

Ombudsman's Determination

Applicant	Mr W
Scheme	FF Pension Scheme (the Scheme)
Respondent	The Service

Outcome

1. I do not uphold Mr W's complaint and no further action is required by the Service.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr W's complaint against the Service is about the overpayment of his injury pension, which they are recouping. He says that he would like them to admit their mistake and stop recouping the overpayment.

Background information, including submissions from the parties

4. Mr W is in receipt of an injury pension under the Scheme. He is aware that the injury pension he is receiving may be subject to a deduction in respect of any State incapacity benefit he receives.
5. Mr W contacted the Service on 21 April 2010 to tell them that he had recently been notified and paid extra incapacity benefit.
6. The Service say that during their conversation with Mr W on 21 April 2010, they informed him that they would need to recalculate his injury pension. Mr W does not recall being told this.
7. The Service kept a file note of the conversation which reads as follows:
 - "1. Incapacity benefit ceased between April-August 2009
 2. Incapacity benefit of £400 per month from August 2009 awarded (Due to higher level DLA award) – the actual figure was £596 per month when DWP confirmation received.

3. Standard increase on Industrial Injuries Disablement Benefit awarded each April
4. Only just been notified and paid extra: advised would recalculate and up re 1 but but o/p re 2 once information from DWP received re amounts and date [sic]. Mr W says that in addition to telephoning the Service he sent them a letter. On receipt of his letter, they sent him a form to complete and return to them which would allow them to deduct an amount from his injury pension. He was told that if he did not hear from them once he returned the form everything would be fine.”
8. The Service say that Mr W was aware generally of the process by which overpayments were recouped as this had been done before.
9. There was a delay by the Service in recalculating Mr W’s injury pension. Eventually he was informed, in June 2011, that the overpayment amounted to £8,298.94 and that it needed to be recovered.
10. The Service have apologised for the delay. They say that his case coincided with the National Fraud Initiative report through the Audit Commission, which required the cross-checking of injury benefits with the records they held. As a result, Mr W’s case was not reviewed until February 2011 by which time they had contacted DWP on more than one occasion to obtain the necessary information. However, their position is that Mr W has received public monies and they have a duty to fully recover the overpayment.
11. The Service have decided to recoup the overpayment by deducting £131.77 each month from his injury pension until February 2017.

Adjudicator’s Opinion

12. Mr W’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Service. The Adjudicator’s findings are summarised briefly below:
 - The delay in reducing Mr W’s injury pension resulted in the overpayment. The reduction in his injury pension should have taken effect from the time his DLAA increased, which was in August 2009. As he did not advise the Service of the increase in his DLAA until April 2010, they cannot be blamed for any delay before that date. However they are responsible for the delay between April 2010 and June 2011, when they recalculated his injury pension and informed him of the overpayment. Therefore even though an overpayment was unavoidable, it would not have been as high as it is if the Service had recalculated his injury pension sooner than they did.

- The legal position is that the Service are entitled to recover the overpayment and have a duty to do so. The only defence against the Service recovering the overpayment is if Mr W can show a “change of position”. Mr W has been unable to provide any evidence to show a “change of position”.

Ombudsman’s decision

13. The Service is entitled to recover the overpayment. Mr W has not been able to demonstrate that he received the overpayment in good faith and relied on it in making relevant financial decisions and changes to his lifestyle that are irreversible.
14. I am satisfied that although Mr W cannot recall the details of the conversation on 21 April 2010, the overpayment was discussed. I am also satisfied that he was aware of the principle that overpayments resulted in recoupment and I conclude that he could not reasonably have expected to be able to keep the overpayment. The Service were responsible for the delay between April 2010 and June 2011, but he had use of the overpayment during that period and I am not persuaded that the delay caused him significant injustice.
15. Therefore, I do not uphold Mr W’s complaint.

Karen Johnston

Deputy Pensions Ombudsman
17 June 2016