

Ombudsman's Determination

Applicant	Mr R
Scheme	Local Government Pension Scheme (LGPS) – Southwark Pension Fund (the Fund)
Respondent	Southwark Council (the Council)

Outcome

1. Mr R's complaint against the Council is partly upheld. To put matters right, the Council shall pay Mr R £500 in recognition of the significant non-financial injustice which he has suffered dealing with this matter.

Complaint summary

2. Mr R has complained that the Council failed to augment in a timely manner the early retirement pension available to him from the LGPS in the way stipulated by the provisions of the Settlement Agreement.
3. He contends that the Council should have used the part of his severance award¹ which could not be paid tax free of £24,967 to either buy additional pensionable service for him in the LGPS or to partially cover the value of his unpaid contributions required to purchase the remaining 4 years 40 days of his added years pension contract.
4. He is unhappy that the Council decided:
 - to pay £24,967 directly into the Fund in order to secure an additional pension of £1,279.98 per annum for him from his early retirement date of 1 October 2016; and
 - the strain cost of providing this extra pension on an unreduced basis from the LGPS should be covered by his severance award.

¹ The Council awarded Mr R a severance payment of £54,967 of which the first £30,000 was tax free.

5. In his view, the Council should have been responsible for paying the associated strain cost to purchase an unreduced pension using the entire £24,967 for him.
6. He is also dissatisfied with how the Council subsequently dealt with his complaint under the LGPS Internal Dispute Resolution Procedure (**IDRP**).

Background information, including submissions from the parties

7. In July 2016, Mr H of the Council's Pensions Team (**the Pensions Team**) calculated that Mr R would be entitled to an additional pension of £1,068.14 per annum from the LGPS if he left the Council on 14 August 2016 and £20,904 of a proposed severance award of £50,904 was used to secure it.
8. In an internal e-mail dated 28 July 2016, Mr H said that:

“Usual caveats, pension purchased by the employer is not reduced if taken early so I have had to reduce the amount of pension bought to make it cost neutral for the employer.

If Mr R checks the amount of pension that £20,904 should have purchased he will discover that it should have bought £1,767.63 (which would have generated an additional capital cost for the employer of £14K).

The £20,904 has been “spent” on additional strain cost of £8,272.13 and the purchase of additional pension...”
9. Mr R's employment with the Council was terminated on 30 September 2016 by a Settlement Agreement signed and sealed on 7 September 2016.
10. The Settlement Agreement showed that the Council would pay the first £30,000 of a severance award of £54,967 tax free to Mr R. It also specified under clause four that the residual amount would be treated as follows:

“Subject to the rules of the pension scheme, the employer shall before the termination date pay £24,967 into the employee's pension scheme in order to augment the employee's benefits.”
11. In his letter dated 27 September 2016, Mr R notified Mr L, the Head of the Pensions Team at time, that:-
 - He had made a formal request to complete his added years pension contract prior to leaving the Council.
 - It was his understanding that under the Local Government Pension Scheme Regulations 1997 (as amended) (**the LGPS Regulations**) he could do this by paying a lump sum.
 - He was waiting for details of the lump sum and also the early retirement benefits available to him from the LGPS.

- He wished to “crystallise” his right to fulfil his added years pension contract prior to his leaving date by lodging an appeal under the IDR. The Council could put the appeal on hold while obtaining the information requested by him.
12. In its report dated 30 September 2016², Aon, the Fund actuary, informed the Council that the capital value of Mr R’s unpaid contributions to his added years pension contract under regulation 55³ of the LGPS Regulations was £38,460.
13. Aon also said that:-
- It had used financial assumptions consistent with “the market related basis” shown in the triennial valuation report of the Fund as at 31 March 2013⁴ updated for market conditions to the Financial Date of 30 June 2016.
 - It had based its calculations on the data provided by the Council on 6 September 2016 that was updated on 26 September to reflect Mr R’s actual redundancy date.
 - Its calculations involved placing present values on expected future contributions to the Fund over the period to the end date of Mr R’s added years pension contract in July 2026, his 65th birthday.
 - If the Council agreed with the calculations, it should inform Mr R accordingly.
 - The report did not consider any tax implications. For example, if Mr R’s additional pension caused him to exceed his annual allowance for pension savings in the current tax year, he might incur a tax charge.
14. Mr R notified Mr L in his letter dated 9 November 2016 that he had not yet received the requested information.
15. Mr L replied on 15 November 2016 that the lump sum required to complete Mr R’s added years pension contract was £38,460.
16. Mr R subsequently asked Mr L numerous questions about the LGPS and the benefits available to him from it in his letters dated 17 November, 30 November, 5 December and 13 December 2016. In particular, he enquired:-
- How the figure of £38,460 was calculated.

² The report was entitled “Discontinuance of additional contributions under Regulation 83”. Regulation 83 of the LGPS Regulations has been set out in Appendix One below.

³ Regulation 55 of the LGPS Regulations has also been set out below in Appendix One.

⁴ This actuarial valuation report was dated 31 March 2014

- Which regulations Mr L had relied upon to support a view that his pension benefits could not “be topped up as agreed with the Council” as he did not “receive benefits based on an individual pot”.

17. Mr L did not reply so Mr R sent him another letter on 22 December 2016 which said:

“If you are correct about my pension rights and a viable alternative cannot be found...I would like to pay up all or part of my added years contract. This is with the proviso that all the queries I have raised being addressed to my satisfaction, it being beneficial to me and that I am provided with the information I have requested...”

18. In his letter dated 4 January 2017, Mr P, the Executive HR Business Partner of the Council at the time, replied to Mr R as follows:

“As agreed at the meeting, which was attended by Mr C from UNISON; this letter responds on the points raised (within your letters and during the meeting) and reflects agreed action points. My colleague Mr H from the pensions team joined us part way through the meeting to facilitate a better understanding ...of some of the pension matters being discussed.

...I had in advance of our meeting drawn together what I believed to be the principal issues in question, these I hope are reflected in the content of the letter...

Early Retirement

In departing the Council over the age of 55, the position the Council took notwithstanding that you were leaving the Council on “agreed terms” was your pension benefits would be the same as a colleague taking early retirement on redundancy from the Council, voluntary or otherwise.

The effect of this is there is no reduction in the pension monies due to you as earned. The Council would however pay a capital sum to the pension scheme for the early release of the pension to you without actuarial reduction. The estimate for this capital cost is one of the figures we obtain from the pensions team ...This is often referred to as the ‘strain cost’...

