

Ombudsman's Determination

Applicant	Mr U
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Southwark Council

Outcome

1. Mr U's complaint is upheld. To put matters right, Southwark Council shall pay Mr U £500 in recognition of the significant distress and inconvenience which its errors have caused him. In addition, it shall send him a formal letter of apology.

Complaint summary

2. Mr U has complained that Southwark Council failed to:-
 - Pay all the Additional Voluntary Contributions (**AVCs**) he made into the LGPS AVC scheme in a timely manner.
 - Carry out an "inter-fund" transfer of his pension rights in the LGPS, including his AVC fund, to Lewisham Council without undue delay.
 - Respond satisfactorily to his enquiries concerning when he would receive his 2018 annual benefit statements for the main LGPS and its AVC scheme.
 - Properly deal with the subsequent complaint he made using its internal complaint procedure about its poor administrative service.

Background information, including submissions from the parties

3. Mr U worked for Southwark Council from April 2016 until March 2018.
4. According to his employment contract, Mr U was entitled to "hard to fill" payments of £2,327 per annum from Southwark Council. These payments could be taken in different ways. Mr U decided to use them as AVCs, payable monthly into Southwark Council's LGPS AVC scheme, administered by Aegon.
5. On 4 January 2018, Mr U informed Southwark Council that only £1,745.19 had been paid into the LGPS AVC scheme for him during the tax year 2016/2017.

6. On 29 January 2018, Southwark Council replied and explained that AVC payments for the period January to November 2017 had been delayed for all its LGPS AVC members.
7. Mr U requested an explanation for the delay and details of any financial loss which he had suffered as a result.
8. On 7 February 2018, Mr U confirmed that he would be leaving employment with Southwark Council and would be taking up a job with Lewisham Council. Mr U asked for an update on the AVC issue.
9. On 21 February 2018, Southwark Council replied that:-
 - It had experienced difficulties paying monthly AVCs to Aegon on time.
 - It had now rectified matters by making a bulk payment of the outstanding AVCs to Aegon and resuming regular monthly payments.
 - Aegon was having problems allocating the bulk AVC payment to the members' accounts correctly.
 - Once Aegon had completed the allocation of the AVCs, it could then determine whether Mr U had suffered any financial loss and compensate him accordingly.
10. On 16 May 2018, Mr U requested an update from Southwark Council and sent a follow up e-mail on 4 June 2018. On the same day, Southwark Council apologised for not responding sooner and said that:-
 - It was still waiting for information from Aegon to establish whether the delayed investment of some of his AVCs had caused him any financial loss.
 - It could not, at that time, say when the matter would be resolved.
11. In mid-2018, Mr U decided to transfer his accrued LGPS pension rights, including his AVC fund, from Southwark Council to Lewisham Council. His inter-fund transfer request was referred to Southwark Council on 30 May 2018 by Lewisham Council.
12. On 30 July 2018, Mr U asked Southwark Council for an update on the AVC issue and for details of when he would receive his annual LGPS AVC statement for 2018.
13. On 2 August 2018, Southwark Council replied that:-
 - Its Strategic Director of Finance and Governance had requested an urgent meeting with Aegon to resolve the AVC issue.
 - It was expecting Mr U's LGPS AVC statement for 2018 from Aegon soon and would send it to him on receipt.

14. On 21 September 2018, Southwark Council responded to a further request for an update from Mr U and confirmed that:-
 - Aegon was hoping to issue his LGPS AVC statement for 2018 shortly.
 - Southwark Council was finalising how any compensation payable for the delayed investment of some of his AVCs would be calculated.
15. On the same day, Mr U notified Southwark Council that Lewisham Council was still waiting for its response to his request for an inter-fund transfer. He asked for the transfer to be completed without further delay. Mr U also asked Southwark Council whether the 2018 annual statement, in respect of his benefits in the main LGPS, had been issued.
16. Southwark Council replied that it had asked its actuaries to give priority to his inter-fund transfer request and they would be completing it shortly.
17. On 3 October 2018, Mr U chased Southwark Council for a response. When he did not receive a reply, he complained to Southwark Council on 5 November 2018, about its administration of the LGPS. Southwark Council sent him an automated e-mail response which said that it would try to investigate and resolve his complaint within 15 working days. This also said that Southwark Council would let him know if its reply was going to be delayed.
18. On 9 November 2018, Southwark Council informed Mr U that it had asked its Pensions Team to deal with his complaint under stage one of its internal complaint procedure by 30 November 2018.
19. On 28 November 2018, the Pensions Team at Southwark Council contacted Mr U and apologised for the delayed payment of some of his AVCs to Aegon. It informed him that AVCs totalling £2,327 had now been paid into his AVC policy for year ending 31 March 2018 and invested accordingly. It also told him that he should receive his LGPS AVC statement for 2018 soon. It enclosed a computer screen shot to substantiate what it had said about the AVC payments.
20. Southwark Council advised Mr U that the response issued by its Pensions Team was not its formal response to his complaint. It was still investigating why payment of the AVCs had been delayed.
21. On 1 December 2018, Mr U asked for his complaint to be escalated to stage two of Southwark Council's internal complaint procedure. Southwark Council said that it would comply with his request.
22. Mr U received an e-mail from Southwark Council informing him that the delay in providing a response under stage one of its complaint procedure would be addressed at stage two of its complaint procedure. This e-mail also said that Southwark Council would try to provide its response under stage two within 25 working days and inform him accordingly if it was unable to meet this deadline.

