CAS-93659-D0T2

Ombudsman's Determination

Applicant	Mr D
Scheme	Local Government Pension Scheme (**the Scheme**)
Respondents	Local Pensions Partnership Administration (**LPPA**)

Outcome

Mr D's complaint against LPPA is partly upheld. To put matters right, LPPA shall implement the instructions set out in paragraph 107 below.

Complaint summary

1. Mr D's complaint concerns:

   - a delay in the setup of his early retirement benefits, which resulted in a reduction in the value of his additional voluntary contributions (**AVC**);
   - the reduction in the value of the AVC subsequently acted to reduce the value of an annuity he purchased on the open market;
   - a lump sum, in respect of his redundancy, which does not appear to have been paid into the Scheme by his former employer;
   - interest he is owed, on the maximum tax-free lump sum and pension arrears, for the period of the alleged delays; and
   - He would like LPPA to pay him redress in recognition of the distress and inconvenience he endured due to LPPA's actions.

Background information, including submissions from the parties

2. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

3. Mr D was an employee of London South Bank University (**the Employer**). By virtue of his employment, Mr D became a member of the London Pension Fund Authority section of the Scheme, a defined benefit occupational arrangement.

4. From 17 January 2011 to 31 March 2014, Mr D accrued benefits within the final salary section of the Scheme (**the FS Section**). From 1 April 2014, Mr D accrued benefits under the Career Average Revalued Earnings (**CARE**) section of the Scheme. Under the Scheme, Mr D's Normal Retirement Age (**NRA**) was 67.

5. While Mr D was a member of the Scheme, he paid AVCs to Prudential, as it was the AVC provider.

6. Mr D's Scheme entitlement is administered in accordance with the Local Government Pension Scheme Regulations 2013 (**the 2013 Regulations**). Specifically, regulation 30(7) states:

   "(7) Where an active member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of —

   (a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State; and

   (b) any other retirement pension relating to that employment payable under these Regulations, without reduction."

7. On 13 August 2021, Mr D's service was terminated by way of redundancy. As Mr D was over the age of 55, but had not yet reached his NRA, he was entitled to claim his Scheme benefits, without any actuarial reduction. Mr D's redundancy agreement from the Employer said:

   "…The employer agrees to meet the consequential costs of the employee's early retirement. The pension costs for the employer are estimated to be in the region of £45,495.26. This figure is based on a previous estimated termination of 30 June 2021, so is subject to change based on the termination date set out in this Agreement."

8. On 19 August 2021, LPPA sent Mr D an unreduced early retirement quotation (**the Quotation**). The Quotation explained that:-

   - He was entitled to an unreduced annual pension was £11,178.21 and a tax-free lump sum of £83,546.05.

- The overall value of his AVC was £110,620.01, which he could use to fund his tax-free lump sum, instead of commuting part of his annual pension to fund the lump sum.
- Thereafter there would be a residual AVC amount of £27,073.96 which could be used to purchase an annuity.
- The Quotation contained the following statement: "please note that the figures quoted below are estimated figures only and are not a guarantee of the benefits payable".

9. On the same day, Mr D emailed LPPA with several queries about his retirement benefits. However, LPPA has said that it did not receive this email.

10. On 21 September 2021, LPPA wrote to Mr D, enclosing a copy of the Quotation, and asked how he wanted to claim his pension. In response, Mr D asked several questions about the retirement option declaration forms, and whether the Employer had paid a lump sum into the Scheme in accordance with the redundancy agreement.

11. On 26 October 2021, LPPA responded to Mr D and explained that:-

- If he chose to claim his pension before his NRA, it would be actuarially reduced.
- In his case, he was entitled to claim his pension without incurring a reduction. This was because when he was made redundant, he was over the age of 55, but had not yet reached his NRA.
- The Employer agreed to pay a lump sum of £45,495.26 to the Scheme to cover the cost of paying him an unreduced pension before his NRA. He was not eligible to receive the £45,495.26.
- If he chose not to claim his pension until a later date, the Employer was still required to pay the lump sum to the Scheme. When he claimed his pension it would be backdated to the day after he was made redundant, which was 14 August 2021.
- As he was made redundant, he was unable to transfer to another arrangement.

12. On 26 and 27 October 2021, Mr D emailed LPPA to query what the difference would be to his pension if the £45,495.26 was not paid into the Scheme. As he understood it, the £45,495.26 represented the contributions his employer would have paid into the Scheme had he not been made redundant.

13. On 1 November 2021, Mr D emailed LPPA to query a letter he received dated 21 October 2021 (a copy of the Quotation). The letter inferred that he was eligible to transfer all of his benefits to another pension arrangement, contradicting LPPA's comment that he was unable to do so. He suffered from incurable myeloma cancer, so he wanted to claim his benefits in the most efficient way possible. If he was required to claim his pension at that time, he wished to do so as soon as possible. He

was also unsure of why his annual pension remained £11,178.21, regardless of whether he took a lump sum or not. He had not received a response to his emails of 19 August, 26 October, and 27 October 2021.

