

Ombudsman's Determination

Applicant	Mr G and Ms G (the Applicants)
Scheme	Local Government Pension Scheme (Scotland) (the Scheme)
Respondent	Strathclyde Pension Fund (the Fund)

Outcome

1. I do not uphold Mr G's and Ms G's complaint and no further action is required by the Fund.

Complaint summary

2. The Applicants' complaint is that the Fund did not properly investigate their financial situation when deciding how to distribute death benefits from the Scheme on the death of their late mother, Ms N.

Background information, including submissions from the parties

3. The Applicants are represented by Ms N's sister, Mrs C.
4. Ms N worked for South Ayrshire Council (**the Council**). She joined the Scheme in August 2001 and left in June 2005. She was married to Mr M G. In December 2013, Ms N and Mr M G divorced and Ms N met a new partner, Mr T.
5. In September 2014, Ms N and Mr T moved into a new home together which they had mortgaged jointly. In July 2015, Ms N took up a new post with the Council and re-joined the Scheme. On 27 July 2015, she wrote to the Fund and requested that all death benefits be paid to the Applicants. The Fund confirmed that her death grant nomination form (**Nomination Form**) had been updated.
6. On 15 April 2016, Ms N updated her Nomination Form again, this time using the Fund's online administration process. She named each Applicant as a beneficiary to receive a 10% share of all her pension benefits. She also named Mr T as a dependant, to receive the remaining 80%.

7. In a letter to Ms N dated 20 April 2016, the Fund confirmed that it had updated her Nomination. This now covered all her benefits in the Scheme, replacing her previous Nomination Form.
8. Ms N collapsed suddenly on 3 May 2016, and never regained consciousness. She suffered a catastrophic bleed to the brain and died on 5 May 2016. She had not previously been unwell. At the time, the Applicants were aged 17 and 19, respectively. Mr G was still at school.
9. On 7 May 2016, Mr T wrote to the Fund stating that he was Ms N's executor and next of kin. He said that his sister had reported Ms N's death to the Fund and that he had been asked to provide documentation. He explained that:-
 - Ms N had two pensions, deferred and active.
 - His understanding was that the deferred pension would be paid to the Applicants.
 - His understanding was also that Ms N had recently changed her Nomination Form in respect of her active membership, as they were in the process of drawing up their wills. He and Ms N had agreed with the Applicants that any death benefits would be used to pay Ms N's funeral costs and repay the debts that he and Ms N had accrued. Ms N had told him she did not want to leave him in financial difficulties should she die.
10. On 6 June 2016, the Fund informed Mr T that its records showed that Ms N had nominated the Applicants to receive all the benefits from her two pensions in the Fund. It added that he could apply for a dependant's pension, if eligible. Mr T gave a copy of the letter to the Applicants.
11. On 29 July 2016, the Fund advised the Applicants that they would each receive a child's pension from Ms N's two pensions of £540 and £608 per annum, plus a death grant of £2,839 each (10% of the available fund value).
12. On 15 August 2016, Mr M G asked the Fund to explain its decision. On 22 August 2016, the Fund confirmed to Mr M G that the death grant had been paid in line with Ms N's latest Nomination Form and only in exceptional circumstances would it be disregarded.
13. On the same day, Mrs C asked the Fund to explain its latest decision, as the death grant had originally been awarded to the Applicants. On 9 September 2016, the Fund confirmed that Ms N's death grant was distributed in accordance with her wishes in the Nomination Form that she had updated in April 2016.
14. The Fund also explained that the Fund's Discretions Board (**the Discretions Board**) had made the decision. It had considered all the information available, but its general process was to follow the latest Nomination Form, unless there were exceptional circumstances.

15. On 5 October 2016, Mrs C complained under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**) about the decision to award most of the death grant to Mr T and, in particular:-
- She questioned the validity of the change to Ms N's Nomination Form in April 2016, online, shortly before her death.
 - She said that Ms N had told her before her death that the Applicants were her sole beneficiaries. She asked if the Fund had considered all the facts, including Ms N's intention that the Applicants should be provided for.
 - She asked why the Fund had corresponded with Mr T after Ms N's death and not the Applicants. Mr T was not her next of kin. Mr T had been Ms N's partner for under two years, and they had lived together for only a few months.
 - Mrs C referred to Ms N's and Mr T's draft wills in which they gave undertakings about the repayments of Ms N's funds that had been used to finance the house.
 - Mrs C also provided copies of emails from July 2016 between Mr T and the Applicants in which they had all agreed that Mr T and Ms N had used the Applicants' trust funds to purchase the house and that this loan should be repaid from Ms N's death benefits. They had also agreed that any sums remaining should be used to pay for funeral costs and settle Mr T and Ms N's credit card debts.
16. On 21 October 2016, the Fund provided background details and instructions to the IDRP's stage one decision maker.
17. On 9 February 2017, the stage one decision maker rejected Mrs C's complaint on the grounds that the Fund had acted correctly, and not unreasonably, in exercising its discretion. He explained that:-
- Regulation 38(2) of the Local Government Pension Scheme (Scotland) Regulations 2014 (**LGPS Regulations 2014**) applied to Ms N's pension benefits on her death and provided that:

