

## Ombudsman's Determination

Applicant	Mr H
Scheme	London Clubs Limited Pension Scheme (the <b>Scheme</b> )
Respondents	Aon UK Limited ( <b>Aon</b> ), and Barnett Waddingham LLP ( <b>Barnett Waddingham</b> )

## Outcome

1. Mr H's complaint against Barnett Waddingham and Aon is partly upheld. To put matters right, Aon shall remedy any financial injustice it has caused to Mr H.

## Complaint summary

2. Mr H has complained that:-
  - Aon failed to implement his pension sharing order, (the **Order**), before the administration of the Scheme transferred to Barnett Waddingham. Aon should reimburse the charges for implementing the Order (the **Fees**).
  - He was unable to access his benefits until April 2018, as the transfer of his pension was delayed. In the intervening period, his pension decreased in value by £9,000.
  - Barnett Waddingham did not implement the Order from its effective date.

## Background information, including submissions from the parties

3. On 19 March 2009, the court made an Order in respect of Mr H's pension rights in the Scheme. Aon was the pension administrator at the time the Order was made. Aon is the Scheme Secretary. It also provides actuarial services on behalf of the trustees of the Scheme (the **Trustee**).
4. Mr H's shareable rights in the Scheme were defined benefits (**DB**) in nature.
5. Aon received a copy of the Order in 2010.

6. Between late 2010 and early 2011, Aon was uncertain how the Order should be implemented. The divorcing parties notified Aon that they were exploring alternative options to the Order.
7. On or around 8 March 2011, Aon received Mr H's share of the Fees.
8. On 20 April 2011, Mr H's ex-spouse, Mrs H, wrote to Aon, enclosing "all the information" Aon required concerning the Order, including her share of the Fees.
9. On 17 May 2011, Aon notified Mr H that it had a duty to implement the Order, unless a court ordered otherwise.
10. On 20 May 2011, Aon received a telephone call from Mrs H. Aon's note of the conversation records the following:

"Further to our letter they have agreed to follow the court order so we can proceed with the divorce as stated by court order [sic]."
11. Under Section 28 of the Welfare Reform and Pensions Act 1999 (the **1999 Act**), activation of a pension sharing order takes effect when an order is made under the Matrimonial Causes Act 1973.
12. Section 29 of the 1999 Act, defines the "transfer day" as the day the pension sharing order takes effect. Where the arrangement is a workplace pension, the relevant benefits are determined as outlined in paragraph 13 below.
13. For a member in active membership, the relevant benefits are those the member would be entitled to, assuming pensionable service ended immediately before the "transfer day". Otherwise, the benefits or future benefits to which the member is entitled to under the arrangement immediately before the "transfer day".
14. Section 34 of the 1999 Act, describes the implementation period as being four months, beginning on the date the pension sharing order takes effect. Or, if later, the date the scheme receives all relevant paperwork to implement it. The pension scheme can choose any day within this period as the "valuation day".
15. The Pensions on Divorce etc. (Charging) Regulations 2000 (the **Charging Regulations**), set out the circumstances in which a person responsible for a pension scheme may recover charges in connection with "pension sharing activity". Broadly, the Charging Regulations permit the recovery of costs "reasonably incurred" by the person responsible for the scheme.
16. Under the Pensions on Divorce etc. (Provision of Information) Regulations 2000, the person responsible for the scheme must issue a notice of discharge of liability, (the **Notice of Discharge**), to the parties. This should be issued no later than the end of the period of 21 days beginning with the day on which the discharge of liability in respect of the pension credit is completed.
17. In the case of a "transferor" whose pension is not in payment, the Notice of Discharge must include the value of the accrued rights, as calculated by reference to the cash

equivalent value of those accrued rights. It should display the value of the transferor's pension rights after the value of the pension debit and any charges have been deducted. The cash equivalent value of pension rights quoted for this purpose is not guaranteed.