14. On 2 November 2021, LPPA wrote to Mr D and said:

- The £45,495.26 represented the total cost to the Scheme incurred by paying him an unreduced pension before his NRA. This figure represented the contributions that would have been paid from 14 August 2021 to his NRA.

- Due to the value of his AVC fund, his 25% tax-free entitlement would be taken from the AVC, this amounted to £83,546.05. Regardless of whether or not he claimed a lump sum, his annual pension would be £11,178.21.

- He was entitled to use the full value of the AVC fund to purchase an annuity with the Scheme, or on the open market. This did not constitute a transfer. Similarly, the AVC could fund his tax-free cash entitlement, with the residual funds used to purchase an annuity.

- If he wished to consider the option of purchasing an annuity on the open market, he should obtain financial advice.

- His comments regarding death benefits had been referred onto LPPA's death benefits team.

- It had not received his email of 19 August 2021; however, it was in receipt of his emails of 26 and 27 October 2021. He should have received an automatic reply informing him that LPPA's response time was 10 working days.

15. On 8 and 10 November 2021, Mr D wrote to LPPA and reiterated his comment that there appeared to be no benefit in claiming an unreduced pension without a lump sum. He asked LPPA to confirm if the figures outlined in the Quotation were guaranteed, and if his pension would be backdated to 14 August 2021, with interest.

16. On 15 November 2021, LPPA responded to Mr D's emails of 8 and 10 November 2021. It explained that:-

- The Quotation provided three options on how to claim his benefits and AVC, which were:

    - option A – an unreduced pension of £11,178.21, this allowed him the opportunity to use the AVC fund to purchase an annuity;

    - option B – a maximum tax-free lump sum of £83,546.05, funded from the AVC, with an unreduced pension of £11,178.21; if he elected to claim a lump sum, the excess value of his AVC could be used to purchase an annuity; and

    - option C – provided Mr D with the opportunity to reduce or request a specific tax-free cash entitlement.

- His pension would be backdated to 14 August 2021; however, LPPA would only be in a position to pay his benefits once it received the disinvested AVC funds from Prudential. Interest was only payable on arrears after 12 months.

- The tax-free lump sum of £83,546.05 would not change; however, the residual amount left over may increase or decrease depending upon the AVC value up until the point it was disinvested.

- LPPA was unable to confirm what the final AVC value would be as the funds remained invested until the point of disinvestment, so it was subject to change. Consequently, interest was not payable on the maximum tax-free lump sum.

- LPPA's death benefits team had issued a separate letter to Mr D, dated 8 November 2021.

17. In response, Mr D said that he had not received the letter of 8 November 2021.

18. On 17 November 2021, LPPA emailed Mr D a copy of the letter of 8 November 2021, providing details of the death benefits available to his beneficiaries.

19. On 21 November 2021, Mr D emailed LPPA and said that, before he could claim his pension, he required additional clarity on the death benefits available. He asked if he could withdraw all of his pension with 25% being tax-free and the remainder being subject to tax. He understood the death benefit information he received to mean that his partner would receive ten years' worth of his pension, less any amount that he had taken. However, it was unclear what would happen to the pension in the event of his partner's death.

20. On the 26 November 2021, LPPA's death benefits team responded to Mr D and provided him with a detailed explanation of the death benefits payable under the Scheme.

21. On 27 November 2021, Mr D wrote to LPPA and reiterated his query about how, and if, he could claim all of his pension, subject to tax.

22. On 29 November 2021, LPPA responded to Mr D and explained that the Quotation outlined the maximum tax-free lump sum that he could claim from the Scheme. There were no provisions available for a lump sum, in excess of 25%, to be claimed. To claim the maximum lump sum, he needed to complete the AVC election form.

23. On 6 December 2021, Mr D asked LPPA to:

- confirm what the residual value of his AVC would be after claiming the tax-free lump sum;

- provide details on the type of annuity he could purchase through the Scheme; and

- provide details for any open market annuity options.

24. On the same day, LPPA sent Mr D an up-to-date AVC statement along with a guidance note about purchasing an annuity.

25. In response, Mr D said that the AVC statement did not answer the questions he posed in his email of 6 December 2021, about his AVC, or how to purchase an annuity.

26. On 10 December 2021, Mr D informed LPPA that he was exploring the possibility of purchasing an annuity with several other providers, so he required the information requested on 6 December 2021.

27. On 14 December 2021, LPPA explained to Mr D that it was unable to provide him with financial advice and that he should contact Pension Wise. LPPA said that:-

- The maximum tax-free lump sum highlighted in the Quotation was made up entirely from the AVC fund.

- If he did not take the AVC as a tax-free lump sum, he could use the fund to buy an annuity with the Scheme, to “top up” his annual pension, or he could purchase an annuity on the open market.

- If the AVC fund value of £110,620.01 was used to purchase a “top up” annuity, he would receive an additional yearly pension of £5,210.20 on top of his Scheme pension of £11,178.21. A total pension of £16,388.41.

- If he claimed the AVC lump sum of £83,546.05, the residual AVC value of £27,073.96 would provide a “top up” annuity of £1,275.18.