"The Administering Authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member."
 - The Fund had a statutory duty (and absolute discretion) to determine how the death grant was to be paid. It had to exercise its discretion in line with common law principles, namely, that only relevant factors should be considered, and that the decision reached should not be perverse.
 - The Fund's internal policy was that where a nomination form existed, the Discretions Board would usually decide to pay the death grant in accordance with

the member's choice(s) in the form and would only depart from them in exceptional circumstances.

- It was reasonable for the Discretions Board to place considerable reliance on the recent Nomination Form as an indicator of Ms N's wishes.
 - It was able to accept the updated Nomination Form as valid even though it had been updated recently online because the online process could only be accessed by a member who had followed a strict security process. The Fund had also written to Ms N confirming the change in the Nomination Form.
 - A nomination in favour of Mr T was reasonable. Even though Ms N and Mr T had been in a relationship for less than two years, they had bought a new home and were making plans for their future. The time they had been together was not information that would justify setting aside a validly made Nomination Form.
 - The draft will was not a relevant factor to be taken into account because it did not apply to discretionary pension benefits, although it showed Ms N's intention to make provision for her children.
 - The Discretions Board had addressed the distribution of the death grant in a considered manner and in line with due process. It had placed substantial reliance on the Nomination Form and had found that there were no exceptional circumstances to disapply it. So it had exercised its discretion reasonably.
 - The Fund had apologised for the system error that had showed the Applicants as the main beneficiaries, even though the Nomination Form had been amended online. This error did not detract from the fact the Fund had received and acknowledged an instruction to change Ms N's Nomination Form.
18. Mrs C appealed the decision under stage two of the IDRP. In the response dated 21 December 2017, the IDRP stage two decision maker rejected her appeal. He explained that his role was not only to consider whether the Discretions Board had reached its decision properly but also if it had taken account of all relevant information. To do this, he had investigated the Fund's internal policy, all correspondence, and had spoken to the Fund and the IDRP stage one decision maker.
19. In its submissions to the Pensions Ombudsman's Office, the Fund provided copies of both Nomination Forms and its published policy on discretionary death grants and the role of the Discretions Board (**the Discretions Policy**). Extracts from its Discretions Policy are set out in Appendix 2.
20. The policy stated that the Fund's Discretions Board should decide who should receive a death grant and that the late member's nomination form should be followed unless there were exceptional circumstances. Exceptional circumstances included cases where the member's situation had changed significantly since the date of the nomination form (for example, on marriage, divorce, separation, etc.).

21. The Fund also provided additional details about the information gathering process:-

- For active members, the Discretions Board normally relied on information provided by the member's employer. For deferred members, information was generally provided by family members.
- Fund officers collected the information and, if not sufficient, they would ask other parties to provide more.
- Ms N held both active and deferred pensions in the Scheme. Following her death, Mr T had contacted the Fund, as the deceased's cohabiting partner. The Council had confirmed that relationship and provided details about the Applicants to the Fund.
- The Fund then wrote to Mr T to advise him of the potential death benefits. This initial communication referred to the Applicants as nominees but did not inform Mr T that he was also a nominee. Subsequent communication by email and telephone calls made him aware that he had also been nominated.
- The Fund subsequently communicated with Mr T about whether he qualified for a dependant's pension. Ultimately, he did not. The Fund also communicated with both Applicants regarding children's pensions to which they were entitled.
- The Discretions Board did not meet Mr T. It was not common practice to do so. It took into account the information gathered by the Fund officers and made a decision, based on that evidence. It did not request further details about the Applicants' personal situations because it did not consider it necessary.

The Applicants' position

- The Fund should have considered other factors when exercising its discretion and should have divided the death grant three ways in equal shares, instead of following the updated Nomination Form.
- The Fund did not investigate the Applicants' financial situation. It did not consider that the Applicants were 17 and 19 and financially dependent on Ms N.
- It disregarded information from Ms N's family about her wishes. It did not investigate Ms N's decision to change her Nomination Form shortly before she died.
- It did not investigate Mr T's claims that he was Ms N's next of kin, even though they had been together for less than two years and he was not financially dependent on Ms N.
- It did not give the Applicants the same opportunity to comment as Mr T. The Discretions Board may not have met Mr T, but he visited the Fund's office and was able to give his input.

