

# ALLEN & OVERY

## How to

### *...recover overpaid pensions*

#### **1. Double check the correct amount**

As a first step, double check the member's correct pension entitlement to avoid any further mistakes over the revised pension figures. You should only seek recovery where confident that there has been an overpayment.

#### **2. Correct future pension payments**

You will normally want to correct the pension going forward, after giving the member appropriate notice. The first step is to write to the member to explain about the overpaid pension and the arrangements for correction (see #3).

#### **3. Draft the letter carefully**

When writing to the member, explain the mistake and how you propose to correct it – remember that the news is likely to be unexpected and may be stressful, particularly if the member has limited funds. The Pensions Ombudsman has been critical of overly aggressive letters to pensioners about overpaid pensions.

#### **4. Decide whether to seek recovery**

The starting point is that members should only receive the benefits to which they are properly entitled under the rules. If the overpayment is trivial or for other reasons it would now be inappropriate to seek recovery (see #6), then you may decide not to pursue this. Remember to consider the potential tax consequences of non-recovery.

#### **5. Try to reach agreement first**

If you intend to seek recovery, the first step is to ask the member to repay the amount. You may want to propose arrangements for repayment and/or enter into dialogue as to how the overpaid pension can fairly be repaid. Don't make deductions from a member's pension or seek to recover overpayments without contacting the member first.

#### **6. Assess the member's response**

Members may assert that they have spent the overpaid amount and should not be asked to repay monies that they no longer hold. You will need to consider arguments of this kind on a case-by-case basis, including whether the member has so changed their position in reliance on the overpaid pension that it would be unfair to make them repay it.



## 7. Recovery from future pension payments

Consider whether it is viable to reduce future pension payments to the member until such time as the overpaid amounts have been recouped. Recoupment is the most common way that overpaid pensions are recovered as it avoids the member having to repay the money from savings or other sources of income (if they have any), and allows for recovery to take place over a period of time.

## 8. Recovery over a fair period

If future pension payments are to be reduced to recover the overpaid pension, this should be over a period of time that is fair to the member and does not cause financial hardship. As a general rule of thumb, the period should be at least as long as that of the overpayment (eg if a member was overpaid for ten years, recovery should take place over the next ten years).

## 9. Recovery from the administrators

Overpaid pensions may be the fault of the administrators responsible for the day-to-day payment of pensions. Trustees may look to the administrator to make good the loss to the scheme to the extent it is not recovered from the member – administrators normally resist this unless some attempt has been made to recover the overpaid pension. Read more at [www.allenoverly.com/profneg](http://www.allenoverly.com/profneg).

## 10. Limitation

You should act quickly to recover an overpaid pension once aware of it. If you cannot recoup the pension from the member and wish to bring proceedings against the member to recover the overpaid pension, then these should be commenced within six years from the date the trustees knew, or should have known, about the mistake. Assess limitation issues carefully.

For more information on avoiding and managing pensions disputes, please visit our Pensions in Dispute site at [www.allenoverly.com/pensionsindispute](http://www.allenoverly.com/pensionsindispute)

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