

## Ombudsman's Determination

Applicant	Mr S
Scheme	Local Government Pension Scheme ( <b>LGPS</b> ) – Southwark Pension Fund
Respondent	Southwark Council ( <b>the Council</b> )

### Complaint summary

1. Mr S complained that the Council incorrectly decided not to award him a cohabiting partner's pension and a lump sum death grant (**the Death Grant**) from the LGPS following the death of his partner, Ms C, in March 2021.

### Summary of the Ombudsman's Determination and reasons

2. The complaint is partly upheld against the Council.
3. The evidence does not support a finding that Mr S has suffered actual financial loss as a consequence of the way in which the Council dealt with his application for the death benefits available from the LGPS.
4. However, I consider that the Council's failure to inform Mr S in a timely manner that his application for the Death Grant had been unsuccessful was maladministration which has clearly caused him distress and inconvenience.
5. To put matters right, the Council shall award Mr S £500 in recognition of the significant non-financial injustice which he has experienced dealing with this matter.

## Detailed Determination

### Material facts

6. Mr S married Ms C on 8 August 2008.
7. According to a decree absolute, their marriage was dissolved on 6 January 2012.
8. Ms C had four adult children Mr D, Ms D, Mr B and Ms B from previous relationships. She also had two adopted daughters, who were both minors at the date of her death.
9. Ms C worked for the Council and was an active member of the LGPS.
10. The LGPS is governed by the LGPS Regulations 2013 (as amended) (**the LGPS Regulations**).
11. On 4 September 2017, Ms C completed a form entitled “Death Grant – Expression of Wish Form” (**the Death Grant Nomination Form**) to show that:-
  - 11.1. She had nominated Mr S to receive any lump sum death benefit from the LGPS in the event of her death.
  - 11.2. Mr S was her “husband” and they lived at the same address in London.
12. The Death Grant Nomination Form included the following proviso:

“IMPORTANT: this form is not a will. Although the scheme administrators would want to comply with your wishes, they have absolute discretion in deciding where, or to whom, any payment is to be paid.”
13. Ms C’s last will and testament (**the Will**) dated 10 October 2020 showed that:-
  - 13.1. She had appointed Mr D and Ms D as executors and trustees of the Will.
  - 13.2. She had selected Mr D to be the guardian of any of her children who were minors if she was the sole surviving parent at the date of her death.
  - 13.3. She wished to give her two adopted daughters £1,000 each.
  - 13.4. She wished to divide her residuary estate (after her debts, taxes, funeral and testamentary expenses had been paid) equally between her other four children.
14. Ms C died on 11 March 2021.
15. On 31 March 2021, Ms D sent copies of the Will and other documents to the Council.
16. On 9 April 2021, Ms D asked the Council whether it needed anything else from her.
17. The Council replied as follows:

“Thank you for sending over the birth certificates for the children. We just need the attached claim forms completed for their dependent’s pensions...”

18. On 9 April 2021, Mr D completed and returned the claim forms to the Council.
19. On 12 April 2021, the Council informed Mr D that:-
  - 19.1. Before deciding who should receive the Death Grant, it had to carry out appropriate due diligence on all potential beneficiaries.
  - 19.2. Ms C had completed the Death Grant Nomination Form in 2017 to show that she wished Mr S, her husband, to benefit from any lump sum payment from the LGPS on her death.
20. The Council asked Mr D whether Ms C was still married to Mr S when she died and to provide a contact address for Mr S.
21. Mr D supplied the Council with Mr S' contact details.
22. On 13 April 2021, Mr D asked the Council when its due diligence exercise would end because he needed to know if he had to find alternative funds to pay for his mother's funeral expenses.
23. The Council replied on the same day that:

"Unfortunately it is dependent on the response time from the other potential beneficiaries. We will however be making payment for the two dependent's pensions payable to the children on 20 April..."
24. The Council asked Mr S in its e-mail dated 26 April 2021 to provide details of: (a) his relationship with Ms C; and (b) the names and contact details of any other potential beneficiaries of the benefits available from the LGPS following Ms C's death.
25. On 27 April 2021, Mr S replied that: (a) he was Ms C's husband; (b) he and Ms C had lived together at the address given in the Death Grant Nomination Form; and (c) Ms C had four children. He informed the Council on the next day by e-mail that the potential beneficiaries were:

"Mr S (partner), Ms D, Mr D, Mr B and Ms B"
26. On 28 April 2021, the Council informed Mr D that: (a) it contacted Mr S and he had responded; (b) its investigation was ongoing; and (c) it would provide him with a further update in due course.
27. On 5 May 2021, Ms D asked the Council whether it would be helpful if she obtained a copy of the decree absolute.
28. On 10 May 2021, the Council replied that this would be helpful because it had received conflicting information from Mr S. It also said that:

"Once received I think that would make the situation a lot clearer around who the remaining beneficiaries are and we can arrange payment."

Apologies for the delay in all this but as I am sure you can appreciate such matters do need thorough investigation to mitigate any challenge from our final decisions.”

