

**Complaint reference:**  
14 019 995

**Complaint against:**  
London Borough of Southwark

## **The Ombudsman's draft decision**

Summary: Mr A complains about the Council's delay in making an advance compensation payment to him under the Land Compensation Act which resulted in bailiff costs of nearly £7000 being deducted from his payment. There has been fault by the Council which has caused Mr A injustice. In recognition of this I propose the Council refunds of the bailiff costs, with interest, and pay a time and trouble payment for Mr A of £250.

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## **The complaint**

1. Mr A complains the Council failed in its statutory duty to make an advance compensation payment to him under the Land Compensation Act on the date it took possession of his former home. It instructed bailiffs to evict him and then deducted bailiff costs of nearly £7,000 from his compensation payment.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

## **How I considered this complaint**

3. In considering the complaint I reviewed the information provided by both Mr A and the Council.

## **What I found**

### **Land Compensation Act 1973**

4. Section 52 of the Land Compensation Act 1973 says that where an acquiring authority has taken possession of any land the authority shall, if requested by a person entitled to the compensation, make an advance payment on account of the compensation payable.
5. Section 52(4) says "*Any advance payment ..... shall be made not later than three months after the date on which a request for the payment is made..... or, if those three months end before the date on which the acquiring authority take possession*

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*of the land to which the compensation relates, on the date on which they take possession as aforesaid.”*

6. On 23 July 2013 the Council confirmed to Mr A that the compulsory purchase order (CPO) of his flat, and the others on his estate, had been confirmed by the Secretary of State.
7. On 26 July Mr A wrote to the Council’s Legal Services to formally request an advance payment. He stated he did not have the funds to secure alternative accommodation and would not be able to give vacant possession until the payment was received. Alternatively, he asked to be temporarily rehoused by the Council in accordance with its rehousing policy for leaseholders. The Council says it has no record of this contact and the officer dealing with him does not recall it.
8. On 25 September the Council sent a letter and formal notice which advised a General Vesting Declaration had been made and that the Council would require possession of the property within 28 days.
9. On 3 October the Council wrote to Mr A to confirm vacant possession would be required by 4 November and that the Council planned to instruct bailiffs if vacant possession was not given. On 10 October Mr A wrote to the Council to repeat his request for an advance payment and for a delay to the target date for possession.
10. On 14 October the Council wrote to confirm it would not delay the date and enclosed a form for him to make a claim for the advance payment. Mr A was referred to the Council’s website if he was still looking for accommodation.
11. On 22 October Mr A contacted the housing options team as he had been directed but was told the Council could not offer any accommodation while he was awaiting the compensation payment and suggested he stay with friends or family. He then emailed the Council’s Chief Executive to request an advance payment again and a delay in the vesting date.
12. On 23 October his solicitors submitted a claim for over £300,000. Two days later they wrote to the Council and asked for the eviction to be postponed until an advance payment had been made or an offer of rehousing made to him. The Council responded by email to confirm vacant possession could not be delayed and the advance payment could not be paid until vacant possession was obtained.
13. On 28 October the Council decide Mr A’s claim for compensation was “unreasonable and excessive” and that an offer of compensation could not be made until the Council had been able to assess the condition of the property.
14. On 4 November the property was vested in the Council and its Principal Surveyor, Officer Q, inspected the property with Mr A’s surveyor in attendance. Officer Q told Mr A he was in breach of the General Vesting Declaration by still being present in the property and asked him to leave. Mr A refused because the Council had still not made the advance payment.
15. On 6 November bailiffs, instructed by the Council, arrived and took possession of the property. Mr A presented himself as homeless to the Council later that day, and the following day, and on both occasions he was told he was ineligible for rehousing assistance because he was about to receive a significant amount of compensation.