Purchase of added years (contributions)

I understand you decided some time ago to make additional contributions (or added years) at 9% of pay to obtain higher pension benefits on retirement. Those additional contributions constituted a contract for purchase of added service. The agreed term ran from xx July 2003 to xx July 2026 inclusive, the latter date being your 65th birthday. The contract in its totality would have purchased an additional 9 years and 247 days.

From the date of its inception to the point at which you left was a contribution period of 13 years and 83 days towards this contract. The total yield therefore against the original contract term is 5 years 207 days additional service...

As agreed at the meeting we indicated we would represent the math that sits behind the 5 years 207 days figure...

Term paid to end of September 2016 [13 years and 83 days] divided by the total term of the contract [23 years] multiplied by the balance of the term remaining [9 years and 247 days] = 5 years 207 days.

There is therefore a shortfall in capital...for the balance of the contract term. It is the monetary value of this shortfall that you can if you wish pay to the pension scheme to obtain the full added year benefits you wished when you started the additional payments. The calculation of the capital sum due is again undertaken by the Council's independent actuaries, using factors that they have used as part of the 3 yearly review of the Southwark LGPS...This as discussed at the meeting is a total figure of £38,460...

For illustrative purposes only, in the meeting we provided an estimate of the additional pension benefit if the above capital amount was paid in full for the additional contributions purchase. This was an additional annual pension amount of £2,300 plus an additional lump sum of £6,900. You asked what would happen if less than the total figure of £38,460 was paid. In response we indicated that we believed this was possible (within scheme rules), but the benefits (both in annual pension and lump sum) would also reduce proportionate to the amount contributed.

I have to stress making this capital payment is entirely your own decision for which the Council has no view ...or would wish to contribute towards....

The agreement to use part of your termination payment to augment your pension

As you know as part of your negotiations with the Council you agreed to 'waive' payment of the sum of £24,967 on the basis that in line with the pension scheme rules this sum would be added to augment your pension benefits.

There was significant correspondence between our employment legal team and your lawyer about what this actually meant. As part of one of the responses sent to your lawyer a spreadsheet⁵ was created that sought to illustrate the association between the sum and its potential benefits on an

⁵ This spreadsheet was prepared on 2 September 2016. It was given to Mr R's lawyer in order to provide clarification on "the terms and content of a proposed settlement agreement". It showed that the Fund actuary had calculated a sum of £24,967 could purchase an additional pension of £1,218.47 per annum for Mr R in the Fund. The £24,967 would cover both the "base cost of benefit purchase" of £15,604.58 and "the additional strain cost to the Council" of £9,362.63. It also included a proviso which said the figures were not guaranteed or binding on the Council.

annual basis to your pension. It is important to note a number of points with regard to the £24,967.

1. In waiving the sum, no income tax was due on the sum, as it was being added in total to the pension scheme for your benefit.
2. The sum would need to cover both the employee contribution...and the strain cost associated with additional contribution being made. In other words the Council would pay in total £24,967 to the LGPS which would be inclusive of the strain cost.
3. The Settlement Agreement clause did not warrant or guarantee any monetary amount of direct benefit to you in terms of additional annual pension.

During the meeting there was a discussion about possible alternative options for using this sum in terms of maximising its pension benefits for you. In response to a question raised on your behalf the amount cannot be used directly to pay part of the capital shortfall for your additional years.

However, it would be feasible (if you wished) for the sum of £24,967 to be paid (as an after cessation payment), and the net product of that payment could be used by you to make a payment (direct to the LGPS) against the additional years capital shortfall. In response to a question from Mr C on your behalf, the Council will not 'gross up' the £24,967 payment noting the Council would apply (as outlined in HMRC guidance) the appropriate tax deduction to the £24,967 payment.

Meeting outcomes/next steps

I hope you find the content of this letter, accurately reflects the content of our meeting and provides you with substantive responses to the points you have raised in your correspondence from November/December...

In concluding the meeting there were a number of matters you need to consider and ideally respond on as soon as reasonably practicable...

...I have listed below the matters for your consideration and response.

1. Request for the Council to revise the Settlement Agreement signed and sealed on the 7th September 2016.

This related to the discussion on alternative options for the sum of £24,967 which is currently (as detailed in clause 4 of the Settlement Agreement) scheduled to be paid direct by the Council to the LGPS to augment the employee's [your pension] benefits.

I can confirm if you wish to make a request...for an amendment to the Settlement Agreement which would result in the £24,967 no longer being paid direct to the LGPS, but paid to you as an additional termination

payment (in addition to the £30,000 already paid under the existing agreement)...Ms M, Director of Modernise, would agree to such a request.

If you make such a request...my colleagues in Legal Services will prepare the relevant documentation. As with the initial Settlement Agreement, it is appropriate that you received independent legal advice...Exceptionally, Ms M has agreed the Council will offer an additional £350 excluding VAT towards the costs of receiving such legal advice. During the meeting there was discussion on you taking independent financial advice from an appropriate independent financial advisor (**IFA**) on the pension matters we discussed. The Council has no direct view on this beyond noting taking appropriate advice from an IFA would be prudent for any person considering their options with regard to pensions. However, the Council would not in this instance pay an additional sum for you to receive such advice. However, if you wished to use...some of the £350 excluding VAT towards IFA costs the Council would have no issue with that approach.

2. Payment of the capital sum for balance of your additional years contract

...it is your decision as to if you wish to do this and until such time as you do make a final decision the Council's pensions team cannot finalise your pension benefits and put them in place backdated to 1st October 2016.

It was noted during the meeting that under the relevant pensions regulations you had a period of up to three months (from the date of retiring being the 1st October 2016) to elect to make a lump sum payment to the (LGPS) fund for the balance of your additional years contract. The Council has however the discretion ...to allow a longer period for such an election to be made...Therefore, I would ask you to make a decision on this election no later than the end of February 2017...

Pursuing Matters Further

I was conscious from the meeting that you were unhappy with regard the lack of responses to correspondence you had sent in November and December to the Council....I will take responsibility for this for the Council and in that regard you have my apology that you had not received substantive responses to points you have raised over this time...

As a member of the LGPS if you have complaints directly relating to the management by the Council ...you may make use of the IDRP. I enclosed a copy of that process with this letter."

19. Mr R was dissatisfied with Mr P's reply and in his letter dated 28 February 2017, he asked that his appeal under Stage One of the IDRP be considered. He also said that:

“I would like to exercise the option to pay up part of my added years contract, on the proviso that the Council confirms that this is possible within the LGPS scheme rules...”

