

## Ombudsman's Determination

Applicant	Mr Derek Aldridge
Scheme	Local Government Pension Scheme (the LGPS)
Respondent	City of London

### Complaint summary

Mr Aldridge has complained that City of London failed to inform him that his pension could be affected by his return to work and they are now seeking recovery of the resulting overpayment.

### Summary of the Ombudsman's determination and reasons

The complaint should be partly upheld against City of London because they failed to identify at an early stage that Mr Aldridge had been re-employed. However, I do not uphold the substantive complaint that they failed to inform him that his pension could be affected by his re-employment.

## Detailed determination

### Material Facts

1. Mr Aldridge's date of birth is 1 October 1941. He was employed by City of London Environmental Services and was a member of the LGPS. Mr Aldridge retired on 1 April 2006 and commenced his pension of £23,689.80 a year and a lump sum of £77,130.29. He was re-employed by City of London on 18 May 2006 in the same role but on an ad hoc basis as an Authorised Officer at Smithfield Market.
2. City of London state that Mr Aldridge was sent a letter on 24 March 2006 which explained the requirements about returning to work, along with a statement of his retirement benefits (retirement pack). The letter said the following –

“I enclose a statement of your pension benefit entitlement under the above provisions, together with a cheque in respect of the lump sum retirement grant.

I am required to draw your attention to Regulation 110 relating to abatement of pension on re-employment. You shall:-

inform any [LGPS] employer with whom you propose to accept new employment that you are in receipt of a pension from the City of London.

immediately you enter new LGPS employment you must inform me. Such notification must be in writing and should include your date of starting and the name of your new employer.

The City of London has resolved (Regulation 109) that any pensioner re-employed after 31st March 1998 in further LGPS employment will have their pension abated. Such cases shall not receive any pension which, when added to pay received from the new LGPS employment, exceeds their rate of pensionable pay at retirement (adjusted for inflation). Pay received will be reviewed over a calendar year and the pension adjusted accordingly.”
3. On 6 September 2011, City of London wrote to Mr Aldridge saying that his re-employment had only recently been discovered due to a data matching exercise. As a result, his pension had been overpaid by £32,838.81 from 18 May 2007 to 17 May 2011. They proposed to deduct £1,000 a month from his pension to make up the overpayment. He raised a complaint under the LGPS Internal Dispute Resolution Procedure (IDRP).
4. Mr Aldridge said that he informed the Pensions Manager (who wrote the letter of 24 March 2006) of his re-employment in May 2006, during a conversation about re-joining the LGPS. He said that the Pensions Manager told him that he was already drawing his pension and could not make further contributions into the LGPS. He said that he was re-employed in his former position by the same employer. He said that

the employing Environmental Services Department, Human Resources (HR) Department and the Payroll Department all knew this and he questioned how the Pensions Department did not? He says that City of London, the HR Department and the Payroll and Pensions Department were negligent in failing to notice that he had returned to work.

5. In the Stage One decision dated 10 January 2012, the decision maker said that the letter of 24 March 2006 notified Mr Aldridge that his pension would be abated if he was re-employed by a local authority employer. The letter also mentioned that he should inform City of London in writing of his re-employment. The decision maker noted that Mr Aldridge claims to have spoken with the Pension Manager but there was no record that he informed City of London in writing. The letter went on to acknowledge that, as the HR and Payroll Departments were aware of his re-employment, the LGPS should have been able to monitor his re-employment. However, Mr Aldridge did not inform City of London as required and he received overpaid pension which he was not entitled to under the regulations. This meant that City of London have a duty to recover the overpayment. The decision maker said that the regulations did not set out how overpayments should be recovered so it should be by mutual agreement between Mr Aldridge and City of London.
6. Mr Aldridge appealed under Stage Two of the IDRP. Referring to the letter of 24 March 2006, he said that he only received the attached benefit statement but not the covering letter. He said the regulations refer to re-employment in a new local authority whereas he was re-employed by the same authority. He maintained that the HR and Pensions departments made mistakes and he would not have worked the hours he did if he had known that his pension would be abated.
7. City of London issued the Stage Two decision on 20 July 2012. They said that the letter dated 24 March 2006 was part of the standard information sent to all pensioners at retirement. The covering letter included his address and it would not be possible to send him a pension statement without it. They upheld the decision to abate Mr Aldridge's pension and recover the overpayment.
8. In the meantime, Mr Aldridge commenced repayment, initially at £250 a month from November 2011, increasing to £450 a month from March 2012. Repayment is due to be completed in January 2018.
9. Mr Aldridge brought his complaint to this service.
10. In correspondence with us, City of London offered to pay Mr Aldridge £500 compensation and reduce his monthly repayment from £450 to £300. Mr Aldridge turned down the offer.