- It did not consider evidence other than the Nomination Form and was influenced by Mr T not Ms N's family.

The Fund's position

- The Fund had investigated the circumstances thoroughly and there was no valid reason to disregard Ms N's final wishes in the updated Nomination Form. It was reasonable for Ms N to make provision for Mr T, the partner she had moved in with and planned a life with.
- In honouring a valid Nomination Form, the Fund's aim was to comply with Ms N's wishes, rather than the wishes of potential beneficiaries. It had exercised its discretion in the correct manner by paying the death grant in line with Ms N's Nomination Form.
- The Fund did not receive a copy of Ms N's will and did not request a copy as it was in draft form. A death grant from the Scheme would not be distributed under her will or on intestacy.
- The Fund was (and remains) unaware if Mr T inherited the house following Ms N's death. This would not affect his status as a nominee.
- Ms N had considered that Mr T needed more financial assistance than the Applicants. She had expressed this clearly through the Nomination Form. The Fund honoured her wishes.
- The Discretions Board considered if there were any exceptional circumstances that would require it to disapply the Nomination Form, as set out in its internal policy, such as the ending of a relationship or a nominee predeceasing the member. It concluded that there were none.

Adjudicator's Opinion

22. Mr G's and Ms G's complaints were considered by one of our Adjudicators who concluded that no further action was required by the Fund.

23. The Adjudicator's findings are summarised below:-

- Regulation 37 of the The Local Government Pension Scheme (Scotland) Regulations 1998 (**the LGPS Regulations 1998**) and Regulation 38(2) of the LGPS Regulations 2014 (**together the Scheme Regulations**) provide that the Administering Authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to have been a relative or dependant of the member. Relevant extracts of the Scheme Regulations are set out in Appendix 1.
- The Fund's Discretions Policy stated that the Nomination Form should be followed unless there were exceptional circumstances.

- The Fund carried out investigations and decided there were no exceptional circumstances. It followed Ms N's latest Nomination Form and awarded 10% of the total death grant of £29,182 to each of the Applicants, with the balance amounting to £23,504 to Mr T.
- There was no reason to treat the latest Nomination Form as invalid just because it was updated online shortly before Ms N died. The change to her Nomination Form was then confirmed in writing.
- The Fund had properly exercised its discretion, in accordance with the Scheme Regulations, and through the Discretions Board, as required by its published policy.
- The Fund did not immediately update Ms N's Nomination Form and provided incorrect information but remedied this shortly afterwards. This error did not amount to maladministration.

24. Mrs C did not accept the Adjudicator's Opinion and provided the following comments:-

- Ms N was not sorting out her financial affairs when she revised her Nomination Form. In fact, she died unexpectedly. She was not ill. She suffered a catastrophic bleed to the brain. Her life support was turned off on 5 May 2016.
- A sum of £50,000 was mentioned in the draft will. This was Ms N's share of the sale proceeds from her former marital home. It had been used to pay off her and Mr T's debts and the remaining £32,500 was used as a deposit on the home she bought with Mr T. Mr T had agreed that the latter sum should be repaid to Ms N or her estate.
- Had the Fund invited the Applicants, along with Mr T, to its office, there may have been a different outcome. The Fund's officers only heard Mr T's account. Mr T was given priority over the Applicants before confirming the true facts. He was neither next of kin nor executor.
- The Fund had acknowledged Ms N's online change to her Nomination Form, in writing. It was a serious error to send out incorrect information about this just a couple of months later.

25. The complaint was passed to me to consider. Mrs C's further comments do not change the outcome of the Applicants' complaints. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs C.

Ombudsman's decision

26. The Applicants' complaint is that the Fund did not exercise its discretion properly when it distributed Ms N's death grant in accordance with her latest Nomination Form,

without investigating the Applicants' financial positions. On their behalf, Mrs C asked for a three-way split of the death grant between the Applicants and Mr T.