29. On 11 May 2021, Mr S completed a form entitled “Claim for Payment of Death Grant” (**the Death Grant Claim Form**) and returned it to the Council. Mr S wrote on the form that:-

29.1. Ms C was his “wife” and he was her “partner”.

29.2. His home address was the same as his mother’s.<sup>1</sup>

29.3. He was unaware of anyone else who might be entitled to make a claim for the Death Grant.

30. On 12 May 2021, Ms D provided the Council with a copy of the decree absolute.

31. In an e-mail dated 13 May 2021 to the Council’s Pensions Manager, the Deputy Pensions Manager said:

“So we’ve contacted the other potential beneficiary, Mr S, who was down as being married and nominated on the record.

Mr S sent back claim forms and marriage certificate but failed to mention that in 2011 they divorced...I had a feeling as such because Ms C left the two adopted children in the guardianship of her eldest son and did not name Mr S on a will that was produced not long prior to her passing.

In light of this, are you happy for the death grant to be split evenly to Mr D and Ms D as outlined on the will?”

32. In a further e-mail dated 14 May 2021 to the Pensions Manager, the Deputy Pensions Manager added that:

“I’ve spoken to Ms D and there are 6 children in total.

Ms D, Mr D, Ms B and Mr B. Plus two adopted children who are under 18.

All 4 children of age have been involved in the e-mail exchanges ...and have agreed they are happy for Mr D to be paid the grant and distribute as he is the main named on the Will...

Ms D has said that if needed they are all happy to have it split between herself and Mr D as she had been the main one dealing with the matters and Mr D being the one named.”

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<sup>1</sup> Mr S said he moved to his mother’s address shortly after Ms C’s death.

33. The Pensions Manager and the Deputy Pensions Manager completed Form PF35, entitled "Payment of Death Grant - Consideration of Council's Discretion - Reg E8" on 26 May 2021. This form showed that:-
- 33.1. As a result of Ms C's death, a Death Grant was payable from the LGPS.
  - 33.2. The Council had the power, at its discretion, to pay the grant to or for the benefit of all or any of the surviving spouse, children, dependents, relatives, personal representatives or nominated beneficiaries of Ms C in such shares as it shall in its absolute discretion decide<sup>2</sup>.
  - 33.3. Ms C completed a form nominating, her husband, Mr S, as her beneficiary but they had divorced in January 2012.
  - 33.4. An application for payment of the Death Grant had been received from Mr D and Ms D.
  - 33.5. The cost to LGPS was £157,707.
  - 33.6. It was recommended that the payment of the Death Grant should be made to Mr D and Ms D.
34. The Council paid the Death Grant of £157,707 to Mr D and Ms D in June 2021.
35. In its e-mail dated 24 June 2021 to Mr S, the Council said that:-
- 35.1. After completing its checks, it decided that he did not qualify for a spouse's pension from the LGPS because: (a) he had divorced Ms C in January 2012; and (b) he was not "legally married" to her at the time of her death.
  - 35.2. If he could provide evidence of cohabiting partnership status, it would be happy to investigate further.
36. Mr S replied on the same day that:-
- 36.1. Ms C filed for divorce in 2011. He and Ms C had reconciled in 2013 after resolving their problems.
  - 36.2. They had been living at the address shown in the Death Grant Nomination Form. Ms C's family could confirm this.
  - 36.3. They were going to remarry but decided to wait until Ms C's health improved.
  - 36.4. They had a business (**the business**) together. This could be checked with Companies House<sup>3</sup>.

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<sup>2</sup> The relevant regulation of the LGPS Regulations has been set out in the Appendix.

<sup>3</sup> The correspondence address of the business held at Companies House was originally that shown in the Death Grant Nomination Form. Mr S changed it to a different address following Ms C's death.

36.5. He had been Ms C's carer while she was ill.

37. On 25 June 2021, the Council provided Mr S with the following information about cohabitation<sup>4</sup>:

"An eligible cohabiting partner is a partner you are living with who, at the date of your death, has met all of the following conditions for a continuous period of at least 2 years:

- you and your cohabiting partner are, and have been, free to marry each other or enter into a civil partnership with each other, and
- you and your cohabiting partner have been living together as if you were a married couple, or civil partners, and
- neither you or your cohabiting partner have been living with someone else as if you/they were a married couple or civil partners, and
- either your cohabiting partner is, and has been, financially dependent on you or you are, and have been, financially interdependent on each other.

Your partner is financially dependent on you if you have the highest income. Financially interdependent means that you rely on your joint finances to support your standard of living. It doesn't mean that you need to be contributing equally. For example, if your partner's income is a lot more than yours, he or she may pay the mortgage and most of the bills, and you may pay for the weekly shopping.

On your death, a survivor's pension would be paid to your cohabiting partner if:

- all of the above criteria apply at the date of your death, and
- your cohabiting partner satisfies your pension fund that the above conditions had been met for a continuous period of at least 2 years immediately prior to your death.

You are not required to complete a form to nominate a cohabiting partner for entitlement to a cohabiting partner's pension. However, you can provide your pension fund administrator with your cohabiting partner's details and your pension fund may have a form that you can complete to do this..."

