

Ombudsman's Determination

Applicant	Mr D
Scheme	Local Government Pension Scheme (the LGPS)
Respondent	Hertfordshire County Council (the Council)

Outcome

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

Complaint summary

3. Mr D says his pension was overpaid by £1,963 as a result of Council's delays and mistakes in implementing his pension sharing order (the **PSO**). He does not believe that he should have to repay this amount.

Background information, including submissions from the parties

4. Mr D is a pensioner member of the LGPS. The scheme is administered by the London Pensions Fund Authority (the **LPFA**) on behalf of the Council.
5. In late December 2015, the Court made a PSO awarding 43.7% of Mr D's pension to his ex-spouse. The PSO annex (the **Annex**) stated that the Order would take effect from the later of: a) the date on which the decree absolute of divorce was granted; b) 28 days from date of the PSO; or c) where an appeal had been lodged, the effective date of the Order determining that appeal.
6. On 10 February 2016, the decree absolute was granted. As neither Mr D nor his ex-wife appealed the PSO, it came into effect on 10 February 2016. Mr D's pension continued in payment at the same rate while implementation of the PSO remained outstanding.
7. The Annex did not show Mr D's correct address, and he does not recall receiving a copy. He was provided with a copy of the Annex and decree absolute during the course of the investigation.

8. On 12 January 2016, the LPFA received a copy of the PSO, Annex, and decree absolute from the solicitors acting for Mr D's ex-spouse.
9. Under the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (the **Divorce Regulations**), the person responsible for implementing the PSO must issue a statement explaining why he cannot implement it within 21 days of receiving the PSO (the **Statement**). However, it was not until 14 March 2016, nine weeks after the LPFA received a copy of the PSO, that it issued Mr D with a Statement explaining that it required payment of the charges for implementing it. He was asked to pay his share of those charges. Mr D paid the amount requested, the same day, by 'BACS transfer'.
10. The time limit for implementing Mr D's PSO is four months beginning with the day on which payment of all outstanding charges had been received by the LPFA.
11. Under the Divorce Regulations, the person responsible for implementing the PSO has a legal duty to issue a notice within 21 days of receiving the final item required to implement it (the **Notice of Implementation**). They must include a statement that they have four months to implement the PSO. A 'notice of discharge' must be issued within 21 days of the PSO being implemented.
12. The evidence does not support that a Notice of Implementation was issued to Mr D. On 6 May 2016, LPFA sent him a notice of discharge which confirmed that the PSO had been implemented. In the letter, it stated that his pension had been reduced with effect from 10 February 2016, and that he had been overpaid up until 30 April 2016.
13. Mr D has explained that he initially believed his decree absolute had been granted in December 2015, and that the PSO would take effect from January 2016. When he heard nothing from the LPFA, after receiving the Statement in March 2016, he did not know whether the PSO had been implemented or not. He was then contacted by the LPFA on 26 April 2016, some six weeks later, and told that it had not received his share of the charges. He checked and confirmed the same day that the money had gone out of his account.
14. During the period that followed, Mr D says that he had a number of telephone conversations with the LPFA about the PSO. He was aware that the longer the PSO implementation was delayed, the more money he would have to pay back. So he repeatedly contacted the LPFA requesting that it be implemented urgently. He says that some of his calls were not returned. A member of staff at the LPFA (**the Staff Member**) agreed to write to his ex-spouse to explain that he was not delaying the process, as the LPFA had previously told her that he had not paid his share of the charges.
15. The Council has no recording or transcript of the telephone conversation Mr D had with the Staff Member, who has now left its employ.
16. During the investigation, Serco, the debt recovery company for the Council, offered Mr D a repayment period of 25 months, commencing in January 2018, to repay the

overpayment. Under the plan, the initial payment was £43.93, followed by 24 payments of £80. It required Mr D to arrange the payments by bank standing order, or consent to the money being deducted from his pension. Mr D rejected the plan and asked for his case to be considered by an Ombudsman.

17. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised briefly below:-
- With exception to a possible defence under the Limitation Act 1980 (the **Act**), defences to recovery of an overpayment would only apply if the member received the money in the reasonable belief that it was theirs to spend. The defences to recovery do not apply in Mr D's case. He knew that a PSO had been made and under the Order his pension would be reduced by 43.7%.
 - As Mr D agreed to the PSO, it would reasonably be expected that he would be familiar with its terms and the effective date. If he had any questions concerning the PSO, he should have raised them with his legal advisers. Although, he did not receive a copy of the Annex, it would not have been the LPFA's responsibility to provide him with a copy.
 - Given that Mr D initially believed the reduction to his pension would take effect from January 2016, it would have been more prudent if he had set money aside from that date.
18. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D has provided his further comments but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr D for completeness.

Ombudsman's decision

19. Mr D says his point is simply that the LPFA delayed sending him a request for payment of his share of the charges until 14 March 2016. It then took a further five or six weeks for the LPFA to realise that it had made a mistake and that he had paid it. He now understands that the PSO should have been implemented within four months of the date of the decree absolute.
20. Mr D's complaint is that, the LPFA held up the implementation process and, in doing so, caused his pension to be overpaid.
21. The fact that the Order was made in December 2015, awarding 43.7% of Mr D's pension to his former spouse, is not in dispute. The date the decree absolute was granted is also not in dispute. I am satisfied that the LPFA determined the correct effective date of the PSO.

22. Overpayments of pension benefits are generally recoverable. However, the Act provides a 'limitation defence' for the recovery of any overpayments made more than six years before the relevant date. The relevant date in this case is 8 November 2017, the date that a formal response to Mr D's complaint was received by this office. I am satisfied that Mr D does not have a defence against recovery under the Act as the overpayment occurred less than six years before the relevant date.
23. Mr D believed that the monies should not be recovered because LPFA delayed the implementation process. I am not persuaded that this is a valid reason to uphold his complaint.
24. Aside from the fact that Mr D ought to have known the financial implications of the PSO to which he had agreed, he knew that he was being overpaid and that the money was recoverable.
25. However, I accept Mr D's argument that the LPFA unreasonably delayed the implementation process. After receiving the PSO, it took nine weeks to issue the Statement. It then delayed the implementation process because it initially failed to identify that Mr D had paid his share of the charges.
26. I also note that the LPFA has provided no evidence to indicate that it issued a Notice of Implementation to Mr D, when it became aware that the charges had been paid in full. These failings amount to maladministration. However, for the reasons stated above, I do not consider that this materially changes the outcome.
27. I therefore find that the Council is entitled to full recovery of the amount of pension that was overpaid to Mr D. While I accept that it is likely Mr D would have been inconvenienced by the mistakes made by the LPFA, I do not consider that the matter justifies compensation of £500, the minimum I would award for non-financial injustice.
28. In conclusion, I consider the repayment plan offered by Serco to be reasonable in the circumstances. It is now open to Mr D to accept the offer, or negotiate an alternative plan with Serco.
29. Therefore, I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
5 January 2018