- The amounts quoted for the AVC fund value were not guaranteed until the AVC was disinvested.

28. Between 18 December 2021 and 5 January 2022, Mr D corresponded with LPPA about the applicable death benefits associated with his Scheme benefits and the AVC fund. He informed LPPA that he was working with Hargreaves Lansdown (**HL**) to secure an annuity on the open market.

29. On 6 January 2022, LPPA informed Mr D that it was not in a position to pay any benefits until it received the completed retirement/annuity declaration forms.

30. On 27 January 2022 and 8 February 2022, LPPA wrote to Mr D as it had not yet received a response as to how Mr D wished to claim his Scheme benefits and the AVC.

31. On 8 February 2022, Mr D reiterated that he was in correspondence with HL about purchasing an annuity.

32. On 14 February 2022, Mr D emailed LPPA and explained that HL were in the process of securing him an annuity with Canada Life, for £2,057. He believed that LPPA were responsible for a number of delays in the payment of his retirement benefits, so interest at 1.5%, backdated to 14 August 2021, should be applied to his payable

benefits. LPPA should also pay him £200 for the frustration he experienced in having to request additional information that should have been provided to him in August 2021.

33. On 26 February 2022, Mr D completed an “AVC Form of Election (Excess)”. The form outlined a number of options that were open in regard to the AVC, which were:

- to claim a maximum tax-free lump sum funded by the AVC;
- use the whole of the AVC fund to purchase an annuity on the open market; or
- use the AVC to purchase an annuity with the Scheme.

If the AVC was to be used to fund a tax-free lump sum, and there were residual funds left over, then he could purchase an annuity on the open market or within the Scheme. Mr D elected for the AVC to be used to fund his tax-free cash entitlement with the residual funds used to purchase an annuity on the open market.

34. On 27 February 2022, Mr D sent LPPA copies of the completed retirement declaration forms to claim a maximum tax-free lump sum of £83,546.05, with an annual pension of £11,178.21. The residual AVC fund value was to be used to purchase an annuity with Canada Life. He highlighted that LPPA had not responded to his emails of 8 and 14 February 2022.

35. On 9 March 2022, Mr D contacted LPPA as it had not acknowledged, or responded, to his email of 27 February 2022.

36. On 14 March 2022, LPPA asked Mr D to provide a copy of his passport, which Mr D provided on the same day.

37. On 16 March 2022, HL wrote to LPPA and provided a letter of authority (**LOA**) signed by Mr D. It said that the residual AVC funds were to be transferred to Canada Life to purchase an annuity. The LOA said that if the AVC fund value dropped below £25,720.26, LPPA should notify both itself and Mr D before any transfer payment was made.

38. On the same day, LPPA wrote to Mr D and said that, before any benefits could be paid, he needed to complete the enclosed “employee discharge” and “new scheme discharge” forms.

39. On 24 March 2022, LPPA followed up on its letter of 16 March 2022 to Mr D.

40. On 28 March 2022, Mr D emailed LPPA and informed it that he had yet to receive his tax-free lump sum, or a monthly pension payment. On the same day, Mr D contacted HL to query if it was aware of anything that was delaying the setup of his annuity with Canada Life.

41. On 30 March 2022, HL emailed Mr D and explained that it had telephoned LPPA for an update. The LPPA representative explained that there had been a “system issue”

that was preventing LPPA from progressing Mr D’s retirement request. Though, it was unclear what this system issue was, or how long it would take to rectify.

42. On 30 March 2022, LPPA contacted Mr D and said that he needed to complete the “employee discharge” and “new scheme discharge” forms before it could proceed with his retirement request. Copies of these forms had been posted to him on 16 and 24 March 2022.

43. On the same day, Mr D responded to LPPA and asked why he was not told that “system issues” were affecting the payment of his benefits. He did not understand why the additional declaration forms were not sent to him in August 2021. He said LPPA should agree to a payment in recognition of the delays he had encountered so far.

44. On 3 and 5 April 2022, Mr D emailed LPPA and said that he had received the two outstanding forms from LPPA. He asked LPPA to clarify what information was needed to complete the outstanding forms. He also said that he was unable to complete the “employee discharge” form until he received a breakdown of his and the Employer’s contributions into the Scheme, including confirmation that £45,495.26 was paid into the Scheme upon his redundancy.

45. On 6, 7, 11, 15 and 20 April 2022, Mr D chased LPPA for an update on how to complete the “employee discharge” and “new scheme discharge” forms, as well as confirmation on when he would receive his pension. He said the delay in paying his pension was causing him sleepless nights, in addition to the symptoms he experienced due to his cancer diagnosis. It had now been eight months since he was made redundant.

46. On 21 April 2022, LPPA wrote to Mr D and apologised for the delay in responding to his emails. LPPA said that it had undergone a system change which contributed to the delays in its usual response time. It was awaiting a response from its annuities team regarding how to complete the outstanding discharge forms.

