.

It was also significant that the method of repayment would not unduly affect the level of the pension that he had always expected to receive. Mr B's complaint was not upheld.