23. On 30 January 2019, Mr U asked Southwark Council for an update on his complaint. Southwark Council replied on 13 February 2019 and said that its Pensions Team was dealing with the matter and this involved investigating wider issues with Aegon. It did not therefore see any merit in continuing with stage two of its complaint procedure, because it was unlikely to resolve his complaint any faster than its Pensions Team.
24. Mr U was unhappy with this response and made a complaint to The Pensions Ombudsman's Office (**TPO's Office**) in April 2019, before the Pensions Team had completed its investigation.
25. Southwark Council completed the inter-fund transfer of Mr U's main LGPS benefits in August 2020. The transfer of his AVCs to Lewisham Council's LGPS AVC scheme was subsequently finalised in November 2020.
26. During TPO's Office's investigation of Mr U's complaint, Aegon was asked whether it would be willing to carry out the appropriate redress calculations in respect of Mr U's AVC to determine whether he has suffered any financial loss. Aegon agreed to do so and provided details of its calculations.
27. According to Aegon's calculations, the value of Mr U's AVCs has, in fact, increased by around £23 because of the delays in making payments to Aegon.

Southwark Council's position

28. Mr U made his complaint to Southwark Council in its capacity as his former employer. The complaint was therefore initially dealt with by its Customer Complaints Team. The timescales set for providing responses at stages one and two of its internal complaint procedure were 15 and 25 working days respectively. As Mr U's complaint concerned its AVC provider, which was an external third party, it was unlikely that these timescales would be met.
29. Mr U did not ask for his complaint to be dealt with under the LGPS Internal Dispute Resolution Procedure (**IDRP**). Consequently, his concerns were not considered under the IDRP. Mr U said that Southwark Council did not bring to his attention that he could have made his complaint in this way. Southwark Council has not disputed this statement.
30. "Hard to fill" payments are sponsored by an employer and can be paid as either taxable income or as AVCs. The onus is therefore on Southwark Council, in its role as the employer, to ensure elections for hard to fill benefits are approved annually in good time by its Human Resources department. It must also ensure that appropriate funds are then sent to the Pensions Team (via payroll) for payment to Aegon as AVCs.
31. It is an acknowledged fact that Southwark Council was going through a major reorganisation/redundancy exercise around 2016. This led to a shortage of staff in its Human Resources department and many elections regarding hard to fill benefits did not go through the correct approval process, resulting in delays.

