

How should trustees approach the recovery of overpayments in light of the decision in *Webber v Department for Education*?

The starting point for any pension scheme is that members are only entitled to the benefits payable in accordance with the scheme's governing documentation. The fact that a mistake has been made does not entitle the affected member to a higher level of benefit.

Members may argue that they have a legal claim to retain any sums overpaid, and even to continue receiving a higher, incorrect, level of pension as, broadly, they have "changed their position" in reliance on the incorrect payment(s). While trustees should be aware that such claims may be valid, in practice success is relatively rare. Members need to have strong evidence to support their position and justify retention of some or all of the overpaid sums.

Trustees should therefore feel comfortable in seeking full recovery of overpayments in the first instance and look for substantial proof from the member to depart from this.

The Webber case

It is relatively rare for a member overpayment case to progress through to the High Court. The Webber case has a long history, having been considered by the Deputy Pensions Ombudsman twice prior to the recent court judgment.

Facts

Mr Webber was a member of the Teachers Pension Scheme and drew his benefits in 1997. Under the rules of that scheme, when a member continues working having drawn their benefits, their pension will be reduced in the event that their total income exceeds their salary at the date of retirement (revalued to the present day). Mr Webber began working again in 2001 and had received information which explained the need to notify the administrators of changes such as this. He did so and, at that date, his combined income did not exceed the threshold. However, in the following tax year and a number of subsequent years, with increased working hours, his salary did result in him exceeding the limit. Mr Webber did not notify the administrator of these changes.

In November 2009, the administrator sought to recover the overpayments that had been made since 2001.

Change of position

Mr Webber argued that he should be entitled to retain the overpayment as he had changed his position in reliance on the pension and salary that he was receiving. Had he been aware of his correct entitlement, he claimed that he would not have made a number of one-off payments over the years.

Mr Webber also stated that he had notified the administrator when he went back to work and was not aware that he needed to provide any further notification whilst he remained in the same employment.

The Court found that, in the circumstances, Mr Webber knew that there was a risk of an overpayment and chose not to check with the administrator. As a result, he could not rely on a change of position defence.

Limitation

Notwithstanding the change of position findings, the Court also held that the administrators should have been on notice at the time they were first contacted by Mr Webber that it was likely he was going to be overpaid in future years. In light of this, he found that the administrator could, with reasonable diligence, have identified the overpayment in the 2002 / 2003 tax year. This triggered the start of the limitation period for the claim. As a consequence, Mr Webber had a limitation defence for the recovery of any overpayments made more than 6 years before the relevant date when the limitation period is to be regarded as having stopped. The court did not formally decide the cut-off date but suggested it would be the date Mr Webber brought his complaint to the Ombudsman.

What does this mean for trustees?

Whilst there is nothing 'new' in this case, it does highlight that it will be difficult for a member to establish a change of position defence where they know there is a risk they are being overpaid and could take steps to ascertain the position. Similarly, trustees should be alive to the possibility of overpayments and seek to take steps as soon as practicable when an issue arises. Otherwise, they may lose the opportunity to recover some or all of the overpayment. ■



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