20. In his letter dated 27 April 2017 to Mr A of the Council’s Legal Team, Mr R added:

“Under clause 4 of the agreement, I agreed to forgo part of my severance payment in excess of 30K to buy additional pensionable service to augment my pension and pension benefits under the LGPS, which I understand that Mr L has insisted is not permitted. If that is the case, then under clause 14, there is a provision where it is found that a clause is not enforceable, to replace it with a clause that is enforceable...”

The LGPS rules applicable at the time provided for the pension contributions paid to augment my pension in these circumstances to be tax free...

Bearing in mind that I contend that the Council breached the agreement and has delayed the payment, will the Council compensate me for this loss and the opportunity cost to me...”

21. Mr A replied in his letter dated 2 May 2017 that the Human Resources Team had instructed the Finance Team to pay “the clause 4 sum of £24,967 to your pension scheme”.

22. He also said the Pensions Team had informed him that:-

- Once the payment was received, it would calculate the actual amount of additional pension secured for Mr R in the LGPS.
- The unreduced benefits available to Mr R from his added years pension contract would be paid with his “main pension benefits”.
- The document titled ‘Augmentation of service by the employer’⁶ supplied by Mr R was obsolete. When it was valid a few years ago, “additional money” would have purchased “additional service rather than additional pension”.
- It would have been at the Council’s discretion whether or not to permit a purchase of added years using part of a severance award. If it had agreed, there might have been tax implications in accordance with “finance law and HMRC guidance” in force at the time.

23. The Council says that:-

- Mr R made further submissions so it asked him in August 2017 whether there were any other issues that he wished to raise under the IDRP.

⁶ The contents of this document has been reproduced in Appendix Two below.

- It sought the assistance of the Fund actuary with this matter in September/October 2017.
- The Fund actuary provided a response in December 2017 and answered the Council's questions about it in January 2018.

24. In its Stage One IDRPs decision letter dated 12 January 2018, Ms A, the Council's Head of Financial and Information Governance at the time, apologised to Mr R for failing to reply to his pension enquiries in a timely manner.

25. Ms A explained that:-

- On 15 November 2016, the Council informed him that the cost to purchase the remaining 4 years 40 days of his added years pension contract was £38,460.
- On 27 April 2017, it sent him the Fund actuary's report showing this figure.
- According to regulation 83 of the LGPS Regulations: (a) the Fund actuary must calculate the capital value of Mr R's unpaid contributions that was required to fulfil his added years pension contract; (b) the Council must allow him the opportunity to pay this into the Fund. The regulation did not, however, permit Mr R to only pay part of the capital value. The Council was sorry that it had previously informed him that he could do so.
- If he wished to complete his added years pension contract, the capital value of £38,460 could be deducted from his retirement lump sum. Alternatively, he could send a cheque for this amount to the Council.
- The taxable element of his severance award of £24,967 could not be used by the Council towards partially fulfilling his added years pension contract. It had been paid into the Fund and used to purchase an additional pension of £1,279.98 per annum for him without actuarial reduction.
- He would receive pension payments backdated to his retirement date of 1 October 2016. Interest would also be added to his pension and lump sum benefits to reflect late payment. He would consequently not suffer any financial loss.

26. Ms A also said that:

“Separately to the augmentation of benefits, it was agreed that your benefits accrued up to 30 September 2016 would be paid unreduced. As a result of this, the Council is required to pay a strain cost into the Fund to cover the cost of paying unreduced benefits. This payment is separate and in addition to the £24,967 ... The amount payable by the Council to secure unreduced benefits is £74,268.77 ... using factors set by the Fund's actuary a number of years ago...”

27. Ms A enclosed some quotations showing the estimated early retirement benefits available to Mr R from the LGPS under four possible scenarios as at 1 October 2016 with her Stage One IDRPs decision letter. She hoped that these would provide Mr R with sufficient information in order to decide whether or not to complete his added years pension contract.
28. Mr R was dissatisfied with Ms A's response and, in April 2018, notified the Council that he wished to appeal under Stage Two of the IDRPs.
29. On 10 July 2018, Mr R sent details of his appeal to the Council that said:-
- Ms A was an inappropriate choice of adjudicator for the purposes of Stage One IDRPs because she had "direct input" into the issues of his complaint. He had pointed out this conflict of interest to the Council⁷.
 - Similarly, the adjudicators⁸ which the Council had selected to consider his appeal at Stage Two IDRPs were unsuitable. They also previously had been involved with his case. It was unfair that they were being allowed "to adjudicate on their own conduct".
 - The Council had used the wrong financial assumptions to calculate the cost of purchasing the remaining 4 years 40 days of his added years pension contract. In his view, those applicable as at a valuation date of 31 March 2016 and not 31 March 2013 should have been used in the calculations⁹.
 - The Council did not fully address his data protection concerns and denied him access to personal information which hindered his Stage One IDRPs appeal.
 - The Council only sent him the Fund actuary's report in April 2017 showing the cost to purchase the remaining 4 years 40 days of his added years pension contract was £38,460 after he had complained to the Information Commissioner's Office (ICO)¹⁰.
 - Mr R said that he was entitled to unreduced early retirement benefits from the LGPS but reduced the additional benefits available to him from taxable part of his severance award of £24,967 without his consent.

⁷ Mr R says that: (a) Ms A in her role of Head of Financial and Information Governance dealt with his subject access requests (SAR); and (b) the Council dismissed his concerns on this inherent conflict of interest.

⁸ The Council selected Ms M, Director of Modernise, and Ms R as potential adjudicators at Stage Two IDRPs. Mr R believes that they were also unsuitable to act as adjudicators because they had been involved with the issues to be considered under IDRPs.

⁹ Mr R also believes that the effective financial date should be 30 September 2016 and not 30 June 2016. He contends that he has suffered financial detriment as a consequence of these mistakes.

¹⁰ The ICO informed Mr R in its letter dated 14 March 2017 that the Council had likely breached the Data Protection Act 1998 (DPA) by failing to respond to his SAR in relation to his pension records within 40 days.

- The Council did not specify the interest rate that would apply to his retirement benefits from the LGPS for late payment.

30. The Council says that:-

- It received more correspondence from Mr R in August and September 2018.
- In late September 2018, it sent Mr R a letter which dealt with the issues that he had raised at IDRPs Stage Two relating to his employment that it deemed to be outside the scope of the IDRPs, including the Settlement Agreement. In particular, it informed Mr R that if he wished to dispute the clauses in the Settlement Agreement, he should contact its Legal Team.
- It tried to find an officer who would not be regarded by Mr R as having had prior involvement with his case to carry out Stage Two of the IDRPs.
- On 1 October 2018, it informed Mr R that it disagreed with his view that the officers selected to deal with his complaint under IDRPs were unsuitable; and (b) it would choose Mr B, its newly appointed Pensions Manager, who had no previous involvement in his case to undertake the second stage.
- Mr R sent further letters in October and November 2018 to express his concerns about the appropriateness of Mr B to deal with his Stage Two IDRPs appeal.