47. On 22 April 2022, HL telephoned LPPA for an update on the AVC disinvestment. The LPPA representative said that it had everything that was required to proceed with paying Mr D his benefits, so there was no apparent reason for the delay. The representative escalated the issue to senior management by logging a complaint and said that Mr D should expect a call from LPPA on the same day. Mr D did not receive a call from LPPA.

48. On 26 April 2022, LPPA provided Mr D with a breakdown of his Scheme and AVC contributions. It said that it was still awaiting details of the Employers contributions. It also recommended that Mr D forward the “scheme discharge” form to HL to complete.

49. On 27 April 2022, Mr D emailed LPPA and said that he was unable to complete the employee discharge form until he understood what the difference was to his pension, before and after the Employer paid in the £45,495.26. LPPA should pay him £1,000

in recognition of the substantial number of delays that it had caused in paying his pension.

50. On 4 May 2022, Mr D returned the completed outstanding discharge forms to LPPA, despite not having received a response to his email of 27 April 2022.

51. On 9 May 2022, HL raised a complaint, on behalf of Mr D, about the time taken to pay the residual AVC fund to Canada Life and said:-

- It appeared that the information the LPPA representative told HL, on 22 April 2022, was incorrect, and nothing had been actioned as a result of the telephone call.
- Mr D had emailed LPPA on 30 March, 3, 5, 6, 7, 11, 15, 20, 22 and 27 April 2022, with inconsistent responses provided to him by LPPA.
- Mr D was yet to receive the maximum tax-free lump sum, his backdated monthly pension, and any form of compensation/interest for the delays he had experienced.

52. On 11 May 2022, LPPA wrote to Mr D and acknowledged the complaint raised by HL. It said it aimed to provide a full response within 30 working days. If it required any additional time beyond the 30 working days, it would inform him. On the same day the LPPA retirements team sent an AVC disinvestment request to the AVC provider, Prudential.

53. On 16 May 2022, Mr D resent LPPA all of the applicable retirement declaration forms to claim his Scheme/AVC benefits. On the same day, LPPA's retirement team told Mr D that a request for the disinvestment of his AVC had been sent to Prudential. LPPA was unable to pay any of his pension until it received confirmation of the AVC disinvestment amount.

54. On 19 May 2022, Canada Life returned the completed scheme discharge form to LPPA.

55. On 20 May 2022, LPPA received £105,651.61 from Prudential following the disinvestment of Mr D's AVC.

56. On 7 June 2022, LPPA's transfer team wrote to Canda Life and said that a transfer payment of £23,347.66 would be raised within two days. On the same day, the LPPA complaints administrator wrote to Mr D and explained that on 17 May 2022 Prudential disinvested the AVC fund. LPPA received confirmation of this on 30 May 2022. LPPA's transfer team had raised a transfer payment to Canda Life, for the residual AVC amount and the retirement team were raising a priority payment for his tax-free lump sum.

57. On 8 June 2022, LPPA's retirement team raised priority payments for the tax-free lump sum and the monthly pension arrears, backdated to 14 August 2021.

58. On 12 June 2022, Mr D emailed LPPA's complaints administrator and said:

- he was yet to receive confirmation of when exactly his benefits would be paid;
- since he was made redundant on 13 August 2021, he had been without an income, while suffering from incurable cancer, for which he was told to avoid stress;
- his consultant prescribed him sleeping pills due to the stress and anxiety he was experiencing; and
- he should be paid interest on the tax-free lump sum which he believed should increase the lump sum to £100,000, when also taking into account that inflation was near 10%.

59. On 15 June 2022, Mr D received his tax-free lump sum of £82,403.95.

60. On 16 June 2022, HL emailed LPPA and explained:

- Canada Life had received the residual AVC funds; however, the amount received was £3,726.30 less than what was expected (**the Shortfall**);
- the LOA said that LPPA was to inform HL if the residual AVC value was below £25,720.26, but it did not;
- Mr D said that he would not agree to the Canda Life annuity, unless LPPA paid the Shortfall, or compensated him with an equal amount; and

61. LPPA should pay Mr D an amount equal to the annuity payments he would have received from Canada Life if the annuity was effective from 14 August 2021.

62. On 16 June 2022, Mr D emailed LPPA and said that he had not received a breakdown of the Employer's Scheme contributions, as well as confirmation that the £45,495.26 was paid in after his redundancy. He also queried the Shortfall.

63. On 22 June 2022, Mr D emailed LPPA noting that it had not responded to his emails of 12 and 16 June 2022. He received the tax-free lump sum; however, it was only £82,403.95 instead of £83,546.05, a difference of £1,142.10. Furthermore, no interest had been paid on the lump sum for its late payment.

64. On 27 June 2022, LPPA emailed Mr D and said that it had tried to call him and left a voicemail explaining that the complaints administrator was away until 4 July 2022.

65. On 30 June 2022, Mr D received £6,542.02, into his bank account. This was an arrears payment accounting for the pension payments he should have received since 14 August 2021.

66. On 6 July 2022, HL emailed Mr D and explained:-

- If LPPA agreed to pay the Shortfall to Canda Life, the start date of the annuity would be set up from the date the Shortfall amount was received.

