Mistakes in Pension Calculations and Overpaid Pensions

INTRODUCTION
This briefing looks at the effects and remedies of errors in calculating pension benefits and of members receiving overpaid pensions from their pension schemes.

Such errors remain more common than GMB would wish. These can often lead to much distress and inconvenience on the part of a member who has acted in good faith, and who has played no part in the error. Opportunities for full recourse can be limited and this bulletin outlines what steps an affected member should take.

MISTAKES
The possibilities for making mistakes in pension calculations are wide ranging and can apply at various different times during a person's membership of a pension scheme (for example on leaving service, on retiring or when electing to move your pension benefits to another scheme).

The reasons behind mistakes can include; a member providing incorrect data (e.g. their own date of birth), employer providing incorrect data (e.g. salary amounts), pensions administrator inputting data incorrectly, calculations being performed incorrectly and not checked, figures being typed into letters incorrectly or incorrect use of actuarial factors and calculation methods. Actuarial factors are most commonly used in calculating defined benefit transfer values and early retirement pensions. It is exceptionally difficult to analyse and verify the actuarial factors that have been calculated and applied in such instances.

The most commonly noticed errors relate to calculation of retirement pensions. GMB has come across a variety of mistakes that have been present in retirement quotations. These quotations have been used by members to formulate their retirement plans and often they will help them finalise their decision to retire, or to accept a redundancy package.

A common scenario would be that a member requests an early retirement quote from their pension scheme. On the basis of the amount quoted (for example £7,000 per annum) and on the grounds of their savings and other potential income, they take the decision to retire from work. They notify their employer accordingly and work towards a retirement date. Shortly after retirement the pension scheme makes contact again. This time they quote a pension of £5,000pa is payable. When challenged they say that the previous quote of £7,000 was produced in error and that only the revised level of pension is payable. In such an instance the member would argue that they are suffering a financial loss.

Any decision taken or action made by a pension scheme can be appealed through its own Internal Disputes Resolution Procedure, and subsequently referred to the Pensions Ombudsman for a legally binding determination.

CONSEQUENTIAL ACTIONS

The steps taken by the Ombudsman to investigate any errors in pension calculations are in line with the information below. The process is often long and requires the production of exceptional levels of information from members to back up their appeal.

The view held by the Courts is that members are only entitled to the level of pension that is dictated by the rules or regulations of their pension scheme. The production of a quote which is not consistent with the correct level of pension due will not in itself generate any entitlement to the incorrect level of pension.

It is expected that if members could have been aware that a mistake had occurred, they should challenge this before making any decisions. If there is any suggestion that a member was aware of a potential mistake, but did not challenge it, this would negate any claims of financial loss.

It is also expected that steps could be taken to try and put any affected individual back into the position they would have been had no mistake occurred. This is possible in instances where a transfer value has been mistakenly calculated and the process of transferring the pension can be reversed. It is very difficult to assume that a retired member (such as quoted in the example above) could be allowed back into employment and in the position they had been, however if this is possible it would be the fairest solution to the mistake.

In many instances however members will have changed their position as a consequence of the incorrect information they have been given. This can include a change of lifestyle (eg retiring from work) and a change of financial circumstances (including leaving work, and/or entering into any financial contracts or making purchases). As above, where such changes of position can be reversed, they should be.

Where irreversible changes of position have been made (for example a return to your original work is impossible or a financial contract cannot be broken), then the nature of these changes would be investigated further. If there is any suggestion that the irreversible change is one you would have made anyway, this would negate any claims for financial loss. For example it was shown that you intended on retiring regardless of the level of the pension quoted to you, then there could be no claim. This might be reflected through any initial communication with your pension scheme or employer in which you express an intention to retire rather than expressing an interest in doing so.

The final aspect in assessing financial loss is the extent to which any losses can be mitigated. This means that if available steps can be taken to reduce financial outgoings or improve income, these should be taken and offset against your loss. For example, can any financial outgoings being reasonably cancelled or have you been able to secure alternative employment that has resulted in you being no worse off?

All of these matters should be carefully considered in an Internal Resolution Disputes Procedure and by the Pensions Ombudsman in deciding whether you have suffered a financial loss and whether the original, incorrect level of pension should be retained.

Experience has shown that such a process is exceptionally onerous and satisfactory outcomes can be difficult to achieve. However cases have been upheld by the Ombudsman and members have seen higher levels of pension continue.

In instances where financial loss cannot be demonstrated, but where it is recognised that members have suffered an inconvenience or distress, some financial compensation would normally be due. However the amount involved in this is of the order of £100 to £1,000.

OVERPAYMENTS OF PENSIONS

The example quoted previously related to a member who had been quoted an incorrect pension which was corrected before any payments were made. Also common are instances where a member's pension is calculated incorrectly and is overpaid, often for a number of years, before any error is detected.

In such instances there are two issues that must be dealt with; firstly that the pension has been overpaid for a period of time, and secondly that (in line with the rules and regulations) the pension going forward must be reduced.

All of the provisions on financial loss as highlighted in the previous section still apply in cases of overpayments, and the same appeals procedure can be used.

In instances where financial loss cannot be demonstrated, pension schemes have a legal duty to try any reclaim any overpaid pension. However schemes have the discretion to write off any overpayments or seek to claim the money from their administrators; and focus on reducing the pension going forward. A guiding principle to any repayments is that these should be spread over as long a period as possible.

A recent Ombudsman determination found against a retired member of the Teachers Pension Scheme who appealed against any repayment of a pension that was overpaid to the amount of nearly £32,000. The Ombudsman felt that the member did not comply with his duty to report employment whilst in retirement which would have led to abatement of his pension (NB not all pension schemes apply an abatement policy – if they do, you should be told of this on retirement). The Ombudsman did not uphold the member's appeal and so the sum is to be paid back over 30 months by the member.

HOW TO REDUCE THE LIKELIHOOD OF MISTAKES

Unfortunately, the combination of human error and the complexities associated with pensions means that the complete eradication of all such errors in pension calculations and communication is unlikely.

We would encourage members to check any information that a pension scheme holds. This is most often communicated in annual benefit statements in which a pension scheme provides estimates of benefits and may highlight the relevant data on which those estimates were based. Checking these statements for errors is important.

When requesting any retirement quotes, members should also be encouraged to query the data used in producing these and the general method of calculating the pension.

SUMMARY

In contesting any move to reclaim an overpaid pension or reduce your pension, you need to be able to demonstrate:

- You relied solely on the information that was provided to you
- You did not suspect that there was any error in the information
- You made an irreversible decision on the grounds of the information
- Had the correct information been made available at the correct time, you would have acted differently and not made the decisions you did
- You cannot be put back into the position you were in before you made the decision
- You have not been able to mitigate your loss.