38. The Council also informed Mr S that if he could provide a Council tax bill, joint bank account statements or utility bills showing both his and Ms C's names from: (a) over

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<sup>4</sup>The definition of "cohabiting partner" in the LGPS Regulations has been set out in the Appendix.

two years ago; and (b) within the last few months prior to Ms C's death, this should be adequate to prove cohabitation.

39. In his e-mail dated 28 June 2021, Mr S told the Council that:

"...Ms C paid all the bills & I contribute that's how we use to run the house. I contribute towards food & the maintenance of the property.

The only thing in my name is the rates for the business plus any Amazon stuff I may order...I find it very frustrating knowing I've lost my partner and having to prove I was living with her..."

40. On 7 July 2021, the Council replied that:

"I appreciate that it is the last thing you wish to be doing during such a hard time but unfortunately to mitigate the risk of fraud and as an audit/scheme regulation requirement we do need to request evidence to support a claim as you were no longer married, it's a cohabiting pension which requires more scrutiny.

If you can provide any evidence that you hold detailing cohabiting status that would help our decision making process, the documents you mention...could be a good example.

Once received we can review the case and advise if a cohabiting partners pension can be payable."

41. In its letter dated 16 August 2021, the Council informed Mr S that:-

41.1. Based on the available evidence, it was unable to award him a cohabiting partner's pension from the LGPS because he did not fully satisfy the requisite criteria at the time of Ms C's death.

41.2. In its view, he had proved that he was living with Ms C but there was insufficient evidence to demonstrate financial interconnectivity or that they were free to marry.

41.3. It also required further information about their shared business.

41.4. It would be happy to review his case on receipt of additional supporting documents being provided.

42. Mr S was unhappy with the Council's decision and sought the assistance of his solicitor in the matter.

43. In its letter dated 28 October 2021 to the Council, Mr S' solicitor said that:-

43.1. The rent and business rates for the business property were paid directly from Ms C's bank account.

43.2. It accepted that the business on its own did not prove a cohabiting relationship between Mr S and Ms C.

43.3. There was, however, “various evidence of cohabitation” such as the correspondence addressed to Mr S at Ms C’s home.

43.4. It wished to submit additional documents as evidence of a cohabiting relationship between Mr S and Ms C for the Council’s consideration. These were:-

- A tenancy agreement attached to a letter dated 3 September 2016 from the landlord of the business property. This agreement showed that Mr S and Ms C lived at the same home address.
- A letter dated 9 October 2021 from the landlord describing Mr S as Ms C’s husband.
- Various business rates letters dated between October 2019 and May 2021 sent to Mr S and Ms C at their home address.
- Two letters from HMRC sent to their home address dated as far back as September 2020 relating to the period from June 2018 to May 2019.

44. Mr S’ solicitor also said that:

“It is our contention that from the correspondences and/or documents now submitted, it is more than likely that our client was in a cohabiting relationship with his late partner. It is particularly questionable as to why business related items and correspondences would be sent to the home address of a party to the business without more as is the case here. We further submit that the only reason the documents herein could have been addressed to our client and his late partner jointly at the address they shared is because they were a couple and indeed lived together until the late partner’s death.”

45. The Council replied in its letter dated 21 December 2021 as follows:-

45.1. There was no dispute that Mr S and Ms C were business partners but this was not one of the criteria for cohabitation.

45.2. It accepted that Mr S had lived at the same address as Ms C.

45.3. The evidence provided by Mr S supported three of the four requirements for a cohabiting partner’s pension to be paid under the LGPS Regulations.

45.4. However, to show financial interdependence on a personal level, Mr S would need to supply evidence that was not business related.

45.5. Its decision to decline Mr S’ application for a cohabiting partner’s pension stood.



46. Mr S was dissatisfied with this decision and raised a complaint on 6 January 2022 under the LGPS Internal Dispute Resolution Procedure (**IDRP**) through his solicitor who said that:-
- 46.1. The letter dated 3 September 2016 from the landlord confirmed that Ms C was a party to the leasehold agreement of the business property. Simply put, Mr S ran the business whilst Ms C was a “silent business partner who funded the business with her salary from her full time employment”.
- 46.2. It was clear from the commercial lease for the business property that there was an element of financial interdependence between Mr S and Ms C.
47. In its Stage One IDRPs decision letter dated 16 February 2022, the Council replied:-
- 47.1. It had performed all the necessary checks before rejecting Mr S’ application for a cohabiting partner’s pension.
- 47.2. There was insufficient evidence to demonstrate financial dependency or financial interdependency between Mr S and Ms C.
- 47.3. By stating in its letter dated 28 October 2021 that Mr S was more than likely in a cohabiting relationship with Ms C, the solicitor had created some doubt as to whether such a relationship existed.
- 47.4. Business letters were only sent to Mr S and Ms C at the address shown on the Death Grant Nomination Form because this was the correspondence address recorded at Companies House.
- 47.5. The solicitor had said that Ms C was a silent business partner who funded the business with her salary from her full time employment. This implied that Ms C was nothing more than a passive financial investor with little or no say in the day-to-day running of the business. While Mr S might have been financially dependent on Ms C’s business investment, this did not mean there was any financial interdependency between them.
48. The Council also said that:
- “We have previously stated which evidence would allow us to review our decision and these are:
- Council Tax bill with both parties named at the address shown on the Death Grant Nomination Form;
  - Shared personal bank account;
  - Shared mortgage agreement at the address shown on the Death Grant Nomination Form;
  - Shared tenancy agreement for a private property;
  - Or similar documents for a domestic property to that effect.