- It was unlikely that Canada Life would backdate the annuity to 14 August 2021 unless the 2013 Regulations contained a provision stating that AVC funds, used to purchase an annuity, must be effective from a certain date.

- Backdating the annuity, if possible, would affect the annual income of £2,057 that was agreed with Canada Life. To facilitate this, Canda Life would deduct the payments needed to backdate the annuity from the same pot that would be used to cover all future payments.

- The Quotation included the following caveat: “please note that the figures quoted below are estimated figures only and are not a guarantee of the benefits payable”. This suggested the AVC values quoted to him were not fixed.

- The AVC funds were invested up until 20 May 2022, during which time the war in Ukraine had caused extreme volatility on the financial markets. This likely affected the value of the AVC fund.

- There was no indication of when LPPA might resolve his complaint, or if it would pay the Shortfall. So, it may be worth setting up the Canada Life annuity with the funds received, this would determine what his monthly and annual income would be, the difference of which could be reported to LPPA.

67. On the same day, Mr D told HL to instruct Canada Life to setup the annuity with the funds it held. He would pursue compensation from LPPA regarding the Shortfall amount, and the interest payments he believed he was due.

68. On 22 July 2022, HL responded to Mr D and said that it had instructed Canada Life to set up the annuity. The annuity would be set up from the date the residual AVC amount was received, which was 15 June 2022. It contacted LPPA to query when a response to its email of 16 June 2022 was expected.

69. In response, Mr D sent HL a list of questions to refer to LPPA to answer.

70. On 26 July 2022, HL emailed Mr D after a telephone call between itself (HL) and LPPA on 25 July 2022. HL explained that the LPPA representative had said that several of Mr D’s questions were referred onto LPPA’s transfer team and the LPPA complaints administrator to answer. The LPPA representative also said:-

- the AVC fund was invested up until 17 May 2020, so any figures that were quoted to Mr D were not guaranteed and subject to change.

- Both Mr D and HL’s emails had been received and logged by LPPA; however, LPPA was dealing with a significant backlog that was made worse by a change in its IT systems in the last year. Responses to these emails were pending and flagged as a priority.

- There was no record of the telephone call between HL and LPPA on 22 April 2022. It was likely that due to the change in IT systems, notes from the call were not recorded properly. So, LPPA only became aware of, and received, the formal complaint on 9 May 2022.

- LPPA received Mr D’s declaration forms, as well as Canada Life’s transfer forms, on 8 April 2022. On 21 April 2022, LPPA reviewed the declaration forms noting that two additional discharge forms were required based on Mr D’s election. On 26 April 2022, LPPA asked Mr D to complete the employee and transfer discharge forms. On 18 May 2022, Canada Life emailed additional forms to LPPA to facilitate the annuity.

- Separate responses from the LPPA transfers team and the complaint administrator should be received shortly, to answer the outstanding questions.

71. On 1 August and 6 September 2022, HL emailed LPPA as it was yet to receive a response from LPPA’s transfers team and the complaints administrator. Originally, Canada Life quoted Mr D an annuity of £2,057, based on a transfer payment of £27,073.96, at a rate of 7.92%, valid until 16 April 2022. Canada Life received the residual AVC funds on 15 June 2022, on this date, an annuity of £1,428.48, at a rate of 6.12%, was available to Mr D, a difference of £717.12.

72. On 12 September 2022, Mr D received his first annuity payment from Canada Life.

73. On 20 September 2022, HL chased LPPA for a response to its emails of 1 August and 6 September 2022. HL asked LPPA to confirm if it would consider accepting the funds back from Canada Life, and if Mr D could reverse his retirement options. It asked LPPA to confirm if Mr D’s retirement options could be unwound, would he be eligible to claim the AVC fund as an uncrystallised funds pension lump sum, or transfer the entirety of his benefits to another provider.

74. Between 28 June 2022 and 12 September 2022, Mr D emailed LPPA seven times to follow up on a number of questions to which he wanted answers.

75. On 29 September 2022, LPPA’s complaints administrator responded to Mr D and apologised that none of his recent emails had been responded to. She explained that she was going to be on annual leave until 12 October 2022; however, while she was away, her colleague would be collating additional information to allow her to respond to his complaint, upon her return.

76. On 10 November 2022, HL asked LPPA for an update on when a response to the complaint raised on 9 May 2022 would be received. This was in addition to the outstanding responses to HL’s emails of 16 June 2022, 1 August 2022, 6 and 20 September 2022.

77. On 8 February 2023, LPPA emailed Canada Life to ascertain whether Mr D’s annuity had commenced, and if it could accept an additional transfer payment to allow for the recalculation of the annuity. LPPA did not receive a response from Canada Life.

78. On 19 December 2023, LPPA provided its response to HL. It upheld the complaint raised on behalf of Mr D and said:-

- Having reviewed the complaint, it was clear that Mr D was unsure of the options available to him under the Scheme after he was made redundant. Due to lack of ownership on the part of LPPA, many of Mr D's emails were not responded to.