31. In its letter dated 23 November 2018, the Council replied as follows:-

- It was disappointed that Mr R felt the integrity of its IDRPs was compromised by the fact that Mr B would somehow be influenced by the fact that he reported to Ms A.
- It took its IDRPs responsibilities very seriously and its appointed decision makers must assess each IDRPs stage afresh, both objectively and impartially.
- There seemed little merit in providing an IDRPs Stage Two decision as Mr R clearly felt that he would not receive a “fair trial”.
- He could take his complaint to The Pensions Ombudsman (**TPO**).

32. Following the complaint being referred to TPO, Mr R and the Council made further submissions that have been summarised below.

Mr R’s position

33. The Council failed to complete Stage One of the IDRPs properly and in a timely manner. It took nearly 12 months when it should have completed this stage within two months of receiving his formal application in February 2017. The Council did not

inform him that it had asked the assistance of the Fund's actuary to deal with his appeal.

34. He should receive interest at 8% per annum for the late payment of his benefits.
35. Clause four of the Settlement Agreement stipulated that the Council should pay £24,967 into "the employee's pension scheme" in order to augment his benefits. The added years pension contract is the employee's pension scheme for the purposes of the LGPS. The Council should have paid £24,967 into his added years contract by 30 September 2016.
36. The Council's document titled "Augmentation of Service by the Employer" stated that:
(a) he could relinquish the taxable element of his severance award; and (b) the Council could use the money as a tax free pension contribution to buy additional pensionable service for him in the LGPS.
37. He says that:

"...the Income Tax (Earnings and Pensions) Act (**ITEPA**) has been in place since 2003. It states in section 308 that " *No liability to income tax arises in respect of earnings where an employee's employer makes contributions under a registered pension scheme in respect of the employee*". This provides for the employer to make a payment under a registered pension scheme in respect of the employee. This is not tax avoidance and is a legitimate legal payment, so there is no legal impediment to do as required."
38. The Council's failure to pay an agreed sum into his added years pension contract in good time was a breach of the terms reached in the Settlement Agreement. It has also caused him to suffer a financial loss.
39. If the LGPS Regulations do not permit such a payment to be made, the Council should have informed him before he signed the Settlement Agreement.
40. The Council should not have included an "unenforceable term" in the Settlement Agreement. Clause 14, however, allows for a flawed provision to be replaced with one that is "valid and enforceable".
41. The Council has an established discretions policy that could address the financial loss which he has suffered.
42. The Council failed to respond to his requests for information about his pension records that were covered by the DPA and the Freedom of Information Act (**FOI**) within statutory deadlines. It did not comply with his SAR and breached the DPA¹¹.

¹¹ The ICO informed Mr R in its letter dated 10 July 2019 that the Council had failed to comply with its Data Protection obligations because it did not provide him with an appropriate response to his SAR. The ICO said that it had asked the Council to respond to his request within 14 calendar days. It also informed Mr R that he had the right to take legal action in the courts for the information to be released, if necessary.

43. The Council should explain how the figures shown on the retirement quotations it sent him have been calculated.
44. The Council failed to keep accurate pension records for him. This made it impossible for him to make an informed decision and claim his pension benefits from the LGPS.

The Council's position

45. It acted in a responsible, diligent and professional manner when dealing with Mr R's enquiries in order to resolve them in a timely fashion.
46. It does not consider there had been unreasonable delays in providing information to Mr R. There were many matters up for discussion. In its view, Mr R and his solicitor initially misunderstood much of this and needed additional time to seek clarity. This was a complex case requiring the attention of multiple teams and the relationship between Mr R and the Council had clearly deteriorated by this point in time.
47. The strain cost and additional £24,967 were paid into the Fund at the end of the 2017/18 financial year.
48. It would have been inappropriate and detrimental to other members of the Fund if the Council had to cover the associated strain cost of providing Mr R with an unreduced additional pension secured using the entire £24,967. In its view, this would be deemed as "unjust financial enrichment". The Settlement Agreement did not stipulate that Mr R was entitled to further "enhanced" benefits on redundancy.
49. Late payment of Mr R's early retirement benefits is not the fault of the Council. Mr R did not ask it to pay them.
50. The Council is prepared to backdate Mr R's pension benefits to 1 October 2016 and apply interest at 1% above the Bank of England base rate in accordance with regulation 81(4) of the LGPS Regulations.
51. There was no requirement to provide Mr R with copies of any correspondence between it and the Fund's actuary. Aon is contractually permitted to provide the Council with consultancy services and pension fund advice (including IDRPA assistance). No consent was required from Mr B in order for Aon to do this.
52. The actuarial valuation process is time consuming. The valuation as at 31 March 2016 was not completed until 2017. It was reasonable for the Fund's actuary to rely on assumptions made for the valuation as at 31 March 2013 when calculating the capital value of Mr R's unpaid contributions to his added years pension contract.
53. If Mr R now wishes to receive the taxable excess redundancy payment as cash and taxed accordingly, the Council is willing to do so but this would require re-opening the Settlement Agreement.
54. Its former policy to allow redundant employees to use their award in excess of £30,000 as a tax free pension contribution to buy additional pensionable service in the LGPS had ended several years prior to Mr R's leaving date in September 2016.

55. While it does have a number of pension fund discretions at its disposal, “nothing exists around employees on redundancy, giving up their taxable redundancy payment to secure additional pensionable service in the LGPS”.
56. If Mr R had a specific pension fund promise around additional pensionable service, it would have been covered within the Settlement Agreement. This was an employment matter that fell outside of the Pensions Ombudsman’s jurisdiction.
57. It refutes Mr R’s allegation that it did not keep accurate pension records for him. It will be recalculating the early retirement benefits available to Mr R from the LGPS once his complaint has been determined by the Pensions Ombudsman.