Please provide evidence of a domestic/personal capacity (not business) showing your client and Ms C had entered into a contractual commitment for financial responsibility or jointly owned significant assets such as a property, bank accounts, car etc and had a joint liability for debts such as a mortgage or credit cards etc...”

49. In August 2022, the Council did not uphold Mr S’ appeal at Stage Two of the IDRPs because he had not provided any new evidence of financial interdependency.
50. Mr S was dissatisfied with the Council’s decision and referred his complaint to The Pensions Ombudsman (**TPO**).
51. The Council informed Mr S in 2023 that: (a) Ms C had nominated him to receive any lump sum death benefit from the LGPS on the Death Grant Nomination Form; and (b) his application for the Death Grant was unsuccessful.
52. Mr S’ original complaint to TPO was that the Council had wrongly decided not to award him a cohabiting partner’s pension from the LGPS following the death of Ms C. He consequently asked TPO to investigate his additional complaint that the Council had also incorrectly decided not to award him the Death Grant.
53. In February 2023, the Council agreed to waive the requirement for this new complaint to be considered under IDRPs before TPO could investigate it.
54. In December 2023, the Council reviewed its decision not to award Mr S a cohabiting partner’s pension. It took into account: (a) all the evidence provided by Mr S during TPO’s investigation; and (b) a witness statement obtained from Mr D and Ms D. The evidence included:
  - statements for his personal current account showing several payments to and from Ms C made during the two years prior to her death<sup>5</sup>;
  - a joint Costco account opened in January 2020; and
  - a tenancy agreement for his flat showing that he and Ms C were joint landlords and their home address was the address shown on the Death Grant Nomination Form.
55. In their statement, Mr D and Ms D said that they could “confirm Mr S being present at the address shown on the Death Grant Nomination Form on occasions” but they could not “comment on permanent residence as there were many occasions upon which he was absent”.
56. In the Council’s opinion, the available evidence now suggested that “a more casual relationship” existed between Mr S and Ms C rather than a fully committed one where they were living together as if they were husband and wife.

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<sup>5</sup> Mr S had also provided the Council with copies of these bank statements in July 2021.

57. The Council confirmed its stance that that there was inadequate evidence of financial dependency or financial interdependency between Mr S and Ms C.
58. In particular, the Council said that:-
- 58.1. There were no bank accounts in joint names.
  - 58.2. The joint Costco account did not meet the criteria for financial dependency.
  - 58.3. There was no evidence that Mr S and Ms C had: (a) “lived in a shared household with shared household spending”; and (b) “significant assets in joint names such as a property” or “any joint debt such as a mortgage, loan or credit card”.
  - 58.4. Its checks did not find any “credit references”, associating Mr S with Ms C’s property.
  - 58.5. There was no evidence of: (a) “regular payments between both parties on bank statements”; and (b) “large expenses being shared of a personal nature” in the two years before Ms C’s date of death.
  - 58.6. Ms C did not leave Mr S anything in the Will.
  - 58.7. As Mr S only met two of the four requirements for a cohabiting partner’s pension to be paid under the LGPS Regulations, “it would be detrimental to the pension fund and other members” if it accepted Mr S’ application.
  - 58.8. It had acted properly and made the correct decision in Mr S’ case.
59. Mr S’ sister, two former neighbours and a close friend subsequently provided TPO in December 2023 with witness statements showing that, to the best of their knowledge, Mr S had been living at the address shown on the Death Grant Nomination Form permanently with Ms C as if they were husband and wife in the two years prior to her death.

### **Summary of Mr S’ position**

60. His employment with Thames Water ended in 2020 during the Covid-19 pandemic. As an agency worker, he was not entitled to furlough payments from the Government. He and Ms C decided that he should concentrate on the business and not look for another job. They would rely on her salary and the monthly rent of £1,200 received from the tenant living in his flat in another part of London to cover their expenditure until the pandemic ended.
61. He did not claim social security payments and earned additional income by doing ad hoc jobs which required him to drive his van.
62. Following Ms C’s death, he used most of his savings and pension fund to pay for his living expenses and to complete the work on the business property.