**Summary of Mr Aldridge's position**

11. Mr Aldridge says that he has been repaying £450 a month and had repaid £12,250 as at March 2014. If he has to repay the money at all, then he would like this reduced to £100 a month. He says that he has found it difficult to maintain payment at this level since leaving employment in May 2013.
12. He also says that he gave £50,000 to his son towards buying a house, and £10,000 to each of his two daughters. If he had known the true position, he would not have given his three children £70,000 from his lump sum. He believes that this means he should not have to repay the money.
13. He reiterates that he received only the benefit statement in 2006 and this arrived in a plain envelope with his name and address handwritten on it. He has provided other examples of correspondence sent to him in this manner. He would like his telephone call to the Pensions Manager in 2006 to be taken into account. His re-employment contract said he should speak to the Pensions Manager if he wished to be admitted into the LGPS and he did so. He says that the overpayment would have been prevented if the Pensions department had provided him with information regarding re-employment earlier rather than later. He is unhappy that his one error (of not informing the LGPS of his re-employment in writing) has counted against him despite the many mistakes made by City of London.

**Summary of City of London's position**

14. City of London say that the LGPS regulations are clear and they must abate the pension and seek recovery. They say that Mr Aldridge was notified of the abatement policy in the letter dated 24 March 2006. They argue that it is unlikely that he would not have been sent that letter as there is nothing else within the retirement pack that has his address on it and therefore they would not have known where to send it without the letter. While he may have spoken to the Pensions Manager about re-joining the scheme, they never received anything in writing informing them that he had returned to employment. They do not have a note of the telephone conversation and the Pensions Manager does not recall the conversation. Furthermore, they cannot explain why previous data matching exercises did not identify Mr Aldridge's re-employment.
15. City of London have told us that some documents such as change of bank details are sent in a plain handwritten envelope while letters with benefit statements are sent in window envelopes. They have also said that the lump sum paid and how it was spent did not impact the decision to maintain the same level of recovery. This was based on an assessment of earnings, expenses and time to complete repayment. They say that Mr Aldridge's monthly pension has increased by £145 since November 2011 and his income now exceeds his outgoings. Accordingly, they cannot agree to a reduction in the rate of repayment. They have a duty to recover the overpayment and will do so over the same period of the overpayment (five years). However, they are

willing to reduce the monthly repayment amount to £300 a month and offer £500 compensation to Mr Aldridge.

## **Conclusions**

16. Mr Aldridge says that the overpayment should not be recovered because it arose as a result of maladministration by City of London in failing to send him the covering letter of 24 March 2006. I appreciate that Mr Aldridge has received other letters from City of London which did not arrive in window envelopes. However, it is my view that it would have been unusual for just the benefit statement to have been sent to him. The covering letter had his name and address on it and referred to the enclosed benefit statement and cheque for the cash lump sum. The letter explained that, if he was re-employed in further LGPS employment, his new income and pension could not be more than his pensionable pay at retirement. This letter was part of the usual procedure and I do not see any reason why it would not have been followed in Mr Aldridge's case. On a balance of probabilities, I am prepared to accept that the covering letter was, more likely than not, included in the correspondence of 24 March to Mr Aldridge in circumstances that he has now forgotten. He should therefore have been aware of the abatement process and the requirement to inform City of London in writing if he was re-employed.
17. City of London say that they do not generally record telephone calls so there is no record of Mr Aldridge's telephone call to the Pensions Manager in May 2006. Accordingly, even if a conversation took place, there is no evidence of what was discussed and if it went beyond Mr Aldridge's questions about re-joining the LGPS. Notwithstanding this, I find it surprising that the HR and Payroll Departments were aware that Mr Aldridge had been re-employed but the Pensions Department was not. Mr Aldridge was re-employed by the same organisation and in a similar role. Had Mr Aldridge been employed by a different authority then this may have been understandable.
18. This lack of collaboration may probably explain why previous data matching exercises also failed to identify Mr Aldridge's case until five years later. I find that City of London should have identified at a much earlier stage that Mr Aldridge had been re-employed and should have abated his pension. This would have prevented the significant overpayment from arising, although the primary responsibility remains with Mr Aldridge himself.
19. Mr Aldridge says that he has changed his position by gifting £70,000 to his children. But he can have no defence to the recovery of the overpayment if, with ordinary diligence, he should reasonably have known that the overpayment was being made. On the balance of probabilities, as explained above, I find that to be the case.
20. Mr Aldridge is not entitled to retirement benefits in excess of what the LGPS rules allow. City of London are entitled to abate his pension and recover the overpayment. However, given their role in what has gone before, this is a case in which City of

London should be sensitive to Mr Aldridge's requests for a reduced repayment arrangement. It is, for example, not unusual for repayments to be made over the same timescale as the overpayment.

21. City of London have offered to reduce the monthly repayment to £300. In addition to the payment of £500 compensation, this seems reasonable to settle the complaint. I therefore make my direction below.

**Directions**

22. Within 30 days of the date of this determination, City of London are to reduce the monthly repayment sought from Mr Aldridge from £450 to £300. This amount should be subject to re-negotiation based on his circumstances and ability to repay. They should also pay £500 to Mr Aldridge for their failure to identify his re-employment at an earlier stage.

**Jane Irvine**

Deputy Pensions Ombudsman  
31 March 2015