Adjudicator’s Opinion

58. Mr R’s complaint was considered by one of our Adjudicators who concluded that further action was required by the Council. The Adjudicator’s findings are set out below in paragraphs 59 to 112.
59. The LGPS is a statutory scheme made under the Superannuation Act 1972. The LGPS Regulations govern the payment of benefits from this scheme. In its capacity as an Administering Authority of the LGPS, the Council must act in accordance with these regulations and within the framework of the law.
60. So, the Council had to follow any procedure laid down in the provisions of the LGPS Regulations when giving redundant employees, such as Mr R, the option to use the taxable element of their severance payments to augment their pension benefits from the LGPS.
61. Mr R believed that the Council could have used the taxable element of his severance award to either buy additional pensionable service for him in the LGPS or to partially cover the value of his unpaid contributions required to purchase the remaining years and 40 days of his LGPS added years pension contract.
62. At the time of Mr R’s redundancy in September 2016, the applicable LGPS Regulations were the LGPS Regulations 2013 and these allowed members access to two tax efficient ways of increasing their pension benefits. Namely, by paying additional pension contributions (**APCs**) and or additional voluntary contributions.
63. APCs were introduced on 1 April 2014. Members could pay APCs to buy extra pension in the main LGPS by either spreading the payment over a number of complete years or by paying a lump sum.
64. Regular APCs would be deducted from monthly pay before tax so members received tax relief automatically through payroll if they were tax payers.
65. Members wishing to buy extra pension by paying a one-off lump sum could do this either through their pay or by making payment directly to the LGPS. They would need

to arrange tax relief directly with HMRC via their self-assessment tax return or by contacting HMRC if the latter option was selected.

66. Regulation 16(4) of the LGPS Regulations 2013 stipulated that where APCs are to be paid by a lump sum contribution, they may be funded in whole or in part by the member's employer but they must be used to secure additional pension. It did not permit additional pensionable service to be purchased by the employer using APCs.
67. Mr R provided TPO with a document titled "Augmentation of service by the employer" and some screen prints about pensions obtained from the Council's Human Resources (**HR**) website¹². In his view, this evidence proved that the Council could have augmented his pensionable service in the main LGPS using the taxable element of his severance award as a tax free pension contribution.
68. However, there was no date printed on this document and the screen prints showed that they were last updated on 6 November 2013.
69. The Adjudicator noted that Mr A, in his letter dated 2 May 2017, informed Mr R that the Pensions Team had said this document was valid a few years ago but it was now obsolete. In the Adjudicator's view, this statement was consistent with the introduction of APCs through the LGPS Regulations 2013 on 1 April 2014 that did not allow the purchase of additional pensionable service.
70. The Adjudicator consequently agreed with the Council's position that it could no longer buy additional pensionable service in the main LGPS for Mr R using the taxable element of his severance award at the time of his redundancy in September 2016.
71. Regulation 15 of 'The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014' (SI 2014/525) stipulated that both regulations 55 (Payment to increase total membership) and 83 (Discontinuance of additional contributions) of the LGPS Regulations continued to have effect under the LGPS Regulations 2013.
72. Mr R elected to pay extra contributions at 9% of his pay to the main LGPS from July 2003 to July 2026 in accordance with regulation 55 of the LGPS Regulations to purchase an additional 9 years and 247 days.
73. Under regulation 83 of the LGPS Regulations, when Mr R ceased to be an active member of the LGPS, on 30 September 1996, he could no longer pay extra contributions under regulation 55.
74. Mr R could, however, have elected to make a lump sum to the LGPS representing the capital value of his unpaid contributions required to complete his added years

¹² Relevant excerpts taken from the screen prints dated 28 April 2017 obtained by Mr R from the Council's HR website have been set out in Appendix Two below

pension contract of 9 years 247 days. This amount was calculated by Aon, the Fund's actuary, to be £38,460 as shown in its report dated 30 September 2016.

75. Mr R contended that the actuarial assumptions and dates used by the Fund's actuary in its calculations of the lump sum were flawed. The onus fell on Mr R to provide sufficient evidence to demonstrate that what he said was correct. However, apart from his own views on the matter, the Adjudicator said they had seen no evidence which supported his position, for example, a witness statement from an independent actuary.
76. So, the Adjudicator said they had no reason to doubt the Fund actuary's professional view that it was appropriate to have used the financial assumptions shown in the triennial valuation report of the Fund as at 31 March 2013, once they were updated for market conditions to the Financial Date of 30 June 2016, in their calculations.
77. Furthermore, regulation 83 of the LGPS Regulations only permitted Mr R to pay this lump sum to purchase the remaining 4 years 40 days of his added years pension contract. It did not allow the Council to use the taxable part of Mr R's severance award of £24,967 to partially cover the lump sum required.
78. The Council was amenable to a request from Mr R for the taxable element of his severance payment of £24,967 to be paid to him though. Mr R could then have used the net proceeds as a contribution towards the lump sum of £38,460 required to fulfil his added years pension contract. However this would have required an amendment to the Settlement Agreement. The Council had also said that it would not be willing to reimburse Mr R the tax deducted from such a payment.
79. The lump sum of £38,460 could also have been deducted from the retirement lump sum due to Mr R from the LGPS or paid by sending a cheque to the Council.
80. The Settlement Agreement was a contract between Mr R and the Council. Clause four stated that:

"Subject to the rules of the pension scheme, the employer shall before the termination date pay £24,967 into the employee's pension scheme in order to augment the employee's benefits."
81. In his letter dated 4 January 2017 to Mr R, Mr P said that there had been significant correspondence between the Council's Legal Team and Mr R's lawyer about what this clause actually meant.
82. The Council had consequently accepted that this clause was drafted ambiguously and open to interpretation in a way that was not its true meaning. With the benefit of hindsight, it would clearly have been better had the Council precisely set out in the Settlement Agreement how it would augment Mr R's pension benefits and provided details of the relevant regulations. By doing so, Mr R would then have been left in no doubt about what the Council proposed to do.