27. The Fund contended that it had correctly followed the Scheme Regulations and its Discretions Policy and there were no exceptional circumstances requiring it to disapply Ms N's latest Nomination Fund.
28. I need to consider whether the Discretions Board had complied with the Scheme Regulations in deciding who should receive Ms N's death grant. I also need to consider whether it exercised its discretion in line with common law principles, namely, that only relevant factors should be considered, the scheme provisions and the law should be construed correctly, the right questions should be asked and that the decision reached should not be perverse.
29. The applicable discretionary powers are found in Regulation 37 of 1998 Regulations that applied to Ms N's deferred pension and Regulation 38(2) of the 2014 Regulations that applied to her pension when she re-joined the Scheme. They stated that:

“ the Administering Authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to have been a relative or dependant of the member.”
30. The Fund's Discretions Policy also provided that payment would usually follow the member's wishes in the Nomination Form unless there were exceptional circumstances. These included the member's situation changing significantly, such as the ending of a relationship or a nominee predeceasing the member.
31. The Discretions Board took into account the information that the Council provided about Ms N's situation and the potential beneficiaries and based on that information, it decided to follow her latest Nomination Form. I find that it was reasonable in the circumstances for the Discretions Board to conclude that Ms N had updated her Nomination Form very recently so that it reflected her latest wishes.
32. I note that Mrs C suggested that if the Discretions Board had invited the Applicants to its office to confirm the facts, as well as Mr T, there might have been a different outcome. The Discretions Board asserted that its officers did not meet Mr T to discuss Ms N's death grant and it was not common practice to do so. It added that there was some discussion with Mr T, but it concerned his eligibility for a dependant's pension. I find that there is no evidence to show that Mr T influenced the Discretions Board's decision so that it took account of Mr T's financial position and not the Applicants.
33. Mrs C also claimed that Ms N's Nomination Form was invalid because it had been updated shortly before she died. I do not consider there is any evidence of an irregularity. The online procedure was approved by the Fund. It also included security checks. The change to Ms N's Nomination Form was then confirmed in writing. Both the Applicants and Mr T were nominated to receive a share of the death grant. I find

there was no reason for the Discretions Board to treat the latest Nomination Form as invalid, just because Ms N had amended it online shortly before her death.

34. I note that Mrs C also referred to Ms N's draft will, and Mr T's letter of 7 May 2016 to the Fund and his emails from July 2016 with the Applicants. She claimed that Mr T had agreed that a large sum which Ms N had paid as a deposit on their home, should be repaid to the Applicants but that he had reneged on his agreement. The Discretions Board claimed that this was not a relevant factor to take into account in making its decision because the death grant was a discretionary Scheme benefit that did not form part of Ms N's estate. I consider that the Discretions Board's view on this is correct.
35. I accept that the Fund made an error in not immediately updating Ms N's Nomination Form after she amended it online. This resulted in Mr T receiving incorrect information that he forwarded to the Applicants. I do not find that this amounted to maladministration because the Fund provided the correct information to the Applicants as soon as it became aware of the error.
36. I consider that the Fund properly exercised its discretion regarding the death grant in accordance with the Scheme Regulations, and through the Discretions Board, as required by its Discretions Policy.
37. I am satisfied that it considered all potential beneficiaries under the Scheme Regulations. The Discretions Board was aware that the Applicants would both receive child's pensions of about £1,150 per annum and that Mr T was not entitled to a pension from the Scheme, as a dependant. It decided to follow Ms N's latest Nomination Form and awarded £2,839 to each of the Applicants (10% of the available fund value), with the balance of £23,504 to Mr T.
38. I find that the Fund took into account all relevant matters and no irrelevant ones in reaching its decision. I consider that the process followed by the Fund was not flawed, and its decision to distribute Ms N's death grant in accordance with the wishes expressed in her latest Nomination Form was reasonable.
39. I do not uphold the Applicants' complaints.



Anthony Arter

Pensions Ombudsman
21 January 2021

Appendix 1

The Local Government Pension Scheme (Scotland) Regulations 2014 [SI 2014/164]

Death grants: active members

“38.—(1) If an active member dies before attaining the age of 75, an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member’s nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) The death grant is the highest of the amount of three times the member’s annual assumed pensionable pay calculated in accordance with regulation 21(4) as at the date of the member’s death, the amount of the death grant payable under regulation 41, or the amount of the death grant payable under regulation 44.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of two years beginning with the date of the member’s death or, where the administering authority did not know about the member’s death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member’s death, they must pay an amount equal to the shortfall to the member’s personal representatives.”

The Local Government Pension Scheme (Scotland) Regulations 1998 [SI1998/366]

Death grants

“37.—(1) If a member dies, the administering authority may make payments to or for the benefit of the member’s nominee or executors or any person appearing to the authority to have been his relative or dependant at any time.

(2) A nomination must be made by notice in writing to the administering authority in such form as the administering authority may from time to time require and may be revoked in the same manner.

(3) A nomination is also revoked by any subsequent nomination which complies with the requirements referred to in paragraph (2).

(4) If not previously revoked, a nomination ceases to have effect on the member’s subsequent marriage.