18. On 24 May 2011, Aon wrote to Mr H about the Order. The letter stated that:

"Further to Mrs [H]'s call, I can confirm that we now have everything that we require from you to proceed with the Divorce Settlement.

As Mrs [H] confirmed we will be following the Court's Pension Sharing Annex dated 19<sup>th</sup> March 2009.

Unfortunately the scheme transfer basis that we use is currently being reviewed by the scheme actuary and so we are unable to proceed at present.

As soon as we get confirmation from the scheme actuary that we can proceed with transfer value calculations we will finalise Mrs [H]'s benefits from the scheme. We envisage this being around 4 weeks. [the **May Letter**]"

19. Aon's records indicate that it requested additional documents from Mr H in 2014 to implement the Order but did not receive a response.
20. Between May 2011 and February 2017, neither Mr H nor his advisers contacted Aon about the Order.
21. In February 2017, in advance of Mr H reaching his normal pension age in August 2017, Aon issued retirement paperwork (the **paperwork**).
22. In March 2017, Mr H said that his advisers told him to contact Aon regarding the Order. When he contacted Aon, he was informed that Aon did not have a copy of the Order. Aon subsequently confirmed that it had not started the implementation process. Mr H said that he was advised it would take two months to implement the Order, as his pension would need to be split at the date of his divorce.
23. In May 2017, Mr H was provided with a cash equivalent transfer value (the **May CETV**). However, it was overstated because the Order had not been implemented.
24. Mr H said that he queried whether the CETV was "all [his] and [whether] the Order had been activated." Aon then acknowledged that the Order had been overlooked.
25. In July 2017, Mr H said that he contacted Aon for an update. He was advised that it was still calculating the figures.
26. On 1 August 2017, the administration of the Scheme transferred to Barnett Waddingham. Mr H's advisers notified Barnett Waddingham that the Order had not been implemented. That same month, Barnett Waddingham received [the Order].
27. Barnett Waddingham has confirmed that Mr H's pension rights were valued on 22 September 2017, for the purpose of implementing the Order.

28. In December 2017, Barnett Waddingham provided Mr H with a corrected CETV (the **December CETV**).
29. In March 2018, the December CETV was paid to the provider, (the **Receiving Arrangement**), of Mr H's personal pension plan (the **Plan**). However, the calculation of the pension debit included benefits that had accrued after the effective date of the Order. Consequently, the December CETV was underpaid while Mrs H's share of the aggregate CETV was overpaid.
30. On 4 April 2018, Mr H complained to Aon. He alleged that he had suffered a drop in the value of his pension because of undue delay in completing the transfer. Following Mr H's subsequent exchanges with Aon, he was advised to contact Barnett Waddingham.
31. On 28 September 2018, Barnett Waddingham confirmed that Mr H's complaint had been "logged". Barnett Waddingham said that a written response would be issued within two months, as indicated in an earlier correspondence dated 31 August 2018.
32. On 10 December 2018, Barnett Waddingham confirmed that the matter was being considered by the Trustee. However, there would be a delay issuing a response. Barnett Waddingham apologised for this and advised that a response would be issued shortly.
33. On 21 December 2018, Aon, as the Scheme Secretary, provided a response under the Scheme's internal dispute resolution procedure (**IDRP**) on behalf of the Trustee. The Scheme Secretary acknowledged that there was a variance between the May CETV and the December CETV: Mr H's share of the final calculation.
34. The Scheme Secretary highlighted that Mr H did not take any action until after he had received the December CETV. The Scheme Secretary invited Mr H to provide evidence to support that he had relied on the May CETV and had suffered a financial loss as a result.
35. The Scheme Secretary explained that the transfer value displayed in the Notice of Discharge, was not a "transfer value which complied with the requirements of pension legislation". Consequently, it was not a figure that Mr H could rely on.
36. The Trustee accepted that the implementation of the Order had been delayed because the necessary documentation was not shared with Barnett Waddingham. The Trustee acknowledged that while Aon did not implement the Order, the Fees would have covered Barnett Waddingham's costs for implementing it.
37. The Trustee accepted that Mr H had been inconvenienced because Aon and Barnett Waddingham had delayed implementing the Order.

