

SHQ - Warren, Bob

From: SHQ - Warren, Bob
Sent: 05 October 2009 17:07
To: O'Toole, David (Cllr)
Cc: SHQ - Holland, P (CFO); SHQ - Warren, Bob
Subject: RE: PENSIONS

David

Hereunder are the replies to your questions, I have tried to avoid duplication but to some extent this is inevitable. The guiding principles are to stop erroneous payments (which has been achieved) and then to recoup the overpayments. With this in mind rather than provide an individual synopsis of each outstanding case, which would be extremely extensive and subject to change, I have provided the guiding principles. If you want any further explanation on an individual case then I will do my best to provide same.

I can confirm that the processes adopted are in line with both audit commission and legal advice, as well as pensions sub committee direction
Bob

From: O'Toole, David (Cllr) [mailto:David.O'Toole@lancashire.gov.uk]
Sent: 28 September 2009 14:50
To: SHQ - Holland, P (CFO); SHQ - Warren, Bob
Subject: PENSIONS

Peter and Bob

Further to the meeting CC Shedwick and I had with CC Driver and others earlier today. Several points were raised which I would be grateful if you can answer.

However the main message that came across is that we as the controlling group want a very early end to this drawn out saga. As you aware know since taking over the chairmanship of the authority it has been a priority that we reach a speedy conclusion. This sentiment was echoed by all at this mornings meeting. I called a special meeting of the resources committee in July for that very purpose.

Although everybody within the service wants a resolution, if individuals refuse to meaningfully engage with the service, the ability to resolve the issue is constrained

I would point out that of 167 recipients of an injury pension, we are dealing with 23 outstanding cases.

Our first principle was to prevent ongoing overpayments to individuals and this has been achieved.

The second stage of recouping the overpayments is clearly more difficult and whilst a great deal of success has been achieved, progress has been thwarted by the stance adopted by Thompsons / FBU.(representing 12 individuals)

In view of the circumstances it is not equitable or tenable to allow individuals who refuse to engage with the service to benefit at the expense of the vast majority who have cooperated

Bob was able to answer some of the points raised but I will ask again for the record

Of those pensioners who have refused to provide details or for one reason or another have not reached settlement. why have some had their pension stopped and others not?

6 individuals, who have refused to give us details or access to their benefits records, have had the injury portion of their pension suspended. This is on the basis that in the absence of the requested information the service is unable to calculate the amount of injury award pension that is payable. To make payments in these circumstances would be "ultra vires".

It is clear that a number of overpayments have been made and in the context that 161 people have signed the authorisation the fact that 6 individuals feel unable to sign the document needs to be considered.


This action is in line with the legal advice obtained by both LCC and ourselves. It is also in line with our first principle to prevent overpayments

In addition some individuals in agreeing a repayment plan have opted to have the injury portion of their pension stopped.


A third grouping have had the injury award element of their pension amended to reflect the benefits that they are receiving and in some instances that would result in the whole award being stopped.

How many of the 150 have been written off and why?


Each case is dealt with on its individual merits. A number of cases when discussion have occurred has resulted in clarification that the benefits they are receiving are not related to the basis of their injury award and as such they do not owe the service any money. In addition having established that a debt is owed then in certain circumstances if the individual is unable to repay the outstanding amount and where this is clear the debt can be written off. This has only occurred on one case so far, which will be reported to the next pensions sub committee. In another instance in light of the full circumstances the debt was not pursued. The only other reduction in outstanding debt occurred on respect of D Wilson when a negotiated settlement was reached with his lawyer (Agreed in return for immediate payment of @ 15K, the remaining outstanding sum was written off. Our subsequent legal advice has raised the issue that this could be seen as being too generous.


 Again this process is in line with both the CFA decisions and our legal advice.


Why are we not perusing the eleven in the same way as the six. That is if the outstanding figure of 17 is correct.