(5) The aggregate amount paid under paragraph (1) must not exceed the member’s death grant.

(6) The amount of an active member's death grant is the greater of—

(a) $2 \times$ the member's final pay; or

(b) $\frac{(3 \times \text{his final pay})}{80} \times \text{his total membership.}$

(7) The multiplier for a deferred member's death grant is the same as for his retirement grant.

(8) The multiplier for a pensioner member's death grant is 5, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

(9) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of the period of two years beginning with his death, they must pay an amount equal to the shortfall to the member's executors.

(10) For these Regulations, any payments made under paragraph (1) must be treated as payments made by way of death grant."

Appendix 2

Extracts from the Fund's Strategy

Its published strategy states that the 'ultimate decision in the exercise of this discretion rests with the Executive Director of Financial Services'. The Executive Director of Financial Services has delegated the exercise of this discretion to the Discretions Board. The Discretions Board consists of senior managers within the Fund Office.

The function of the Discretions Board is to decide the recipients of individual death grants in accordance with the scheme regulations and having regard to guidance from the Pensions Ombudsman.

A copy of the Fund's delegation policy in respect of discretionary death grants.

“ Payment of Death Grants

(Death of Active, Deferred or Pensioner Member)

This document is for guidance only and does not bind the decision makers.

Delegation:

The Strathclyde Pension Fund Pension Administration Strategy states that, in relation to payment of death grants, the 'ultimate decision in the exercise of this discretion rests with the Executive Director of Financial Services'. The Executive Director of Financial Services has delegated the exercise of this discretion to the Discretions Board.

Discretions Board:

The Discretions Board consists of senior managers within Strathclyde Pension Fund Office (SPFO).

The function of the Discretions Board is to decide the recipients of individual death grants in accordance with the scheme regulations and having regard to guidance from the Pensions Ombudsman.

Decisions will usually be taken by consensus amongst the Board members, and in any event, by a majority of the decision makers present. Where this is not possible, a decision may be referred to the Executive Director of Financial Services.

The quorum for any Discretions Board decision is any 2 of the Board members.

The Discretions Board permits certain decisions to be made by the Service Managers in accordance with this policy...

Pension [sic] Ombudsman Guidance:

As per the Pensions Ombudsman's guidance, the decision-makers shall:

- Apply the discretionary powers consistently with the regulations governing the Scheme and any other relevant legislation

- Take account of all relevant factors and ignore all irrelevant ones; and
- Reach a rational conclusion.

Local Government Pension Scheme Regulations:

The Local Government Pension Scheme Regulations state that the administering authority 'may, at its absolute discretion pay the death grant to or for the benefit of the member's nominee, personal representatives, or any person appearing to the authority to have been a relative or dependent of the member'.

"Dependent" in relation to a person means that in the opinion of the administering authority, at the date of the member's death—

- (a) the person was financially dependent on the member;
- (b) the person's financial relationship with the member was one of mutual dependence;
or
- (c) the person was dependent on the member because of physical or mental impairment;

Where a nomination form exists:

Where a nomination form exists, payment will usually be as indicated by the fund member's choice(s) in the form. It is expected that Discretions Board decisions will only depart from the choice(s) expressed in the form in exceptional circumstances.

Where a nomination form exists but circumstances have changed:

In the event that a nomination form exists but circumstances have changed significantly (e.g. marriage, divorce, separation etc.) since the date of the nomination form, these revised circumstances may be taken into account by the Discretions Board. This may result in a decision to withhold payment from one or more of the persons indicated in the form and/or to make payment to persons who are not nominated in the form but who fall within the categories noted in the regulations and/or to treat the nomination form as invalid.

Where no valid nomination form exists:

Generally the order in which different classes of beneficiary are considered for payment of the death grant in the event of no valid nomination form being available is as follows:

- Spouse/civil partner/partner (where such partner's dependency/inter-dependency can be demonstrated to the satisfaction of the Board)
- Children
- Any person who has been the member's dependant/relative
- Personal representative(s).

Before payment can be made to a dependant of the deceased then evidence of this dependency must be sought e.g. proof of upkeep or evidence showing mutual financial dependency.

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The decision makers shall decide if a division between different categories would be appropriate depending on the circumstances.

Legal advice and authorisation to release funds:

It may be that legal advice will be required (e.g. if payment is to be made for the benefit of a minor, either to a Trust Fund or to the Accountant of Court) and if so a solicitor from Legal Services, Corporate and Property Law Section must be consulted.

The decision-makers may refer matters to the Executive Director of Financial Services at their discretion. The Director will approve a report for the Executive Director of Financial Services in these cases.”