63. He lived with Ms C as husband and wife at the address shown on the Death Grant Nomination Form. Ms C had purchased her home prior to their marriage. They never considered adding his name to the property deed of Ms C's home.
64. They were financially interdependent, and he became more financially dependent on Ms C after losing his job.
65. He and Ms C did not have a shared bank account because Ms C paid all of the household bills from her bank account. While he was employed, he transferred some of his earnings to her for this purpose.
66. They did not accumulate any debts as they paid for everything by cash.
67. Ms C's salary from the Council was inadequate to cover in full the payments for: (a) the monthly rent of £650 and other costs relating to the business property; (b) the mortgage on her home; (c) the household bills; and (d) the costs of the car and the van if he did not contribute towards them.
68. He and Ms C agreed that the children would inherit her home when she died. Ms C made no provision for him in the Will because she wanted him to receive the benefits available from the LGPS following her death.
69. He did not stay at the address shown on the Death Grant Nomination Form after Ms C died because he felt uncomfortable doing so and the children wanted the house for themselves. So, he moved into his mother's home and his family are helping him out with his serious financial difficulties.
70. Ms C was dependent on him because he was her carer when she became very ill. He took Ms C to her hospital appointments and maintained the housekeeping in her home when she was no longer able to do so. He also looked after her adopted children and her mother who lived with them.
71. If Ms C did not want him to receive the Death Grant, she would have amended the Death Grant Nomination Form. Ms C completed this form to show that he was her husband because they had: (a) conducted themselves as husband and wife up until her death; and (b) planned to remarry when she got better. They did not discuss their remarriage plans with her children as it was a private matter.
72. The Council quickly paid the Death Grant to Ms C's children within two months of her death. It did not carry out an in-depth investigation of his domestic and financial circumstances before doing so.
73. The Council did not: (a) give him sufficient time to provide all the evidence in order for a fair decision to be reached; and (b) contact him to the same degree as Ms C's children while carrying out its investigation.
74. The Council only asked him for his marriage certificate and passport. He did not provide the decree absolute because he and Ms C still considered themselves as married.

75. The Council's failure to inform him of its decision on the Death Grant in a timely fashion meant that he was denied the opportunity to challenge it under the IDRP.
76. He used his personal current account to pay and receive money from Ms C. The entries shown on his bank statements for payments to and from Ms C were too small to be business related. Moreover, the transactions were made when: (a) the business was not yet operational; and (b) the business property was still being refurbished. It was clear from his bank statements that he and Ms C were dependent on each other.
77. He opened the joint Costco account with Ms C in January 2020. They did not use it for business purposes. This account was still open at the time of Ms C's death.
78. The current tenancy agreement dated 17 August 2015 for his flat showed that: (a) he and Ms C were joint landlords; and (b) their home address was the address shown on the Death Grant Nomination Form.
79. The evidence which he provided the Council adequately showed that he had: (a) lived at the same home address as Ms C; and (b) contributed towards "the upkeep of the family home".
80. He is "disgusted" that, in December 2023, following a review of its decision not to award him a cohabiting partner's pension, the Council has now concluded that:
  - his relationship with Ms C was "casual"; and
  - he no longer met the criterion that he and Ms C had been living together as if they were a married couple.
81. In their witness statement, Mr D and Ms D said that he was absent from the address shown on the Death Grant Nomination Form on occasions. They cannot, however, substantiate their assertion because they did not live with him. Furthermore, during the pandemic, he could not have lived anywhere else. He had rented out his flat and could not stay with his mother as she is a "vulnerable adult".
82. Ms C did not complete the form entitled "Cohabiting Partner Information for Survivor's Pension" (**the Survivor's Pension Nomination Form**) because:
  - she was not obliged to nominate him for entitlement to a cohabiting partner's pension; and
  - they were living together as husband and wife.
83. If the Council had drawn to Ms C's attention the existence of this form, she would have completed it.
84. There is no evidence to support the Council's allegation that he had made a fraudulent claim for the Death Grant.

85. The considerable distress and inconvenience that he has suffered in this matter warrants significantly more than the minimum payment of £500 which I could award for non-financial injustice in such circumstances.

### **Summary of the Council's position**

86. Mr S and Ms C were legally divorced at the time of her death. Mr S did not divulge this important information to the Council and made his claim for the Death Grant as if they were still married and living together as husband and wife.
87. It had absolute discretion in deciding the recipient(s) of the Death Grant. Ms C's Death Grant Nomination Form was not binding on the Council. However, it would be one of the factors to be considered in reaching its decision.
88. It chose not to inform Mr S of its decision on the Death Grant. In its view, it was unnecessary to do so because: (a) Mr S was not named in the Will or on the death certificate; (b) he was not an executor of Ms C's estate; and (c) he and Ms C were divorced. Moreover, as it was incorrect for Mr S to have applied for the Death Grant as Ms C's legal spouse, it had believed that this was "the start of a fraudulent claim".
89. If Mr S and Ms C had been living together as husband and wife, Ms C could have completed the Survivor's Pension Nomination Form to show that a cohabiting partner's pension should be paid to Mr S on her death.
90. The Survivor's Pension Nomination Form was mentioned in: (a) its newsletter; (b) its website; and (c) the national LGPS website. On the balance of probabilities, Ms C was most likely aware of this form. She did not complete it as she and Mr S were "not cohabiting or conducting themselves as husband and wife".
91. Ms C used part of her salary to fund the business. This showed that Mr S was financially dependent on her. However, there was no evidence to demonstrate that she was financially dependent on him.
92. According to Companies House, the business has now been dissolved. This also indicated that financial dependency was only on Mr S' side.
93. The joint Costco account was most probably used by Mr S and Ms C for business and not personal purposes.
94. The transactions shown on Mr S' personal current account statements for payments to and from Ms C were also most likely business related.
95. Mr S' flat was not a jointly owned significant asset with Ms C. So, while her name was recorded as a joint landlord on the tenancy agreement, this did not meet the criteria for financial dependency, especially when there was no evidence of any monthly rental income from Mr S' flat being paid into Ms C's bank account.
96. Some of the evidence provided by Mr S was significantly out of date and did not meet "the two year criteria".