## **Mr H's position**

38. Mr H's main submissions are summarised below:-

### **Complaint against Aon**

- Neither he nor his ex-spouse received any correspondence from Aon concerning the Order in 2014. The only letter that Aon issued, dated 2014, was sent out in 2017. This is now with his advisers.
- His advisers informed him that he could not take his benefits until his ex-spouse had received her retirement pack from Aon. By December 2017, the value of his pension, inclusive of the value of the pension debit, had fallen from £762,000 to £753,000. By the time the Trustee waived the charges Barnett Waddingham requested for implementing the Order, a further three months had passed by.
- He considered the matter justified an award in respect of the “exceptional” non-financial injustice caused to him. The Order is an official court document; Aon acknowledged that it had a duty to implement it. Aon should have taken appropriate action at the time.
- He was under pressure to finance his son, who has special needs. It was unclear whether Aon would implement the Order. Aon misled him concerning its timescales, which caused him considerable distress. Aon left the Order to “drift” for months waiting for Barnett Waddingham to take over the administration of the Scheme.
- Aon advised that a response to his complaint would be issued within six weeks. When he contacted Aon two months later, his telephone calls were mostly ignored. Eventually in late July 2018, he was told to contact Barnett Waddingham.

### **Complaint against Barnett Waddingham**

- He does not agree with the calculation of [the value] of his pension. He discovered that his pension had been “split” as of September 2017.
- He also does not agree with Barnett Waddingham’s calculation of the interest that was awarded to him.
- Barnett Waddingham took eight months to complete the transfer process. Allowing for the delays caused by Aon, the transfer took 14 months to complete. Other Scheme members were able to complete their transfer over a shorter timeframe.
- Barnett Waddingham ignored his complaint against Aon.

### **Aon’s position**

39. Aon’s main submissions are summarised below:-

- Aon does not accept that it is solely responsible for the delay in processing the Order. The uncertainty over whether the Order should be followed, while not “decisive,” was a contributory factor.

- In the absence of any correspondence from Aon, it is not unreasonable to expect that the divorcing parties, or their advisers, would have realised that the Order had not been implemented. At the very minimum, they should have queried the position.
- Aon disputes that Mr H has suffered any financial loss. Mr H has not provided evidence to substantiate his claim.
- It is not clear whether Mr H's financial claim is based on the May CETV. If so, "[a] misquotation does not entitle the recipient to the erroneously high figure stated". Aon is aware that the mistake was swiftly corrected.
- Mr H is claiming an aggregate loss of £9,000. Mr H cannot claim financial loss on behalf of his ex-spouse without her written consent. Consequently, any alleged loss, which Aon disputes, is capped at £6,000.
- A fall in the value of a CETV is not the same as financial loss. Transfer values can increase, or decrease, depending on various factors and market conditions.
- Mr H has not provided Aon with details of the Receiving Arrangement, or his unit holdings. Financial markets generally fell over the period in question. So Mr H may have secured less units had the transfer been completed earlier.
- Any additional units Mr H secured, would have reduced the impact of the fall in the value of his CETV. So, it is possible that Mr H is financially better off.
- No additional Fees were paid by Mr H. The fact that the Order was implemented by different administrators is a matter between Aon and Barnett Waddingham.
- Mr H has alleged that Aon advised him not to make a complaint "until everything had been sorted out". Mr H has not provided any corroborating evidence or identified the individual who allegedly advised him.
- Aon acknowledged that Mr H's complaint could have been better managed, and it accepted that it had delayed referring the matter to Barnett Waddingham. In recognition of this, Mr H was offered a distress and inconvenience award of £500 in full and final settlement of all claims against Aon.

### **Barnett Waddingham's position**

40. Barnett Waddingham's main submissions are summarised below:-

- To facilitate a transfer of Mr H's benefits to a personal pension plan, the Order had to be implemented so that his pension rights could be shared, as directed by the court.
- Mr H's CETV was calculated in December 2017.
- The pension debit included benefits earned between 28 August 2009 and 31 December 2010. This period is after the date of the decree absolute.

