



Personal Pension Cases – Overpayments of Pension, Underpayment of Tax

Introduction

This general guide aims to provide useful practical information; and assistance to members who have requested help and support in dealing with a claim for repayment of an overpaid pension, or some such similar overpayment. If specific, individual, guidance is required the CSPA office should be contacted.

You may have received a letter from MyCSP or NICSP or HMRC and they have told you after a Review that you have been overpaid pension or underpaid tax.

Don't Panic! As a member of CSPA you can ask for support in getting the situation resolved. We cannot always get the problem to go away but we will help you go through the process. Once you receive the letter asking for repayment, don't consent to repay and say that you are seeking support from a representative.

Do tell your representative everything and provide written documents, not just what you think gives you the best chance or what you think is relevant. If you are going to contest the overpayment you may be required to give your personal financial details to MyCSP to show hardship or provide a 'statement of means'. It may be helpful to your case to provide medical reports, for example, if there is cognitive impairment You may wish to consider if you are prepared to do this.

Consent form

We will require all members requesting CSPA help to complete a Consent Form, one part of which goes to the organisation we are making representations to on behalf of the member; with the remaining part being the member's acknowledgement to how we will proceed to represent them.

Once that is completed, CSPA should be able to provide assistance although **not legal or financial advice**.

Overpayment of Pension Benefits

Most of our personal cases come from a member who has been asked to repay an overpayment of pension and who experience difficulties with this.

The legal position is clear. In all cases where such a pension overpayment has occurred, irrespective of whether or not the individual is in any way at fault, the law is that benefit of an overpayment is regarded as "unjust enrichment". The scheme will ask for a repayment, however, you need not always repay immediately, and no repayments should be made if you decide to appeal your case.

What happens next

The first issue is establishing if you have really been overpaid, over what period and why. The letter you receive notifying you of an overpayment should also provide reasons why this has occurred. If not you can write and ask MyCSP for a full explanation and relevant calculations. Any calculations should be adjusted for overpaid tax. Then consider what you want to do. In many cases people will repay but will be supported in getting a plan that suits them. In other cases, people will challenge the need to repay by establishing a defence. CSPA argue that no one should need to repay and will help you to take your case through the scheme Internal Disputes Resolution Procedure (IDRP) if you want and we can establish a credible defence.

Contesting Alleged Overpayments

In some cases, someone may doubt the accuracy of the reclaim calculation, or the right of recovery.

Most cases referred to the CSPA, usually involve substantial amounts, incurred over a long period, and without the knowledge of the individual, causing much anxiety to both the member and the family.

Typical circumstances are where: -

a permanent pension rate has been calculated in error at the beginning of an award, usually after a few early fluctuating payments, so that the final rate of payment was difficult to spot;

the CPI figure [a small amount] was duplicated into an updated payment and the error continued for a lengthy period;

What do you need to show?

If you want to challenge the appropriateness of recovery, then must be able to:

- establish that you had no grounds to suspect that there might be an overpayment.
- that you had taken all reasonable steps to alert the paying authority to any such suspicions.
- Even then, recovery action can properly follow in some circumstances. However, there is some allowance for defences against recovery, but these are very specific.

One of the main defences concerns **change of position**. This is where the person receiving an overpayment in good faith has significantly altered their standard of living or entered commitments that they would not have otherwise done, had they not been receiving the increase caused by the overpayment. Evidence must be produced to show this, you cannot just say I would not have gone on holiday. You could prove that you had bought a car and had you not had the extra money you could not have afforded a car and that a car is needed due to a disability for example. *However, the fact that you have spent the money does not in itself mean that MyCSP should not ask you to repay it.*

The second main defence is **Estoppel**. To claim this defence against recovery the member would need in essence to specifically demonstrate that: -

[a] the payer must have said that the member was entitled to the payment; Helpful to have documentary evidence to show that you were told this was your final pension or increase.

[b] the member must have set or changed their position (lifestyle) in good faith;

[c] the payment must not have been caused primarily by the member's fault.

If an individual feels that there are very strong grounds as to why they should not be required to repay an overpayment, irrespective of their financial means to repay, they can explain this to MyCSP.

Repayment Arrangements

Repayments are often made by adjustments to future pension payments once the pension has been reduced to its correct rate. Sometimes you may be able (if you can afford it) to make a lump sum payment. However, if an agreement cannot be reached then you may ask your representative to go through the formal dispute procedure.

IDR Procedures and Appeals

All occupational pension schemes must operate an Internal Disputes Resolution (IDR) process as a formal way of resolving disputes. You generally cannot go to law at this point. Briefly, IDR contains two formal stages.

- The first stage is the right to receive a decision made by the scheme administrator in response to a written complaint. In most overpayment cases this is normally MyCSP.
- The second stage is the right of appeal to the Cabinet Office against the scheme administrator.
- There is also a further right of appeal to the Pensions Ombudsman, whose determination is legally binding on all parties. Should the Ombudsman uphold a decision that an overpayment should be repaid, he would usually expect any such recovery to take place over at least no shorter a time than the mistake had gone undetected.

Underpayment of Tax

The general principles set out above also apply here but HMRC are not as flexible as either government departments or MyCSP and take a much harder line on recovering underpayment of Income Tax.

However, they must take into account an individual's personal and financial circumstances in deciding how to recover underpayments. Normally they would try to effect recovery of such tax by means of altering the Tax Code for the coming year, but this can be spread over more than one year. Unfortunately, HMRC do not make most people aware of the longer period available to make repayment. We have, however, found that a reasonable approach to HMRC can be beneficial.

There is no automatic right of referral to a higher authority as set out in Recovery of Overpayments regarding the IDR or similar processes. Such processes would require the services of specialist legal advice. Talk to your representative if you are thinking of this.