- All of the necessary retirement/transfer declaration forms were received in May 2022, and a request for Prudential to disinvest the AVC was made on 11 May 2022. On 30 May 2022, LPPA received confirmation that the AVC had been disinvested; however, the AVC value had decreased since August 2021.

- The maximum tax-free lump sum, and the backdated pension arrears, were paid to Mr D in June 2022. The residual AVC amount was also transferred to Canada Life in June 2022.

- There was no obligation on LPPA to correspond with Canada Life about the setup, or the effective date of the annuity. It was for Mr D and HL to correspond with Canada Life about these matters.

- It was unable to unwind Mr D's retirement benefits, nor was it able to accept the repayment of the residual AVC amount. There were no provisions under the Scheme to allow Mr D to take an uncrystallised funds pension lump sum.

- The service that Mr D experienced in setting up and paying his retirement benefits had fallen short of its normal expectations. In recognition of this, it was prepared to offer Mr D £500.

Adjudicator's Opinion

79. Mr D's complaint was considered by one of our Adjudicators who concluded that further action was required by LPPA. The Adjudicator's findings are summarised in paragraphs 80 to 93 below.

80. Between 19 August 2021 and 5 January 2022, there were numerous exchanges between Mr D and LPPA. During which time Mr D was told: the figures in the Quotation were not guaranteed; the reason why the £45,495.26 was to be paid into the Scheme; interest was only payable if there was a delay of one year after the due date; and LPPA's service level agreement (**SLA**) was 10 working days.

81. During this period, there were no instances whereby the LPPA did not respond to Mr D within its SLA. The Adjudicator was satisfied that the information provided to Mr D by LPPA was clear, and accurately answered his questions. It was unreasonable to expect LPPA to provide an all-inclusive document covering each individual query/scenario that Mr D may have had in regard to his benefits.

82. Mr D returned his completed retirement declaration forms to LPPA on 27 February 2022. On 16 and 24 March 2022, LPPA sent Mr D two additional forms that needed to be completed before it could submit a request for the disinvestment of the AVC fund. From 30 March 2022, Mr D emailed LPPA eight times. It was not until 21 April

2022, four working days outside of its SLA, that LPPA responded to Mr D citing a change in its systems causing delays to its usual SLA.

83. On 26 April 2022, LPPA provided Mr D with information about his Scheme contributions and advised him to forward the transfer discharge form on to HL to complete. Thereafter, Mr D claimed that he was unable to complete the employee discharge form until he received confirmation of the Employer's contributions into the Scheme, namely whether the £45,495.26 had been paid. Mr D returned the completed additional forms on 4 May 2022.

84. The brief delay of four working days, between 27 February 2022 and 4 May 2022, was acknowledged. However, the delay did not materially impact Mr D's ability to complete the two outstanding declaration forms. This was because he was in receipt of sufficient information to explain why the £45,495.26 was to be paid into the Scheme. The transfer discharge form made clear that it was to be completed by Canada Life as the receiving arrangement. It was unclear why Mr D contacted LPPA for information instead of HL or Canada Life. Consequently, it would not have been reasonable to hold LPPA accountable for any delays in the completion of the additional forms.

85. Upon receipt of all of the retirement/transfer forms, the AVC disinvestment request was sent on 11 May 2022, with the funds disinvested on 17 May 2022, for a value of £105,651.61. LPPA received the AVC funds on 20 May 2022 and raised a transfer payment for the residual AVC's on 7 June 2022. Canada Life received the funds on 15 June 2022. Thereafter, Mr D received his tax-free lump sum payment on 16 June 2022, and the pension arrears on 30 June 2022. Overall, the Adjudicator noted a delay of 1 working day in LPPA paying the residual AVC's between 20 May 2022 and 7 June 2022. There were two instances of delays, amounting to a total of five working days between 30 March 2022 and 7 June 2022. However, the Adjudicator believed that the delays did not have any negative consequences on Mr D.

86. Mr D's information requests, between 19 August 2021 and 7 June 2022, were noted. It was perfectly reasonable for Mr D to have wanted to be in receipt of a sufficient level of information to satisfy himself of his options. However, the Adjudicator commented that the volume of requests undoubtedly would have contributed to the perceived delay in paying his retirement benefits, due to the time taken to return the necessary retirement/transfer declaration forms.

87. The Quotation made clear that the figures contained within were not guaranteed. This was also explained to Mr D, by LPPA, on 15 November 2021. So, Mr D should have been sufficiently aware that the annuity for an annual pension of £2,057 could not have been guaranteed as it was based on a residual AVC value of 27,073.96, which was subject to change. There was no requirement for LPPA to pay a sum equal to the Shortfall to Canada Life as none of the identified delays were the cause of the Shortfall, as the AVC value was never guaranteed.

88. The Adjudicator appreciated that Mr D sought to reassure himself that the sum of £45,495.26 was paid into the Scheme by asking LPPA to confirm the value of his benefits before and after the sum was paid by the Employer. This was in addition to requesting a breakdown of the Employer's contributions into the Scheme. LPPA did not provide Mr D with this information despite his multiple requests. The Adjudicator's view was that LPPA should have provided Mr D with a breakdown of the Employer contributions, including confirmation that the £45,495.26 was paid into the Scheme. This would have allowed Mr D to reconcile his own records.