97. The Will showed that Ms C's children should inherit Ms C's house, so Mr S clearly had no financial interest in it. The Will also provided "strong evidence of Ms C's state of mind and how she wanted her assets, including pension benefits, distributed on her death".
98. The witness statements provided by Mr S' sister, former neighbours and a friend do not give "definitive insight" into the relationship between Mr S and Ms C or that they were living together as husband and wife.
99. It also said that:

"It is apparent that whilst Mr S believes he meets the criteria for a cohabiting partner's pension, the facts do not support that view. There was no cohabiting partner nomination held in his name. He was not named in Ms C's will, or as an executor of the estate, or on the death certificate (nor did he contribute we understand towards any funeral costs) which does not, in our view, fall into the role or position that we would expect a "husband" to fulfil.

Taking a balanced view, it is still our view that insufficient evidence exists of co-habitation or financial dependency/interdependency as defined under the LGPS Regulations, other than a number of business arrangements that clearly existed between Mr S and Ms C".

## **Conclusions**

100. There are two parts to Mr S' complaint which I shall deal with separately.

### *The Death Grant*

101. The first concerns the Council's decision in how the Death Grant (i.e. the lump sum) available from the LGPS on Ms C's death was distributed. Mr S believes that the Council should have distributed the Death Grant in accordance with the Death Grant Nomination Form, and in not doing so, it had disregarded Ms C's wishes prior to her death.
102. Most pension schemes provide for lump sum death benefits to be distributed at the discretion of the appropriate decision maker of the particular scheme to one or more of a range of beneficiaries. This long-standing practice is designed to avoid benefits becoming part of the deceased's estate and so being taken into account for inheritance tax purposes. But it can present the decision maker with difficult decisions in sad circumstances which sometimes involve family conflict.
103. The definition of who might be a beneficiary may be cast very widely, making it difficult for the decision maker to ascertain all the potential beneficiaries or to be aware of the needs and financial status of all of them.
104. My role is to consider whether the process that the Council, as the appropriate decision maker, followed in exercising its discretion was reasonable. There are some well-established principles which a decision maker is expected to follow.

105. Briefly, it must take into account all relevant matters and no irrelevant ones. The decision maker must not make a perverse decision - that is one which no reasonable decision maker, properly directing itself, could arrive at in the circumstances. If I am not satisfied that the decision has been taken properly, I can ask the decision maker to look at the matter again. However, I will not usually replace the decision with one of my own or say what the subsequent decision should be.
106. A decision maker must consider and weigh all the relevant evidence, but the weight to attach to any piece of evidence is for the decision maker to decide. In fact, a decision maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement is that the evidence is considered.
107. Regulation 40 of the LGPS Regulations stipulates that the Council has the power to pay the Death Grant to any of the surviving spouse, children, dependents, relatives, personal representatives or nominated beneficiaries at its discretion.
108. In Ms C's case, she nominated Mr S to receive the Death Grant. I note that this nomination was made in 2017, while Ms C died in 2021. A will was also made by Ms C in the intervening period. Nonetheless, it was for the Council, under the discretion provided in the LGPS Regulations, to decide to who, and in what proportions, to pay the Death Grant to.
109. The Council was required to identify all potential beneficiaries and then collect sufficient information about their personal and financial circumstances to put itself in a position to make a decision about who to pay the benefit to. The level of enquiry which is appropriate may vary depending on the facts and circumstances of the case. In more complicated cases, a higher level of enquiry may be appropriate.
110. The Council had to ask itself if there were any reasons why it should not award the Death Grant to Mr S and determine whether there were any other parties who had not been nominated and might have been deserving of this benefit.
111. So, the Council had to investigate Ms C's family background carefully before deciding, fairly and reasonably, who should receive the Death Grant. It was important that all the relevant facts were established. This might involve an investigation of the deceased's domestic personal and financial situation, as well as that of any potential beneficiaries. It might also be necessary to check what other financial provision, for example by the deceased's will, had been made and in whose favour.
112. Mr S does not dispute that he and Ms C were divorced in 2012, but says that they conducted themselves as husband and wife after they reconciled in 2013. However, as they did not remarry, in the eyes of the law, they remained divorced during the period up to Ms C's death in March 2021. This is the case regardless of how long they remained together, their living arrangements or whether or not they had children together.
113. Consequently, when Ms C completed the Death Grant Nomination Form and Mr S later completed the Death Grant Claim Form, in September 2017 and May 2021



respectively, I consider that it was not correct or appropriate for them to have declared they were husband and wife.

