Overstating and overpaying: lessons from the Pensions Ombudsman

Recent decisions by the Pensions Ombudsman show how important it is for pension schemes to prevent and mitigate overpayments and overstatements.

The Ombudsman, Dominic Harris, caught the industry's attention in April with his widely reported conclusion in the case of Mr E and the trustees of the Bic UK Pension Scheme.

The Ombudsman decided that Mr E should repay just £6,554 out of a total overpayment of £90,934 made over more than 24 years.

Notable features of the determination include:

- The Ombudsman judged that when the trustees contacted scheme members in 2013, the communication was poorly drafted and didn't make it clear that overpayments might be recouped
- The Ombudsman concluded that Mr E had a "change of position" defence – he had reasonably spent his overpayments on improving his lifestyle
- Mr E also had an "estoppel" defence for the period before 2013 because the trustees represented that his pension was correctly paid and he reasonably relied on those representations
- The trustees took too long – more than six years – to resolve the problem after spotting potential overpayments
- The Ombudsman ordered the trustees to pay Mr E £1,000 compensation for distress and inconvenience

The Ombudsman's approach is member-friendly

Determinations following the Bic case give further weight to a member-friendly approach by the Ombudsman to oversights. As a result, pension scheme governing bodies need to put in place proper controls to deal with pension overpayments and overstated benefits.

Let's consider what recent Ombudsman determinations tell us about the implications of errors and omissions in the context of overpayments and overstatements.

The case of Mrs L, an overpayment determination, is a timely reminder that, until the new Pension Schemes Bill announced in the King's speech becomes law, trustees and administrators must get a court order before attempting to exercise a set-off in respect of a member's overpaid pension benefits. This decision also provides, as in the Bic case, a detailed and useful review of defences applied by complainants when asked to return an overpayment. And the determination underlines that pension schemes must properly consider any discretions they have before seeking recovery of overpayments.

The decision in the case of Mr G was a little more positive for trustees seeking to reclaim overpayments. In this case, which concerned an overpaid spouse's pension, the Ombudsman held that the member should have realised from warnings in annual newsletters that the pension would end if he remarried. So Mr G had no change of position defence. Also, on the facts of this case, there was no limitation bar to recovery as the pension scheme couldn't reasonably have been expected to discover the mistake any earlier. Importantly, the Ombudsman's decision is a reminder that good faith is needed for a change of position defence.

In Mr N, another case where lack of good faith was a factor, the scheme mistakenly failed to stop a premature retirement benefit when full scheme benefits came into payment. The complainant had no change of position defence available because he should have realised that his premature retirement payment was still being paid. The Ombudsman did, however, make an award for serious distress and inconvenience because the scheme was aggressive in its communication and should have spotted the error earlier.

The case of Mr S was about an incorrect statement where the Ombudsman held that it was unreasonable to rely on the quotation because it wasn't guaranteed and was issued over a year before the complainant took redundancy, allegedly relying on the incorrect quotation. The complainant also hadn't mitigated any loss by seeking alternative employment or delaying taking his pension. The pension scheme was, though, directed to pay £1,000 compensation to Mr S for serious distress and inconvenience. This determination is a reminder that if a complainant relies on incorrect information they must have good reasons to do so.

Robust controls and clear communication

"Prevention is better than cure" is the best strategy for pension scheme trustees and administrators when it comes to pension overpayments and overstatements. We all need to make sure we have strong controls to stop them happening in the first place.

That said, even the best-run schemes will make errors. Here are some steps you can take to help mitigate the impact of mistakes:

- Make sure information given to members about their pension scheme entitlements include proper caveats. For example, say that benefits are subject to scheme rules or that the statement is an estimate and no action should be taken on it alone
- Communicate in plain English and explain the potential implications of different options
- Make sure any oversights are resolved as soon as possible
- Take a compassionate tone when reclaiming an overpayment or explaining to a member that there has been an overstatement of their benefits. Remember that, especially with pension overpayments, the member might be considered a vulnerable customer

The Ombudsman has indicated that for overpayments and overstatements he may ask schemes to provide members with a standard factsheet. This would explain possible defences to recovery, such as estoppel and change of position, and the evidence the member needs to provide.

To use another idiom, it's becoming more important than ever for pension scheme trustees and their administrators to "get their ducks in a row" to make dealing with overpayments and overstatements part of an effective system of governance.

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