

# FYI<sup>®</sup> Alert

## For Your Information<sup>®</sup>

### Pension overpayments and the need for a competent court

A recent Court of Appeal case has thrown doubt on the ability of The Pensions Ombudsman (TPO) to order a pension overpayment to be repaid.

The DWP is looking to legislate to correct the problem but, in the meantime, trustees should be aware of the additional step that will need to be taken where a member complains to TPO about the proposal to recoup the overpayment and TPO's Determination rules in favour of the trustees.

Volume 2023

Issue 29

22 December 2023

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#### Background

When a scheme inadvertently overpays a pension to a member or other beneficiary, it normally needs to be recovered. This news is unlikely to be well received by the payee and a complaint may follow, which may be taken to TPO. Depending on the facts of the case, TPO will either determine in favour of the trustees or the recipient of the payment.

TPO's power to order the recovery of any overpayment was thought to derive from Section 91 of the Pensions Act 1995 which enables a "competent court" to do this. However, a recent Court of Appeal ruling has supported an earlier judgment by the High Court, that TPO is not in fact a competent court.

This means that a TPO Determination is not sufficient to demand repayment and trustees would require a County Court ruling to enforce the recovery of a pension overpayment.

#### The way forward

TPO has now published its [response](#) to the Court of Appeal's judgment. This notes that, "TPO was granted powers to handle overpayment disputes and determine the terms of overpayment recovery by Parliament, with final binding Determinations being subject only to an appeal on a point of law.

In response to the ruling, DWP is supporting legislative changes to formally empower TPO to bring an outstanding overpayment dispute to an end without the need for a County Court order.”

There is no indication of how long it will take for the regulations to be produced to effect this change.

### **What does this mean for trustees?**

This is only really an issue if a member complains about repaying pension instalments to TPO.

TPO has published a [factsheet](#) on how trustees and recipients of overpayments should proceed and it includes details of the County Court process.

It should be noted that although, at least in the short term, the County Court referral is an extra step in the process of enforcing the recovery of overpayments. It is about the County Court enforcing TPO’s Determination, rather than pursuing County Court proceedings to secure recoupment. In effect, until the DWP amends the legislation, the County Court needs to rubber stamp the Determination as a competent court. Trustees must send a certified copy of TPO’s Determination to the County Court.

### **Comment**

This is an unwelcome issue for trustees, as it has always been assumed, by the pensions industry – and TPO itself – that TPO was a competent court.

It’s reassuring to see that the DWP is looking to amend the legislation to ensure TPO can be regarded as a competent court. However, this may take some time and trustees will need to understand how this may affect earlier Determinations.

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