

Overpayments

Frequently Asked Questions

Overview

These Q&As are intended to provide an overview of the main issues which arise in overpayment cases. They do not and are not intended to amount to legal advice to any person on a specific case or matter. These Q&As are based on the law as at 31st March 2012.

The force are suggesting that a member has been overpaid and demanding repayment. Does the member have to repay?

The first question you need to consider is whether there has been an overpayment. In some cases this will be clear. In other cases, for example, if there is a difficult issue of interpretation in relation to transitional rent allowance, it may not be so clear. If you are unsure, contact the JBB office. If an overpayment is established, the starting point is that the member is liable to repay the money, subject to the matters dealt with below.

Are there any defences?

The main defence (other than arguing that there has been no overpayment) is called "change of position". In short, a court may order that no repayment is required or that only partial repayment is required if this is considered fair in all the circumstances. While few cases in this area reach a court, we have successfully acted for police officers in a number of cases in which this defence has succeeded. It is likely that the courts will take the following factors into account when deciding whether or not to order repayment;

- Whether the overpayment was the member's fault;
- Whether the member was aware of the overpayment; The amount of the overpayment; and
- Whether the member has, in good faith, acted to his/her detriment as a result of receiving the overpayment.

It is likely to be necessary to show that the money has been spent in a way in which it would not had been spent if the true position had been known. We have successfully argued in several police cases that the defence should apply where the money was spent in good faith on normal month by month living expenses (Chief Constable of Merseyside v Smedley; Forshaw v Northumbria Police Authority).

Can the force/police authority deduct the money without the member's consent?

No. We have brought two cases: R v Chief Constable of Greater Manchester ex parte Beswick and R v South Wales Police Authority ex parte Walters in which the court has indicated that a force or police authority cannot make deductions from an officer's salary to recover an overpayment without the officer's consent.

If the force/police authority threaten to make deductions without consent, you should contact the JBB office.

What will happen if the member does not agree to repay?

If the member refuses to agree, then if the force/police authority wish to secure repayment, they will have to bring legal proceedings against him/her. Depending on the amount at stake, such proceedings may well be in the Small Claims Court. The member can raise the defence of change of position if proceedings are brought.

Is it possible to negotiate?

The force/police authority cannot be forced to negotiate, but they may be willing to look at either repayment of a reduced amount and/or repayment in small instalments over an extended period. If you are negotiating you should ensure that you make clear to the force/police authority that the negotiations are "without prejudice". This means that they are off the record attempts to resolve the matter without legal proceedings. If you are negotiating on behalf of a member, you should make sure that you have authority to do so. If the circumstances are appropriate then reference to the cases mentioned above may assist.

If you need further assistance, in the first instance please contact your local Joint Branch Board.

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