114. I acknowledge Mr S' view that the Council had not given effect to Ms C's wishes by not following the Death Grant Nomination Form. However, the Council was under no obligation to do so. It had been considered, but after that it was for the Council to decide how much weight to attribute to the provisions on the Death Grant Nomination Form, including none at all, reflecting the passage of time and change in circumstances since it was completed.
115. For example, when considering the Death Grant Nomination Form, it is clear to me that the Council gave weight to the fact that both Ms C and Mr S had failed to disclose the correct legal status of their relationship when deciding the recipient(s) of the Death Grant. In the Council's view, their failure cast doubt on the validity of the wishes expressed by Ms C and the subsequent application made by Mr S.
116. I can understand why Mr S and Ms C informed the Council that they were husband and wife on the forms given how they considered their relationship. Regrettably, this has not helped Mr S' cause.
117. There was a range of possible ways in which the Council could have exercised their discretion to award the Death Grant. Given the range of discretion, and provided the correct process was followed, there was unlikely to be only one answer that was to be regarded as "right" with all others being wrong.
118. In this case, having reviewed the steps taken by the Council in arriving at its decision, I am satisfied that:-
- 118.1. It had acted in accordance with the LGPS Regulations in exercising its discretion.
- 118.2. It had considered all the relevant beneficiaries for the distribution of the Death Grant and followed a reasonable decision making process.
- 118.3. It had considered all of the relevant evidence and not any irrelevant factors.
- 118.4. It had asked itself the correct questions and arrived at an outcome, in a proper manner that cannot be said to be unreasonable or perverse.
119. However, I consider that the Council failed to inform Mr S in a timely manner that his application for the Death Grant was unsuccessful. I find the Council's reasons for not doing so, as set out in paragraph 88 above, to be unacceptable.
120. When exercising any discretion, the Council must set aside any moral or other prejudices. It should have informed Mr S of its decision as soon as possible regardless of any concerns that his application might have been made fraudulently. The Council's failure to notify Mr S of its decision in good time meant that he was denied the opportunity to challenge it under IDRP.

121. I find that this failure represented maladministration on the Council's part which has caused Mr S significant distress and inconvenience.
122. When deciding whether to direct an award for distress and inconvenience, I assess each case on its facts and merits. Similar complaints should, however, result in consistent and broadly comparable awards.
123. Furthermore, my awards for non-financial injustice are modest and not intended to 'punish' a respondent.
124. Having carefully considered the submissions and evidence, I find that the degree of non-financial injustice which Mr S has suffered because of the maladministration identified above is significant enough to merit my minimum award of £500 from the Council.
125. So, I find that the first component of his complaint should be partly upheld and I make the appropriate direction below.

*Cohabiting partner's pension*

126. I shall now turn to the second part of Mr S' complaint, that is, the Council had also incorrectly decided not to award him a cohabiting partner's pension from the LGPS.
127. The procedural requirements for unmarried cohabitants claiming survivor benefits in the LGPS Regulations were designed to ensure that the existence of a genuine cohabiting relationship could be established in an objective manner.
128. So for a cohabiting partnership to be valid, Mr S needed to provide the Council with evidence at Ms C's date of death of long-standing cohabitation and financial interdependence, that is:-
- 128.1. Cohabitation had been continuous for at least two years prior to Ms C's date of death.
- 128.2. Both he and Ms C were, and had been, free to marry each other or enter into a civil partnership with each other.
- 128.3. Both he and Ms C had been living together as if they were husband and wife or civil partners.
- 128.4. Neither he nor Ms C had been living with someone else as if husband or wife or civil partners.
- 128.5. Either he was financially dependent on Ms C or he and Ms C were financially interdependent upon each other.
129. I consider that the evidential hurdle which Mr S had to face was legitimate and proportionate, and allowed the Council to test whether Mr S met the requirements of the LGPS Regulations.