32. According to the Pensions Regulator, Aegon also had its own internal issues at the time which led to further delays in the allocation of AVC payments to the LGPS AVC scheme.
33. Given what was a difficult situation, Southwark Council could not have done more to rectify the AVC issues sooner.
34. All of Mr U's AVCs have now been paid to Aegon and the value of his AVC account was £5,410.67 on 8 October 2020.
35. The Pensions Team had asked Aegon on several occasions to calculate the value of Mr U's AVCs, assuming that there had been no delays, in order to determine whether he has suffered any financial loss. Aegon refused to do so.
36. Its Strategic Director of Finance and Governance requested a meeting with Aegon to discuss the issue with the AVCs, but his request was denied.
37. Aegon did not send the LGPS AVC statements for 2018. Southwark Council noted that Mr U received his LGPS AVC statement for 2018 from Aegon directly.
38. Southwark Council generally issues the main LGPS annual benefit statements to active members by the end of August each year and in June/July for deferred members.
39. An inter-fund transfer is between LGPS employers. Mr U suffered no financial loss because of the transfer delay since he received 'like for like' service in the LGPS.
40. The delay in completing the inter-fund transfer and resolving the AVC issues was excessive. Southwark Council does not accept that it was wholly responsible for this.
41. Southwark Council did not receive the 'election to transfer' form for Mr U from Lewisham Council until March 2020.
42. Southwark Council tried to settle Mr U's complaint by initially offering him:
 - a payment of £232.70 (which it would have rounded up to £250), representing a 5% investment return on his total AVCs of £4,654; and
 - a goodwill ex-gratia award of £500 in recognition of the distress and inconvenience which he has suffered dealing with this matter.
43. At the time Southwark Council made that offer, it felt it to be fair and proportionate to the value of Mr U's AVCs. It expected that the payment of £250 would more than cover any actual financial loss attributable to the delayed investment of some of Mr U's AVCs.
44. Southwark Council notes that Aegon has since calculated that Mr U gained by £23 because of the delayed AVC payments. Southwark Council's offer of £250 for potential investment loss is consequently no longer appropriate. Paying this to Mr U would amount to unjust enrichment at Southwark Council's expense.

45. Based on the result of Aegon's calculations, Southwark Council will not be paying an additional amount to Lewisham Council's LGPS AVC scheme in respect of Mr U's AVCs.

Mr U's position

46. He has decided to decline the offer Southwark Council made during TPO's Office's investigation of his complaint because:-

- It has taken Southwark Council far too long to explain why some of his monthly AVCs were not paid to Aegon in a timely manner.
- Southwark Council's explanation that further delays occurred due to Aegon's own internal issues was also opaque and unsatisfactory.
- Southwark Council should have had checks in place preventing such delays. This problem should have been escalated to senior management much earlier, given its implications and the potential number of members affected.
- Southwark Council should have informed him of its failure to make payment to Aegon sooner. If he had been told about the issues prior to his decision in April 2017 to use his hard to fill payments as AVCs, he could have taken them in a different form. By failing to be candid, it denied him the opportunity to make an informed choice.
- Given the legal relationship between Southwark Council and Aegon, he does not understand why Southwark Council has not been able to liaise effectively with Aegon to resolve his complaint.
- He does not want to raise a complaint with Aegon as the missed AVC payments were not its fault.
- He and Lewisham Council have had to continually chase Southwark Council to complete the outstanding AVC transfer.
- On 31 May 2018, Lewisham Council provided Southwark Council with details of his inter-fund transfer request. Lewisham Council did not receive a reply, even after sending reminders to Southwark Council on 27 July 2018, 27 September 2018, 27 November 2018, and 29 January 2019.
- Southwark Council did not need Aegon's assistance to establish that a shortage of staff in its Human Resources team had led to some of his AVCs not being paid to Aegon on time. It also did not require input from Aegon to investigate why his inter-fund transfer was delayed. He therefore disagreed with Southwark Council's view that his complaint could not have been dealt within the timescales set in its internal complaint procedure.

- His complaint concerning Southwark Council's failure to provide the 2018 annual statements for the main LGPS and its AVC scheme has now been rectified, nevertheless, Southwark Council has not explained why his enquiries went largely ignored.
- Southwark Council has also not explained why it had: (a) taken so long to respond to his complaint; (b) broken promises to respond to his questions; and (c) ignored several reminders from Lewisham Council concerning his inter-fund transfer.
- Southwark Council has failed to recognise his anger and frustration at the poor treatment he received. It has not apologised to him for this or the numerous delays and broken promises.

Adjudicator's Opinion

47. Mr U's complaint was considered by one of our Adjudicators who concluded that further action was required by Southwark Council. The Adjudicator's findings are summarised below:-

- From the evidence presented, the Adjudicator said it was clear that Southwark Council had provided Mr U with a substandard level of service when dealing with both his monthly AVC payments to Aegon and his inter-fund LGPS transfer request. In the Adjudicator's view, the failure by Southwark Council to pay all of Mr U's AVCs to Aegon and complete the inter-fund transfer in a timely manner constituted maladministration on its part.
- The fact that a major reorganisation within Southwark Council around 2016 led to a shortage of staff in its Human Resources department was unfortunate. This did not, however, absolve Southwark Council of its duty to pay all of Mr U's AVCs to Aegon in good time or to bring to his attention the problems which it was experiencing at a much earlier stage.
- Southwark Council contended that Aegon would have delayed allocating Mr U's AVCs in respect of the period January 2017 to November 2017, even if they had been paid on time. The Adjudicator said that there was no way of knowing for certain that this would have been the case, and equally did not absolve Southwark Council of its responsibilities.
- To accurately determine whether Mr U had suffered any financial loss because of the delays attributable to Southwark Council's errors, it was necessary for Aegon to have performed the relevant redress calculations in respect of his AVCs.
- The Adjudicator noted that Mr U was not prepared to accept Southwark Council's original offer to settle his complaint. The Adjudicator also noted that Aegon had