89. There was no apparent reason why the tax-free lump sum of £83,546.05, under the Quotation, had reduced by £1,142.10, to £82,403.95. The tax-free lump sum was funded entirely by the proceeds of the disinvested AVC fund value. So, none of Mr D's annual pension was reduced to fund the tax-free lump sum. The Adjudicator suggested that LPPA should review the calculation of the tax-free lump sum.

90. During the course of Mr D's complaint, LPPA provided brief updates on 27 June 2022 and 29 September 2022. Neither indicated how its investigation was proceeding, nor when a response was likely to be provided. A full response to Mr D's complaint was only issued on 19 December 2023, one year and seven months after the complaint was initially raised. LPPA's handling of Mr D's complaint amounted to maladministration. Taking a view on the issues that Mr D held grievances on, there was no justifiable reason why it took LPPA over a year to respond to Mr D's complaint, given the complaint's relatively simple nature. The Adjudicator believed that a period of no more than six months would have been a more than sufficient period to investigate and respond to Mr D's complaint.

91. LPPA's offer of £500 in recognition of its service was wholly inadequate compared to the level of distress and inconvenience Mr D had suffered over a prolonged period of time. During the setup and payment of his pension, LPPA was reminded on more than one occasion that Mr D was suffering from incurable cancer. Mr D provided evidence to demonstrate the affect dealing with the complaint was having on his mental and physical health. He was prescribed sleeping pills due to the anxiety and stress he was under. In spite of this, LPPA failed to maintain regular communication with Mr D to resolve a relatively straightforward matter. This, in the Adjudicator's view, demonstrated a lack of empathy on the part of LPPA in handling Mr D's complaint.

92. During the investigation into Mr D's complaint, multiple requests for additional information were sent to LPPA to allow a full investigation of the course of events being complained about. On a number of occasions LPPA was extremely slow to respond to the Adjudicator's information requests, despite being fully aware of Mr D's circumstances. This amounted to poor administration, unnecessarily delayed the investigation and compounded the distress and inconvenience Mr D had already suffered. The Adjudicator recommended that an award of £2,000 should be paid to Mr D, in recognition of the severe distress and inconvenience he had suffered.

93. The Adjudicator acknowledged Mr D's belief that interest should be paid on the pension arrears and the tax-free lump sum. However, the relevant scheme

regulations only provided for interest to be paid if a payment was made more than one year after the due date. In Mr D's case, the due date was 14 August 2021 with the relevant period ending on 14 August 2022. Respectively, Mr D's benefits were paid on 16 and 30 June 2022. So, no interest was due on Mr D's benefits.

94. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr D.

Mr D's further comments

Mr D submits:-

- In the first instance, due to suffering from incurable cancer, he wished to claim the largest lump sum possible from the Scheme and from the AVC fund. However, despite his wishes, he was "forced" into purchasing an annuity that he did not want or need. The excess AVC value should have been paid to him as a taxable lump sum.

- It was unlikely that he would live long enough to receive enough annuity payments to account for the £23,347.66 that was transferred to Canda Life. In essence, when he dies, Canada Life will have made a profit on his annuity. He believes that LPPA should pay him a sum equal to the initially quoted residual AVC value of £27,073.96. This will act as compensation for purchasing an annuity that he did not need or want.

- He is missing annuity payments from 14 August 2021 until the annuity was setup and paid by Canda Life, in September 2022. LPPA likely benefited from the value of the AVC residing with itself until the funds were transferred to Canda Life.

- He is not satisfied that the sum of £45,495.26 was paid by the Employer into the Scheme and applied to his pension. The Employer said that LPPA would invoice it for £45,495.26 to account for the contributions that would have been paid into the Scheme between his redundancy and his NRA. There was no evidence to suggest that this had occurred. He is unsure whether his pension was actually backdated to 14 August 2021.

- He does not agree that the recommended award of £2,000, for distress and inconvenience, sufficiently addresses the time and energy he dedicated to resolving his dispute with LPPA. Over the course of the complaint, he sent over 111 emails containing nearly 300 pages worth of information. So, an increased award should be considered.

- LPPA did not provide any additional comments on the Adjudicator's opinion, nor did it confirm whether it accepted the Adjudicator's opinion.

Ombudsman's decision

95. I have taken note of the Adjudicator's findings with regard to events that took place between 19 August 2021 and 7 June 2022. Overall, I agree that, collectively, LPPA acted outside of its SLA for a total period of 5 working days between 30 March 2022 and 7 June 2022. Based on the timeline of events, the identified delays were not material in causing the Shortfall. Mr D did not suffer any financial loss as a consequence of the delays. There is no need to comment on the matter any further for this period.

96. I agree with the elements of Mr D's complaint that the Adjudicator has suggested should be upheld. That is: Mr D should be provided with a breakdown of the Employer's contributions into the Scheme; confirmation should be provided that the £45,495.26 was paid by the Employer to LPPA and applied to the Scheme for Mr D; and LPPA should investigate and provide an explanation as to why Mr D's tax-free lump sum reduced from £83,546.05 to £82,403.95. I uphold these elements of Mr D's complaint which, I find, amount to poor administration and require attention.

