

15 January 2016

Mr Glasspool
100, The Green
London SE17 3JH

Our ref: 14 019 995

(Please quote our reference when contacting us and, if using email,
please put the reference number in the email subject header)

If telephoning please contact: 0330 403 4632
email address: C.Mead@coinweb.lgo.org.uk

Dear Mr Glasspool

Complaint about London Borough of Southwark

I write with reference to your complaint and further to your last email of 11 January.

I have now heard back from the Council that it is willing to accept the proposals I made to settle your complaint and that it concedes to the findings I have made, with the exception of the point described below.

In responding to my draft decision the Council expressed its concerns about the comment I had made in paragraph 27 of the draft decision, which refers to me being left wondering whether its lack of response to your requests for housing were "politically motivated". The Council has strongly disputed this and, having reconsidered matters, I have decided to remove this sentence. However, I have made clear the Council's failure to offer you any proper advice or assistance was fault. I have taken this decision because I had already found fault with the Council here and my comment was obiter and not germane to the decision I made.

I understand the issue of the professional fees has yet to be finalised and, while I have made my final decision, I will be checking the Council completes the agreed remedy and I have asked it to inform me when this has been done.

I now attach a copy of my final decision, a copy of which has also been sent to the Council.

Customer Satisfaction Survey

You may receive a further letter from the LGO in the coming weeks inviting you to complete a short questionnaire telling us about your experience of the LGO's service. I hope that you choose to take part in the survey and contribute your views to the research.

/...

Complaint reference:
14 019 995

Complaint against:
London Borough of Southwark

The Ombudsman's final 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. The Council has agreed to settle the complaint by refunding the bailiff costs, with interest, and paying a time and trouble payment to Mr A of £250.

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. Both Mr A and the Council were given the opportunity to comment on my draft decision.

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*

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. Mr A has provided a copy of a receipt from the Council dated 26 July 2013 which he says he was given when he hand delivered his letter to Council offices.
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 decided 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.

-
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. The Council has disputed that an acknowledgement of Mr A's July request for payment had been made and that what it had acknowledged was his assertion that he had made such a request. However, in its response to Mr A's complaint in December 2014 his July 2013 request is listed as part of the chronology of communication and it is stated that "there is general consensus over the relevant dates". I also note that it is only since the Ombudsman's involvement that the Council has raised doubts about whether it had received the letter.
23. In support of its position that the letter had not been sent, the Council has given details of an email to the Council from Mr A, sent the same day as the letter, in which no mention is made of his claim for an advance payment. It also noted that in the October 2013 communication from Mr A and his representatives no mention of the earlier claim is made. However, having considered the evidence and the comments of both parties, and information from the surveyor who acted for Mr A, I am satisfied on the balance of probability that the July 2013 letter was sent and received by the Council.
24. So, as 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

while there is some dispute about the date the money was sent and received the payment was not made on 6 November and so was late.

25. The Council has said that late afternoon on 6 November it emailed Mr A's solicitors and within this email was a request for the solicitors to confirm they were authorised by Mr A to take payment on his behalf. Given the timing of the email, the fact that the Council already held the solicitors' bank details and it has acknowledged it does not know when it received a reply from the solicitors to the email, my view that the payment was late remains unchanged whether it was received by Mr A's solicitors on either the 7 or 8 November.
26. By paying later than the day on which it took possession, the Council did not follow the law. Moreover, it has said 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.
27. 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. Mr A's requests were reasonably made and repeated because the Council did not respond properly.
28. The Council has queried my above view about the housing advice and support it gave Mr A. It has pointed to information provided to leaseholders from 2011 and Mr A's interest in 2012 in one of the options presented to leaseholders. However, this was a significant period of time before Mr A was actually required to leave his property and even, as the Council has suggested, Mr A ignored the rehousing options presented earlier, it is clear once the CPO had been confirmed he asked for assistance and did not receive any. This was fault.
29. The Council has described Mr A's presentation of himself as homeless as "questionable". It has said that officers at the Homeless Persons Unit would obviously have reacted negatively to someone who was known to be in possession/about to enter into possession of a large sum of money and that in normal circumstances this would be an instant disqualification for assistance as someone who had visible means of obtaining accommodation. However, the point here is that at the time he was asking Mr A was not in possession of the compensation.
30. 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 at the time he asked for help he did not have the funds to secure them.
31. 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.

Agreed action

32. To address the fault highlighted above, I proposed to the Council that it apologise to Mr A, refund the bailiff (and storage) costs deducted from his compensation payment and pay him the interest that has accrued on this amount.
33. 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 proposed the Council pay him £250. The Council has agreed to make these payments.
34. There has been some confusion around the reimbursement by the Council for the professional fees Mr A incurred. He says he paid £3726 to his surveyor and solicitor himself and this was not reimbursed by the Council. The Council says this was because it had not received an appropriate claim or invoice but has now confirmed, once a proper claim has been made, it will consider his claim for reimbursement.
35. 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 have proposed to the Council that it review matters here with a view to introducing them.

Final decision

36. There has been fault by the Council which has caused Mr A injustice. As the Council has agreed to my proposals to settle the complaint the Ombudsman is satisfied with the Council's actions and the investigation is completed.

Investigator's decision on behalf of the Ombudsman