 The number outstanding is 23


The reason for differences are because each case turns on its individual merits. But they can be split into the following groupings

 1) Refused to provide the service with details of their benefit record - injury pension for the 6 concerned remain suspended

 2) Provided benefit authority and have subsequently engaged Thompson solicitors (9 + 3 of the suspended cases) - no progress has been possible as yet. However following various letters and discussions with local FBU official some progress might be possible before resorting to individual legal action

 3) Discussions are ongoing between a small number of individuals (7 plus one suspended) and the service and suggested outcomes will be presented to pension injury sub committee shortly.


 4) Other individuals have engaged with the service and as a result have agreed repayment plans, repaid outstanding amounts and or it has been determined that the DWP benefit award does not have any relevance to their pension injury award and therefore no overpayment has occurred.

 5) where an underpayment has occurred then immediate restitution was made



We have had complaints that we were not consistent. How do you answer ?

Each case is dealt with in its merits and will depend on the individual circumstances and level of engagement. the principles agreed by CFA and legal direction has been followed in every instance. and are roughly grouped as above.

I understand six have had their pensions stopped. Is this so and why have they been treated differently from the others ?

 Yes. The individuals have not provided information to enable their injury pension award to be calculated. Their substantive pension remains in payment.

What further actions are intended against the six

 If the six refuse to give access to their benefit detail then the pension must remain suspended for the reasons previously outlined. However where the service has clear evidence that a level of benefit is being received then proceedings can occur. Whilst each set of circumstances are different it is intended to take a specific case to litigation and proceedings will commence once the potential for progress as a result of the Harman/ Thompson initiative has 

been explored. Two of the six have recently shown a desire to alter their stance and engage with the service.

What have we done to persuade the six to comply with the requests for information ?

1 Various correspondence and discussion the extent of which has been influenced by their level of engagement with the service. At one stage at least two dozen individuals had been "persuaded" it was in their interests not to cooperate.

Each of the six have received 3 letters from LCC/LFRS before their pension was suspended

Can you provide me with a clear plan of action for every individual case which will enable us to bring that long standing problem to a swift conclusion?

The action plan is as follows

Thompsons Cases

1 Since our last discussion I have met with Steve Harman who is interjecting on behalf of Thompsons as well as in his capacity of union representative.

2 For instance, he has provided me with a signed authority form Mr Cavanagh (one of the refusniks) to access his Department of Work and Pensions detail and provided some documentary evidence of his benefit history. It is clear from this documentation that the benefits he has received are for a separate ailment than that which he left the service. I have therefore reinstated his pensions injury award and am awaiting confirmation from DWP before formally closing his case.

3 It would appear he has been misled and it should be noted that I was shown an email from Mr Burns to Mr Cavanagh urging him to withhold permission in respect of his benefits for another month

4 Steve has agreed to discuss the remaining Thompsons cases with me to try and achieve closure and we have scheduled a meeting on Wednesday to see what can be achieved. This is against the backcloth that Thompsons are aware of our intention to issue proceedings, prior to this they were not interested in individual negotiations. Hence I presume their non response to our letters. The one letter in the series that they said they had not received has been forwarded to them.

5 He seemed unclear whether Thompsons were still representing Mr Burns (but thought not) and agreed to ascertain the current position and advise me

6 In the absence of progress on individual cases then legal proceedings will need to be considered.

Suspended Cases

1) In the absence of authorisation it is intended to leave the injury portion of the pension suspended and if sufficient information is available to take a test case.

3) of the suspended cases (now 2) are represented by Thompsons, of the other 3 one is in touch with the service a further individual has responded to the letter informing him of our knowledge about his benefits and wanting to engage with the service. In the absence of authorisation it is intended to leave the pensions suspended.

Individuals engaging with the Service

Engagement will continue and legal proceedings will be actioned as a last resort. It is hoped that after the initial case has been resolved a change in response will be seen. In addition 3 of the cases are at a very early stage due to late information from the DWP and it is hoped to persuade the individuals of an appropriate resolution, potentially using the hardship route if this is necessary.

Conclusion, a change of attitude seems to have occurred at Thompsons and I believe that this will enable the cases they represent to be meaningfully addressed providing the dual track of issuing proceedings once the process is exhausted is followed. It is equally clear that Steve Harman knows that legal proceedings are being instigated and he has a clear desire to limit this measure.

David O'Toole