subsequently carried out the appropriate AVC redress calculations and had ascertained that Mr U's AVCs had, in fact, increased in value by approximately £23 because of the delay in paying his AVCs.

- Since Aegon's redress calculations showed that Mr U had not suffered any financial loss, Southwark Council no longer considered it appropriate to pay him £250 to cover the potential loss of investment return.
- The Adjudicator stated that the role of my Office is to put Mr U back in the position he would have been had the maladministration identified not taken place. Given the outcome of Aegon's calculations, it was the Adjudicator's view that I would most likely conclude that the decision to withdraw the offer of £250 was justified.
- It was also the Adjudicator's view that the delay in completing the inter-fund transfer did not cause Mr U any financial loss, as the funds were not disinvested. However, the fact that there was no financial loss, did not excuse Southwark Council from failing to carry out the transfer in a timely manner. This delay, and its repeated failure to respond to correspondence it had received from Lewisham Council concerning the transfer, amounted to maladministration on the part of Southwark Council.
- The Adjudicator agreed with Mr U that some of the issues which he had raised in his complaint could have been answered by Southwark Council within the timescales specified in its internal complaint process. The Adjudicator also agreed with Mr U's view that Southwark Council did not need input from Aegon to establish why some of his AVCs were not being paid to Aegon on time. Equally, why his inter-fund transfer was delayed.
- Southwark Council's failure to provide a response to these aspects of his complaint also constituted maladministration.
- The Adjudicator considered that the errors identified above and attributable to Southwark Council had caused Mr U significant distress and inconvenience. However, awards for non-financial injustice are modest and not meant to punish a respondent. Southwark Council had offered Mr U an award of £500 in recognition of the non-financial injustice it had caused him. In the Adjudicator's view, this award was in line with what I would likely direct if I were to determine his complaint.
- The Adjudicator noted that Mr U has asked Southwark Council to provide him with a formal apology for its poor administrative service. Given the numerous failings by Southwark Council in this matter, Mr U's request was, in the Adjudicator's view, reasonable.

48. Mr U did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr U provided his further comments which do not change the outcome.

49. He said that:

- The level of maladministration attributable to Southwark Council, in his opinion, is “serious” when applying the criteria shown on the Pensions Ombudsman’s factsheet entitled “Redress for non-financial injustice.”
- Southwark Council has behaved “wholly unreasonably over a long period” dealing with his AVCs and inter-fund transfer. It has been “incredibly slow to put things right” and only provided him with a substantive response to his complaint after he referred the matter to TPO’s Office.

50. I agree with the Adjudicator’s Opinion. I will therefore only respond to the points made by Mr U for completeness.

Ombudsman’s decision

51. Mr U has clearly suffered significant distress and inconvenience as a result of the maladministration identified and attributable to Southwark Council.

52. I acknowledge that Southwark Council has offered Mr U £500 as a gesture of goodwill. I note that Mr U does not consider that this sufficiently recognises the non-financial injustice he experienced in connection with this matter.

53. When deciding how much to award for non-financial injustice, I assess each case on its own facts and merits. Having carefully considered the submissions and evidence, I find that the degree of non-financial injustice which Mr U has suffered falls into the “significant” category.

54. There is no dispute that Mr U should have received better service from Southwark Council. He has, however, suffered no actual financial loss because of the maladministration attributable to Southwark Council.

55. It is difficult to justify that he has suffered “severe” non-financial injustice based on the facts of the case. My awards for non-financial injustice are modest and not intended to be punitive.

56. I uphold Mr U’s complaint.

Directions

57. Within 28 days of the date of this Determination, Southwark Council shall:

- pay Mr U £500 in recognition of the significant distress and inconvenience which its errors have caused him; and
- send him a formal letter of apology for the substandard service which it has provided to him.

CAS-29702-L0S7

Anthony Arter

Pensions Ombudsman
21 May 2021