- The pension debit should have been based on pensionable service Mr H completed before 28 August 2009. Removing the above period from the calculation of the pension debit increased the CETV available to Mr H by £6,735.
- Barnett Waddingham subsequently paid an additional £6,956 to Mr H's pension plan, inclusive of interest calculated at base rate plus 1% (the **Additional Payment**).
- Mr H's complaint against Aon was addressed by the Scheme Secretary as part of the IDRP process.

## Adjudicator's Opinion

41. Mr H's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of Barnett Waddingham and Aon. The Adjudicator's findings are summarised below:-

- It is a matter for the Trustee, as the "person" responsible for the Scheme, whether to recover the Fees that were retained by Aon. As Mr H did not incur a further charge in connection with the implementation of the PSO, the Adjudicator was not convinced that his share of the Fees should be refunded.
- In the absence of an appeal pending, the Adjudicator considered that Aon should have begun the implementation process shortly after it had received notification that it could proceed with the calculation of transfer values. Aon gave an indicative timescale of four weeks to implement the Order. However, Aon failed to take any action.
- The Adjudicator was not persuaded that Mr H could have reasonably relied on the May CETV. Mr H was aware, or had sufficient reason to suspect, that the Order had not been implemented. Mr H is not entitled to take pension figures quoted for divorce purposes. This includes values provided in a Notice of Discharge. On this basis, there is no obligation on the Scheme to pay those amounts.
- The Adjudicator considered that had Aon implemented the Order and updated the Scheme records in respect of the pension debit, in all probability the overstated May CETV would not have been issued. Similarly, the transfer process would likely have been finalised at an earlier stage.
- The Adjudicator recommended that Aon carry out a loss assessment. This was to ascertain whether Mr H would have purchased a higher number of units in the Plan, assuming he had received a correctly calculated CETV in May 2017. If Mr H would have secured additional units, the Adjudicator further recommended that Aon provide sufficient redress to increase Mr H's unit holdings to the level they would have been but for Aon's maladministration.

- To determine the date Mr H's transfer would have been completed, but for the delay between May 2017 and December 2017, Aon should take into consideration the length of time Mr H took to return his completed transfer paperwork and the Trustee's service level agreement with Aon.
  - The Adjudicator acknowledged that the initial calculation of Mr H's shareable rights, included rights in respect of pensionable service completed after the date of his decree absolute. The Adjudicator noted that Mr H has not provided any evidence to support his assertion that Barnett Waddingham made further mistakes in the calculation of his pension. Similarly, that Barnett Waddingham miscalculated the interest awarded to him.
  - Mr H's complaint against Barnett Waddingham should be upheld to the extent that it initially miscalculated Mr H's shareable rights.
  - Aon is a separate legal entity. It was a matter for the Trustee to respond to the issues Mr H raised about Aon.
  - Mr H should be awarded £2,000 in recognition of the severe non-financial injustice he has suffered. Aon should meet £1,500 of the cost of that award and £500 should be met by Barnett Waddingham.
42. Although Aon had some issues with the Adjudicator's Opinion it paid £1,500 and Barnett Waddingham paid £500, in respect of the total distress and inconvenience award of £2,000 as recommended by the Adjudicator.
43. The complaint was passed to me to consider and Aon has provided its further comments, set out below, which I note but they do not change the outcome. I agree with the Adjudicator's Opinion:-
- Aon acknowledges that the Order "could and should have been implemented at an earlier date." Aon accepts that it contributed to the delays experienced by Mr H and his ex-spouse in relation to the late implementation of the Order.
  - Aon does not consider that it is a "fair and reasonable conclusion" that Mr H has suffered financial losses, in the absence of any evidence to support that claim. There is also no evidence that Mr H took steps to mitigate his alleged financial losses. If this point were raised in court, the claimant would be required to provide corroborating evidence. Aon requests that the matter is reconsidered on receipt of supporting evidence from Mr H.
  - Notwithstanding the above, Aon is willing to complete the loss assessment. Aon has sent a further request to Mr H for details of his alleged financial losses. On receipt of this information, Aon will undertake the loss assessment.