83. The Council said that the true meaning of this clause was that it would pay £24,967 as an APC into the main LGPS to secure additional pension and lump sum benefits for Mr R in accordance with the LGPS Regulations.
84. Mr R disagreed with this interpretation because, in his view, “employee’s pension scheme” referred to his added years pension contract for the purposes of the LGPS and so the Council should have paid £24,967 into it by 30 September 2016.
85. The term “employee’s pension scheme” was not, however, defined in the LGPS Regulations specifically to denote an added years pension contract. In the Adjudicator’s opinion, it could also be construed to mean the main LGPS. The Adjudicator consequently disagreed with Mr R’s view that clause four was an “unenforceable term” which should be replaced.
86. Moreover, by paying £24,967 as an APC into the LGPS to secure an additional pension of £1,279.98 per annum for Mr R from his early retirement date of 1 October 2016, the Adjudicator was satisfied that the Council had complied with clause four of the Settlement Agreement, albeit tardily.
87. Mr R was also unhappy that the Council had decided the strain cost of providing this extra pension on an unreduced basis from the LGPS should be covered by him.
88. Prior to Mr R signing the Settlement Agreement on 7 September 2016, the Council had provided his lawyer with a spreadsheet in order to clarify the “terms and content” of the agreement.
89. This spreadsheet clearly showed that: (a) no tax would be deducted from the APC of £24,967; and (b) this amount would cover both the cost of purchasing the additional pension and the strain cost to the Council for it to be paid on an unreduced basis.
90. So, it was clear that the Council was only willing to cover the strain cost of paying the retirement benefits that Mr R had accrued in the LGPS up 30 September 1996 without actuarial reduction.
91. At this point, assuming his lawyer properly advised him of this, it had consequently been open to Mr R: (a) to ask the Council whether it could also cover the strain cost for the pension augmentation because he was not willing to do so; and (b) to continue negotiating the terms of his Settlement Agreement with his lawyer’s assistance and defer signing it until he was satisfied. The Adjudicator had seen no evidence that Mr R did this though.
92. However, any concerns which Mr R might have about how the Settlement Agreement was established was an employment issue that TPO did not have the jurisdiction to investigate. Such matters were dealt with primarily by the courts or employment tribunals.
93. The Adjudicator noted that at Stage One of the IDRP, Ms A informed Mr R that: (a) he would receive pension payments backdated to his retirement date of 1 October 2016

from the LGPS and (b) interest would also be added to his pension and lump sum benefits to reflect late payment.

94. It was unfortunate that Ms A failed to specify the basis upon which interest would be calculated in her letter. However, during the course of the Adjudicator's investigation, Mr B informed him that the Council would be applying interest at 1% above the Bank of England base rate in accordance with regulation 81(4) of the LGPS Regulations 2013 for the late payment of Mr R's benefits.
95. The Pensions Ombudsman had power to award interest under sections 151(2) and 151A of the Pensions Schemes Act 1993. Section 151(2) was a general power enabling the Pensions Ombudsman to make any direction he thinks fit and that can include the payment of interest. Section 151A was for the specific situation where the Pensions Ombudsman makes a direction about the late payment of benefits and states that:

“Where ...the Pensions Ombudsman directs a person responsible for the management of [a] scheme to make any payment in respect of benefit under the scheme which, in his opinion, ought to have been paid earlier, his direction may also require the payment of interest at the prescribed rate.”
96. The prescribed rate was set out in regulation 6 of 'The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996' (SI 1996/2475) which defined it to be “the base rate for the time being quoted by the reference banks” and there was no discretion about the rate applying. Further, although the regulations were silent on the point it was considered that it was implicit that the interest basis applying was simple.
97. So, the Council would, in fact, be using a more generous basis to calculate the interest due to Mr R for the late payment of his benefits from the LGPS.
98. The Council's IDRPs consisted of two stages. At Stage One, the Council must appoint an adjudicator to consider an appeal. Neither the Pensions Act 1995 nor the LGPS Regulations stipulated any particular requirements about who the adjudicator should be. In practice, the Council was likely to ask someone with relevant expertise to understand the details of the dispute to decide it, although this person did not have to be one of its employees.
99. The Council chose Ms A, its Head of Financial and Information Governance at the time, to be the adjudicator at Stage One of the IDRPs. Mr R considered that Ms A was an inappropriate choice of adjudicator because she had “direct input” into the issues of his complaint. The Council, however, disagreed with his view that she was unsuitable to deal with his complaint impartially.
100. While Ms A had been responsible for dealing with Mr R's SARs in relation to his pension records, she did not have any personal involvement in the discussions between the Council and Mr R over how the retirement benefits available to him from the LGPS would be augmented using the taxable element of his redundancy award.

101. In the Adjudicator's view, Ms A's knowledge of Mr R's complaint through his SARs would not have affected her ability to make an impartial decision.
102. The Council selected Mr B, who had recently joined it as Pensions Manager, to consider Mr R's Stage Two IDRPs appeal after he was dissatisfied with the first two choices for this role.
103. Mr B clearly had no previous involvement in this matter. Although he reported directly to Ms A, the Adjudicator saw no reason why he could not also have been able to make a fair-minded and impartial decision.
104. The Pensions Regulator expected that decisions would be made and notified on a dispute raised through IDRPs within reasonable periods which were set out in its General Code of Practice. It envisaged that a decision on a dispute would be made within four months of receiving the application, and complainants should be notified within 21 days from when it was made. The same time periods applied to each stage if a two stage IDRPs was in place. If it was appropriate to do so, a decision could, however, be reached in more than four months. But if it was likely that any specific deadlines were not going to be met, the Pensions Regulator considered it good practice to inform the complainant accordingly.
105. When considering an application under IDRPs, a decision-maker should:
- ensure it had all the appropriate information to make an informed decision; and
 - request further information if required.
106. The Council aimed to complete Stage One of the IDRPs within two months of receiving Mr R's application. However, as a consequence of: (a) the complexity of Mr R's complaint; (b) the receipt of further submissions from Mr R; and (c) the necessity to seek assistance from the Fund's actuary, it was, in the Adjudicator's view, not unreasonable for the Council to have taken longer than anticipated to reach an informed decision properly at Stage One of the IDRPs.
107. There was no doubt from the evidence presented that the Council had occasionally provided Mr R with a substandard level of service for the LGPS when dealing with his pension enquiries and subsequent complaint though.
108. In January 2017, Mr P apologised to Mr R for the lack of responses to the correspondence that he had sent to Mr L in November and December 2016. At Stage One of the IDRPs, Ms A also apologised to Mr R for the Council's shortcomings. In particular, she accepted that the Council had previously told him incorrectly that he had the option to pay part of the lump sum required to fulfil his added years pension contract.
109. The Council also failed to provide Mr R with a copy of the Fund actuary's report and specify the basis upon which interest would be calculated for late payment of Mr R's benefits in a timely manner.

110. In the Adjudicator's view, these mistakes constituted examples of maladministration on the part of the Council.
111. Although, it was the Adjudicator's opinion that Mr R had not suffered any actual financial loss, it was clear that he had experienced distress and inconvenience because of the maladministration identified above.
112. The Pensions Ombudsman's awards for non-financial injustice were modest and not intended to punish a respondent. In the Adjudicator's view, the non-financial injustice which Mr R had suffered was significant enough to warrant an award of £500 from the Council.
113. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome.