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16. On 7 November the Council transferred the payment of over £200,000 to Mr A's solicitors' bank account and they received the monies the following day on 8 November.
  17. In March 2014 Mr A made a Freedom of Information request for information the Council held about the eviction. The Council responded a year later to advise that due to technical difficulties the information could not be retrieved.
  18. On 24 November Mr A raised a complaint about the Council's handling of the eviction and its delay in making the advance payment. The Council issued its final response to the complaint in March 2015. In its response the Council said while it appreciated Mr A might have required an advance payment to secure accommodation, and had he approached the Council with this specific request a payment would have been made to facilitate this, it had no record of his doing so. It also said had he approached the Housing Options service it would have helped with the deposit to enable him to secure private rented accommodation.
  19. The Council apologised for the unjustifiable year's delay in responding to the Freedom of Information request. However, it declined to refund the bailiff costs which it said had been properly deducted from his compensation payment

### **Analysis**

20. Mr A has stated that under section 52 of the Land Compensation Act the Council was legally obliged to make the advance payment, at the latest, on the date it took possession of his property and I agree.
21. Mr A first made his request for the payment on 26 July 2013 and this is the key date for the purposes of section 52(4) of the Act. The Council says it does not have a record of this letter, and did not know to whom it was addressed, but in responding to Mr A's complaint under its own complaints procedure an acknowledgement was made that Mr A made a request for payment in July and the Council had been given a copy of the letter which was addressed to a named officer in the Council's Legal Services.
22. Mr A made his request for payment on 26 July and, as the three months referred to in section 52(4) had ended on 25 October, the payment was due to be paid "not later" than the date on which the Council took possession ie 6 November. There is no dispute the Council took possession on 6 November and as Mr A's solicitors did not receive payment until 8 November, the Council made the payment two days late.
23. The Council says it made payment on 7 November and "banking formalities" meant the funds were not available to Mr A's solicitors until 8 November. However, there appears to be no good reason for the late payment because the Council could have transferred the funds using the BACS or CHAPS system and they would have been received the same day the transfer was made.
24. By paying later than the day on which it took possession, the Council did not follow the law. Moreover, it says payment could only have been made once possession had been taken but this is not what the legislation says. It is open to acquiring authorities to make a payment earlier than the possession date and given government guidance on compulsory purchase where local authorities are urged to "*adopt a reasonable approach towards making such payments... in order to help ... relocation*" earlier payments are clearly envisaged and do take place.

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25. As well as failing to pay the advance payment on the date it became due, the Council also failed to provide any substantive housing advice or assistance to Mr A despite his clear requests for it on a number of occasions. All the Council really told him was that he could not be helped because he would be receiving a significant compensation payment. The Council has said Mr A did not make a specific request for help but he did so in his letters to the Council and by presenting himself in person at Council offices to ask for help. His requests do not appear to have been treated seriously and I am left wondering whether this was because of the Council's view that he was "politically motivated". Mr A's requests were reasonably made and repeated because the Council did not respond properly.
  26. The compulsory purchase of a person's home is a serious matter and I would have expected the Council to have had a co-ordinated approach towards those residents affected. Given the nature of the process they would be going through, one might reasonably expect them to be given more, rather than less, help. The Council has said there were plenty of residential properties in the area available to Mr A but the point here is that he did not have the funds to secure them.
  27. Mr A had made clear to the Council that he did not want to leave the property without receiving the advance payment. Had it been paid on time he would have left and there would have been no need for the Council to have used bailiffs. A better prepared and more positive approach to the matter by the Council would have avoided bailiff action. This would not have been difficult to have achieved and it would have ensured compliance with section 52.

### **Recommended action**

28. To address the fault highlighted above, I propose the Council apologises to Mr A and refunds the bailiff (and storage) costs deducted from his compensation payment and also pays the interest that has accrued on this amount.
29. In recognition of the time and trouble Mr A has spent pursuing matters, and the Council's delay of a year in responding to his Freedom of Information request, I propose the Council pays him £250.
30. The Council has said it reimbursed Mr A for the professional fees he incurred. Mr A disputes this. Instead he says he has had to pay £3726 to his surveyor and solicitor himself. Unless the Council can provide clear evidence it has reimbursed these professional fees then these should also be paid.
31. There was a clear lack of a co-ordinated approach by the Council and, it appears, no proper policies or procedures in place for dealing with compulsory purchases and advance payments. I propose the Council review matters here with a view to introducing them.

### **Draft decision**

32. There has been fault by the Council which has caused Mr A injustice. I have set out my view of how the complaint should be resolved above. If the Council takes the action proposed the Ombudsman will be satisfied and the investigation completed.

### **Investigator's draft decision on behalf of the Ombudsman**