97. The handling of Mr D's complaint between 27 June 2022 and 19 December 2023, fell woefully short of any reasonable expectation of how I would expect LPPA to undertake its Internal Dispute Resolution Procedure. Given the relatively straight forward nature of Mr D's complaint, I can see no reasonable justification as to why it took LPPA one year and seven months to provide a full response to Mr D's complaint. Mr D, and HL, made LPPA sufficiently aware of Mr D's health conditions, in particular how LPPA's lack of communication/updates regarding his complaint impacted his physical and mental wellbeing, during an already difficult time for Mr D.

98. I note that, during the course of the Adjudicator's investigation, a number of information requests were sent to LPPA to allow a full investigation into the events complained about. I find it particularly egregious that LPPA was slow to provide any information, or even respond to the Adjudicator. I also note that LPPA did not respond to the Adjudicator's opinion.

99. I find LPPA's failure to handle, and respond to Mr D's complaint, represents a further instance of maladministration. Subsequently, LPPA's attitude towards dealing with Mr D, and the Adjudicator, speaks to me of a complete lack of empathy and compassion in dealing with the situation. This undoubtably will have caused Mr D severe distress and inconvenience, which I have recognised below by directing an appropriate level of redress.

100. I now turn to Mr D's further comments. I understand that Mr D wished to claim the largest lump sum available to him under the Scheme, even if this meant paying additional tax on the non-tax-free element of his benefits. Mr D is only entitled to claim a maximum tax-free lump sum of 25% of his overall benefits, including his AVC.

101. To facilitate the payment of a lump sum in the way that Mr D has suggested would have required him to have transferred his benefits to another pension provider;

however, he was unable to do this. Mr D was made redundant, after reaching age 55, but before his NRA. So, he met the criteria under regulation 30(7) of the 2013 Regulations. He was required to take the immediate payment of his Scheme benefits, without an actuarial reduction, from 14 August 2021. I find LPPA acted in accordance with the relevant regulations, so Mr D was not entitled to transfer his Scheme or AVC benefits, following his redundancy.

102. I appreciate Mr D's comments about purchasing an annuity with Canada Life, with the residual AVC amount, as opposed to receiving an additional lump sum. Given that Mr D had already received his maximum tax-free cash entitlement, there was no scope to pay the residual AVC amount to him as a lump sum. So, Mr D was required to purchase an annuity either on the open market, or through the Scheme as a top up pension. If Mr D has any questions regarding the payment of his Canada Life annuity, he should direct these to Canada Life.

103. Mr D believes that his Canada Life annuity should be backdated to 14 August 2021, the effective date of his Scheme pension. The AVC fund was disinvested on 17 March 2022, with Canada Life receiving the residual AVC funds on 15 June 2022. Generally, an annuity is only payable from the date the funds are received by the provider. There was no requirement, nor any provision within the 2013 Regulations, to allow for the backdating of an annuity purchase on the open market. Nor does LPPA have any say on the effective date of an annuity bought on the open market.

104. I note Mr D's concern that his pension may not have been backdated to 14 August 2021. There is no evidence to suggest that Mr D's Scheme pension was not effective from, or backdated to, 14 August 2021, the day after his last day of employment. Mr D did not raise this matter with LPPA upon receipt of the pension arrears amount of £6,542.02, so it is unclear why he now believes that his pension might have been payable from an incorrect date. LPPA's letter of 19 December 2023 said that his pension was effective from 14 August 2021, so I have no reason to question whether it was paid from an incorrect date.

105. Mr D says £2,000 does not sufficiently address the level of distress and inconvenience he has suffered. I agree that Mr D has suffered a needless level of severe distress and inconvenience, mainly due to LPPA handling of his complaint. Prior to 7 June 2022, LPPA responded to Mr D's enquiries reasonably. It is only LPPA's handling of his complaint that represents a particularly egregious example of maladministration. I find that £2,000 sufficiently addresses the level of distress Mr D experienced and does not merit an increase.

106. I partly uphold Mr D's complaint.

Directions

107. Within 21 days of the date of this Determination, LPPA shall:-

- Pay Mr D £2,000 in recognition of the severe distress and inconvenience caused.
- Provide Mr D with a full break down of the Employer's contributions into the Scheme, as well as confirmation that the agreed sum of £45,495.26 was paid into the Scheme for the payment of his unreduced pension;
- Investigate and provide Mr D with a detailed explanation on why the maximum tax-free lump sum reduced from £83,546.05 to £82,403.95. If it is determined that there is a discrepancy in the calculation of the tax-free lump sum, LPPA shall:
    - pay Mr D an additional sum of £1,142.10; and
    - pay interest on the £1,142.10, at the base rate for the time being quoted by the Bank of England, for the period from 14 August 2022, one year after the due date, until the date of the payment.

Anthony Arter CBE

Deputy Pensions Ombudsman

20 August 2024