Mr R's further comments

114. Mr R says that:-

- The Council did not make every effort to obtain his informed consent before sharing his personal information with Aon in accordance with section 3.15 of its Data Protection policy.
- Under section 19, 'Actuarial Position of the Fund', of the Council's Pension Fund Annual Report 2016/17, it said that:

"The latest full actuarial investigation into the financial position of the Fund was completed as at 31 March 2016¹³ by Aon in accordance with Regulation 62 of the LGPS Regulations 2013."
- The screen prints dated 28 April 2017 that he obtained from the Council's HR website included links to documents concerning the augmentation of service. If these documents were obsolete, they should have been deleted. The term "last updated" referred to when there were "any changes to the procedure".
- The Adjudicator did not consider "the language" in clause four of the Settlement Agreement and "the context in which it was drafted" before "coming to the view as to the interpretation of the clause". The following considerations should have been addressed:-
 - a) The natural and ordinary meaning of the words.
 - b) Any other relevant provisions of the contract.
 - c) The overall purpose of the clause and the contract.
 - d) The facts and circumstances known or assumed by the parties at the time the contract was executed.

¹³ The report for the actuarial valuation as at 31 March 2016 for the Fund was, however, only signed by Aon on 30 March 2017.

e) Commercial common sense.

- “The Pension Schemes Act (**PSA**) 1993 covers an employee benefit paid on termination of service in employment. For the purpose of the PSA 1993 therefore would cover the meaning of an employee pension scheme...Further the agreement terms were agreed with Ms M in an e-mail... to Mr C of Unison dated 26 July 2016 sent at 1:21 pm”.
- The Council should award him interest at 8% per annum for late payment of his benefits in line with section 69 of the County Courts Act 1984 from 1 October 2016 up to the date when they are paid.
- The Council refused to confirm whether Ms A (and others) were involved in the failure to provide him with information about his pension for his SAR. The ICO found that his SAR had not been dealt with correctly. So it is reasonable to contest that Ms A was an appropriate person to deal with his appeal under the IDR. Ms A was also “the Employer’s nominated representative on the Local Pension Board”.
- It was the Council’s standard practice that junior staff should not address complaints involving more senior staff. Moreover, Mr B was not at the time a nominated person for the purposes of the IDR.
- The considerable distress and inconvenience which he has suffered dealing with this matter warrants an award greater than £500.

The Council’s further comments

115. The Council says:-

- Mr R departed the Council under difficult circumstances which warranted the Agreement. The Agreement is, and remains confidential and should not be commented on by TPO.
- “Mr R’s LGPS benefits were calculated on enhanced ‘redundancy’ departure terms and therefore he received ‘unreduced’ pension benefits at considerable additional expense to the Council as his former employer. The Council made no promise that any additional benefits (APC) would be on enhanced ‘unreduced’ terms using the taxable element of Mr R’s redundancy payment. To further enhance those APC benefits would be detrimental to other Fund members and would be considered unjust enrichment.”
- It will, by exception, re-open the Agreement if Mr R now wishes to receive the taxable element of his redundancy payment as ‘income’. This will be paid to Mr R through its payroll services and taxed accordingly. This would, by default, mean the additional payment made to the Fund to purchase an APC would be reversed.

- It remains committed to settling Mr R's retirement benefits now or at a future date when this matter is finalised.

Ombudsman's decision

116. The Settlement Agreement is a contract between Mr R and the Council, and there is authority in case law that settlement agreements must be interpreted according to the normal rules of contractual interpretation.
117. Mr R has complained that clause four of the Settlement Agreement did not accurately reflect his intentions. However, the Settlement Agreement was agreed and the normal rules of contractual interpretation require that I interpret it objectively and not by reference to Mr R's intentions or subjective understanding. Clause four provided only that the Council would pay the taxable element of his severance payment into his pension scheme, which I interpret as referring to the LGPS, to augment his benefits. It does not specify what the augmentation of benefits would be but, necessarily, the augmentation would have to be effected in a manner permitted under the LGPS Regulations.
118. I note that, in September 2016, while the negotiations of the Settlement Agreement were ongoing, the Council had provided his lawyer with a spreadsheet prepared by Aon, the Fund's actuary, that explained how the Council proposed to comply with this clause.
119. This spreadsheet plainly showed that the Council intended to use the part of Mr R's severance award which could not be paid tax free to him of £24,967 to purchase an additional pension from his early retirement date of 1 October 2016. The strain cost to the Fund to pay this pension early at the same time as his main benefits and without actuarial reduction would have to be paid by Mr R from this severance award.
120. So, I am satisfied that the Council made it clear to Mr R's lawyer that it would not be prepared to use the entire £24,967 to cover the base cost of purchasing an additional pension for Mr R and separately pay the associated strain cost for its early release on an unreduced basis.
121. I concur with the Adjudicator's view that the Council had complied with clause four of the Settlement Agreement by paying £24,967 as an APC into the LGPS to buy an additional pension of £1,279.98 per annum for Mr R from his early retirement date of 1 October 2016. The Settlement Agreement made no provision for the Council to make additional payments relating to the payment of the £24,967 but only to apply that amount to augment his benefits.
122. The Council has said that Aon is contractually permitted to provide it with consultancy services and pension fund advice (including IDRPs assistance) and no consent was required from Mr R in order for Aon to do this. This would allow the Council to share Mr R's personal data with Aon for the purpose of obtaining advice in relation to Mr R's

benefits subject to usual compliance with DPA requirements. If Mr R believes that the Council has infringed the DPA, he can raise his concerns with the ICO.

123. The report for the actuarial valuation as at 31 March 2016 for the Fund was only finalised when signed by Aon on 30 March 2017. I consequently agree with the Council's view that it was reasonable for the Fund's actuary to rely on assumptions made for the valuation as at 31 March 2013 when calculating the capital value of Mr R's unpaid contributions to his added years pension contract.
124. The screen prints dated 28 April 2017, which Mr R obtained from the Council's HR website, showed that there were links to documents concerning the augmentation of service. Mr R has not, however, been able to provide copies of the documents available by clicking on these links as evidence to TPO.
125. In any case, APCs were introduced on 1 April 2014 through the LGPS Regulations 2013 that do not allow the purchase of additional pensionable service. So, at the time of Mr R's redundancy in September 2016, the Council could no longer purchase additional pensionable service in the main LGPS for Mr R using the taxable element of his severance award regardless of what these documents showed.
126. Mr R says the Council should pay him interest at 8% per annum for the late payment of his benefits.
127. As the Adjudicator said, I have the power to award interest on late payment of benefits under section 151A of the Pensions Schemes Act 1993 at the "prescribed rate". The prescribed rate under regulation 6 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (No 2475) is defined to be simple interest at the base rate for the time being quoted by the reference banks. I have no discretion in this matter.
128. This is less interest than the LGPS Regulations 2013 prescribe be paid by the Council to Mr R for the late payment of his benefits (1% above the Bank of England base rate).
129. I agree with the Adjudicator's view that Ms A's knowledge of Mr R's complaint through his SARs would not have affected her ability to give an impartial decision at Stage One of the IDR. I also see no reason why Mr B could not have fulfilled the role of the appointed adjudicator at Stage Two of the IDR and made a fair and impartial decision.
130. When deciding whether to direct an award for non-financial injustice, I assess each case on its facts and merits. My awards for non-financial injustice are modest and not intended to punish a respondent.
131. Having carefully considered the submissions and evidence, in light of my conclusions above and in particular the lack of responses in November and December 2016 and the misleading information provided in respect of using the severance payment to partly meet outstanding amounts under Mr R's added years contract, I find that the