## Ombudsman's decision

44. I acknowledge that Aon and Barnett Waddingham have paid a total distress and inconvenience award of £2,000 to Mr H in relation to this matter. The award is in line with what I would direct for non-financial injustice in similar cases. So, I am not making an additional award. I also consider that it was appropriate, in the circumstances, for Aon to have met £1,500 of the cost of that award.
45. I note that Aon has agreed to carry out a loss assessment on the terms recommended by the Adjudicator, but it nevertheless disputes that it has caused Mr H any proven financial injustice.
46. There is no evidence that Mr H acted in reliance on the May CETV and as yet no financial injustice has been proven. However, it is clear that the failure to implement the Order in the years prior to 2017, or at least from the point Mr H requested a CETV in 2017, caused a delay in his transfer. Whether Mr H has suffered any financial loss, as a consequence of the delay, will be determined through the loss assessment.
47. In disputes involving inaction on the part of pension administrators that impact the transfer process, a material consideration is whether the applicant would otherwise have received a higher transfer payment. A further consideration is whether the applicant could have secured additional units in his or her chosen investment fund(s) in the receiving arrangement. I agree that the appropriate course of action would be for Aon to undertake a loss assessment to ascertain whether Mr H would otherwise have secured a higher number of units. Mr H cannot be expected to have the expertise to carry out the necessary calculations.
48. An individual who has suffered a financial loss must take reasonable steps to reduce the amount of that loss. Aon's maladministration, in failing to implement the Order, delayed the transfer out process. By alerting Aon to the fact that the Order had not been implemented, Mr H took reasonable steps in the circumstances to attempt to minimise his financial loss. It follows that any financial loss resulting from Aon's failure to implement the Order is recoverable from Aon.
49. Aon shall liaise directly with the Receiving Arrangement to obtain the information required to perform the loss assessment.
50. To assess the extent of any financial loss, Aon shall calculate the CETV that would have been available to Mr H in May 2017. Aon shall use the transfer factors and assumptions on which the May CETV was based.
51. Aon shall ascertain the date the transfer payment would otherwise have been made to the Receiving Arrangement (the **Notional Transfer Date**). Aon shall obtain confirmation of the date the May CETV was issued and the date the application to transfer was received by Barnett Waddingham. Aon shall assume that Mr H would have taken the same number of days to return the documentation required to proceed with the transfer. Aon shall also assume that the transfer payment would have been

made to the Receiving Arrangement within the timeframe stipulated in Aon's service level agreement for completing transfer requests.

52. Aon shall compare the number of units Mr H would have purchased, had the transfer been completed on the Notional Transfer Date, and the total number of units Mr H secured in his Plan. If he has incurred a shortfall in units, Aon shall provide sufficient redress to increase his unit holdings to the level they would have been, had the transfer payment been issued on the Notional Transfer Date.
53. The complaint is partly upheld.

## Directions

54. Within 28 days of the date of this Determination, Aon shall:

- I. obtain Mr H's written consent for Aon to request information from the Receiving Arrangement, to carry out the loss assessment described in paragraphs 50 to 52 above (the **Loss Assessment**);
- II. pay any reasonable administration fee should the Receiving Arrangement charge a fee for providing the information;
- III. within a further 21 days of receiving the required information, carry out the Loss Assessment;
- IV. if the Loss Assessment identifies a shortfall in Mr H's unit holdings, pay to the Receiving Arrangement the necessary sum to purchase the number of additional units required to make good that shortfall; and
- V. notify Mr H in writing of the results of the Loss Assessment and the amount of any monies paid to the Receiving Arrangement.

**Anthony Arter**

Pensions Ombudsman  
10 December 2020