130. In June 2021, the Council asked Mr S for confirmation that he had lived in a shared household with shared household spending. It said that if he could provide a Council tax bill, joint bank account statements or utility bills showing both his and Ms C's names from over two years ago and within the last few months prior to Ms C's death, this should be adequate to prove cohabitation.
131. Regrettably, as a consequence of the way in which Mr S and Ms C shared their financial commitments, Mr S was unable to demonstrate to the Council that he met all of the requirements at the time of Ms C's death. The Council consequently informed him in August 2021 that he was not entitled to a cohabiting partner's pension from the LGPS. However, it said that it was willing to review his application on receipt of additional evidence (and, in my view, recognising the burden that fell on Mr S to obtain evidence at what must have been a very difficult time for him, the Council is to be commended for its willingness to consider further evidence and its openness to reviewing the position).
132. When Mr S subsequently provided additional evidence of his relationship and financial affairs with Ms C through his solicitor, the Council reviewed its decision in December 2021. After considering the new information together with the original evidence, the Council informed Mr S that he now met three (rather than two) of the four requirements for a cohabiting partner's pension to be paid under the LGPS Regulations. However, for Mr S to show financial interdependence on a personal level, it said that he would need to supply evidence that was not business related.
133. Mr S was unhappy with the Council's decision. However, his complaint was not upheld at both stages of the IDR by the Council because he did not provide any new evidence of financial interdependency.
134. During the course of TPO's investigation, Mr S submitted further evidence which he believed demonstrated his financial interconnectivity with Ms C. In particular, he provided: (a) statements for his personal current account showing several payments to and from Ms C made during the two years prior to her death; (b) a joint Costco account opened in January 2020; and (c) a tenancy agreement for his flat showing that he and Ms C were joint landlords and their home address was the address shown on the Death Grant Nomination Form.
135. Mr S could be financially dependent on Ms C if she had the highest income and his own income was insufficient for him to maintain the same standard or similar standard of living as when he and Ms C lived together. Financially interdependent could mean that Mr S and Ms C relied on their joint finances to support their standard of living.
136. However, essentially for the same reasons given above by the Council, I agree that despite this additional information submitted by Mr S, there was still inadequate evidence to demonstrate clear financial dependency or financial interdependency between him and Ms C.

137. Cohabitation or living together confers no legal status alone for the purposes of payment of the cohabiting partner's pension. More generally, the rights of cohabiting couples are restricted and are limited when it comes to financial claims. These limitations still stand even when they have children or have lived together for many years. However, cohabiting couples could draw up a cohabitation agreement setting out their plans relating to financial outgoings and any property while living together as well as what should happen if one of them fell ill, died or the relationship ended.
138. Regrettably, I have seen no evidence that Mr S had formalised aspects of his status with Ms C, for example by entering into such a contract outlining the rights and obligations of each partner towards each other. If he had done so, then there would be clear evidence and there would not now be a dispute over his cohabiting partner status.
139. Under regulation 41 of the LGPS Regulations, Mr S would be entitled to a pension from the LGPS following Ms C's death if the Council decided that he qualified as an eligible cohabiting partner.
140. In this case I have considered whether: (a) the applicable scheme rules or regulations have been correctly interpreted; (b) appropriate evidence had been obtained and considered; and (c) if the Council's decision was supported by the available relevant evidence.
141. If I found that the decision-making process was flawed, or that the decision reached by the Council was not supported by the evidence, in most circumstances I would remit the decision to the Council to reconsider. However, in this case I am satisfied that a proper process has been followed and that the evidence gathered is sufficient to support the decision reached.
142. When the Council reviewed its decision in December 2023, it concluded that Mr S had a "casual" relationship with Ms C based chiefly on a witness statement it had obtained from Mr D and Ms D. So, in the Council's view, Mr S no longer met the criterion that he and Ms C had been living together as if they were husband and wife although this made no difference to the overall outcome, as financial interdependency, one of the other key hurdles in the LGPS Regulations, had still not been evidenced.
143. Mr D and Ms D did not live at the address shown on the Death Grant Nomination Form and did not provide any evidence to substantiate their statement. In my view, on that statement alone, it would be unreasonable to depart from the Council's initial view that Mr S and Ms C were living together as a married couple. However, as I set out above, that does not mean that the overall decision is wrong, as financial interdependency (or dependency) had not been established.
144. Therefore, I am satisfied that the Council gave proper consideration to Mr S' application on each previous occasion by assessing all the relevant evidence available at the time and that it acted in accordance with the LGPS Regulations and the principles outlined in paragraph 140 above. So, I find that the Council's decision

CAS-92836-R6B0

not to award Mr S a cohabiting partner's pension from the LGPS was supported by the available evidence and within the bounds of reasonableness.

145. Although I fully sympathise with Mr S' circumstances, I do not find that the evidence supports a finding of maladministration by the Council in how it reached its decision.

146. I do not uphold the second part of Mr S' complaint.

## **Directions**

147. Within 21 days of the date of this Determination, the Council shall pay Mr S £500 in recognition of the significant non-financial injustice which he has suffered because of its failure to inform him in a timely manner that his application for the Death Grant had been unsuccessful.

**Dominic Harris**

Pensions Ombudsman  
23 February 2024

## **Appendix**

### **Regulation 40 of the LGPS Regulations**

“40. Death Grants : active members

40 (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.”

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### **The definition of “cohabiting partner” in the LGPS Regulations**

“cohabiting partner” means a person whom the appropriate administering authority is satisfied fulfils the following conditions:

(a) the person (P) has fulfilled the condition in paragraph (b) for a continuous period of at least 2 years on the date the member (M) died, and

(b) the condition is that:

- (i) M is able to marry, or form a civil partnership with P,
  - (ii) M and P are living together as if they were husband and wife or as if they were civil partners,
  - (iii) neither M nor P is living with a third person as if they were husband and wife or as if they were civil partners, and
  - (iv) either P is financially dependent on M, or M and P are financially interdependent
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### **Regulation 41 of the LGPS Regulations**

“41. Survivor’s benefits : partners of active members

41(1) If an active member dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member’s death.

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