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degree of maladministration and non-financial injustice which Mr R has suffered warrants my minimum award of £500.

132. I partly uphold Mr R's complaint and make the appropriate directions below.

Directions

133. Within 21 days of the date of this Determination, the Council shall pay Mr R £500 in recognition of the significant non-financial injustice which he has suffered dealing with this matter.

Camilla Barry

Deputy Pensions Ombudsman

25 March 2025

Appendix One

Regulation 55 of 'The Local Government Pension Scheme Regulations 1997'

“Payment to increase total membership

- (1) An active member may elect to make additional contributions to the Scheme to increase his total membership by an additional period.
- (2) That period must not exceed the maximum addition under Schedule 4.
- (3) The election must be made by giving notice in writing to the appropriate administering authority earlier than the member's 64th birthday.
- (4) If—
 - (a) the member's appropriate administering authority pass a resolution requiring him to satisfy them that he is in reasonably good health by producing to them a report by a registered medical practitioner of the results of a medical examination undertaken at the member's own expense, but
 - (b) they are not so satisfied, the election is void.
- (6) The amounts of the additional contributions must be such percentage of the member's pay for the time being as is shown as appropriate in guidance issued by the Government Actuary.
- (7) A member's pay for the time being is the pay received by him for the interval at the end of which the additional contribution falls to be paid.
- (8) Where a member is away from work (otherwise than because of illness or injury) with reduced or no pay, for paragraph (7) he is treated as having received the pay he would have received if he had not been away (unless his contract of employment has ceased).
- (9) For paragraph (7) any reduction in pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period he is away from work (other than a period of maternity absence) shall be disregarded.
- (10) If a member continues paying the additional contributions until his last birthday before his NRD (or if his NRD is his birthday, that date), the whole of the additional period may be counted as part of his total membership.
- (11) Otherwise, the part of that period which may be so counted must be calculated as specified in regulation 83 (discontinuance of additional contributions).
- (12) The additional contributions are payable from the member's next birthday after his election.”

Regulation 83 of 'The Local Government Pension Scheme Regulations 1997'

"Discontinuance of additional contributions

83-(1) A member paying additional contributions under regulation 55 may elect to stop payment and must do so if he ceases to be an active member.

(2) Such an election must be made by notice in writing to the administering authority and the employing authority.

(3) If a member stops paying such contributions before his NRD on leaving his employment because of such permanent incapacity as mentioned in regulation 27(1) or on his death, he is to be treated as having completed payment of those contributions.

(4) If a member stops paying such contributions before his NRD on leaving his employment by reason of redundancy at least 12 months after he elected to pay them, he may elect to make a lump sum payment to the appropriate fund.

(5) Such an election must be made by notice in writing to the administering authority given not later than the expiry of the period of three months beginning on the day after he leaves his employment (or such longer period as they allow).

(6) The amount of that payment must be calculated by an actuary appointed by the appropriate administering authority as representing the capital value of the unpaid contributions.

(7) If the member duly makes that payment before the expiry of the period of one month beginning with the date on which he is notified of its amount, he must be treated as having completed paying his additional contributions under regulation 55.

(8) If a member stops paying such contributions before his NRD and neither paragraph (3) nor (4) applies, such proportion of the original additional period covered by the election may be counted as part of his total membership as the length of the period during which he paid such contributions bears to the length of the full period during which they were to have been paid..."

Regulation 15 of 'The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014'

"Additional contributions

(1) Notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations) the following regulations continue to have effect-

- (a) regulation 55 of the 1997 Regulations (payments to increase total membership) as it applies to a member who has elected before 1st April 2008 to make additional contributions to increase total membership by an additional period;

- (b) regulation 83 of the 1997 Regulations (discontinuance of additional contributions) in respect of a person to whom sub-paragraph (a) applies; and...”

Regulation 16 of the Local Government Pension Scheme Regulations 2013

“Additional pension contributions

(1) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay additional pension contributions (“**APCs**”) by regular contributions in accordance with paragraph (2), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work) unless the appropriate administering authority determines in any particular case that it would not be practical to allow APCs to be paid by regular contributions.

(2) Where APCs are to be paid by regular contributions, the arrangements mentioned in paragraph (1)—

- (a) must, when entered into, be for a complete year or number of years with a minimum period of one year;
- (b) must specify the amount of extra contribution to be paid each Scheme year;
- (c) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;
- (d) must specify the amount of additional pension to be credited to the active member's pension account at the end of the Scheme year; and
- (e) may be funded in whole or in part by the member's Scheme employer.

(3) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay APCs by lump sum contribution in accordance with paragraph (4), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work).

(4) Where APCs are to be paid by a lump sum contribution, the arrangements mentioned in paragraph (3)—

- (a) must specify the amount of extra contribution to be paid;
- (b) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;
- (c) must specify the amount of additional pension to be credited to the active member's pension account at the end of the Scheme year; and

(d) may be funded in whole or in part by the member's Scheme employer.

Regulation 60 of the Local Government Pension Scheme Regulations 2013

“Statements of policy about exercise of discretionary functions

(1) A Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions under regulations—

- (a) 16(2)(e) and 16(4)(d) (funding of additional pension);
- (b) 30(6) (flexible retirement);
- (c) 30(8) (waiving of actuarial reduction); and
- (d) 31 (award of additional pension),

and an administering authority must prepare such a statement in relation to the exercise of its functions under regulation 30(8) in cases where a former employer has ceased to be a Scheme employer.”

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Further (and more detailed) information can be found on the local government employer's website.

If you have any queries please contact the Pensions Team lbspensions@southwark.gov.uk or by ringing 0207 525 4924

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