

## Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme (the <b>Scheme</b> )
Respondent	Pensions Shared Service - London Borough of Camden ( <b>Camden Council</b> )

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by Camden Council.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N says Camden Council led him to believe that he would receive 50% of the total death grant due from the Scheme following the death of his cousin. But instead Camden Council paid it to the estate.
4. Mr N says Camden Council appears to have been unduly influenced by inaccurate statements made about him by the personal representative, the main beneficiary of the estate.

## Background information, including submissions from the parties

5. Regulation 40 of the Local Government Pension Scheme Regulations 2013 says:

“**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”.
6. The ‘appropriate administering authority’ in this case is Camden Council. It has delegated the power to exercise discretion under regulation 40 to the Director of Finance.

7. On 30 June 2005, Mr H, Mr N's first cousin, made a Will leaving 5% of his residual estate to Mr N with the remaining 95% to Ms S, the Executor and Trustee of his Will.
8. On 27 June 2015, Mr H passed away. The death grant payable on his death amounted to £73,674.
9. Pensions Shared Service, who administer the Scheme for Camden Council, says Mr H did not complete a death grant nomination or make any statements indicating how he wanted the death grant to be distributed.
10. On 11 December 2015, Ms S asked for 95% of the death grant to be paid to her and 5% to be paid to Mr N. She said that she thought they should share the death grant in the same proportion as in Mr H's Will, as he had made his wishes about his estate clear in his Will.
11. Ms S said that she and Mr H had remained close friends since meeting at university in 1967, and as he had no close relatives, he had been 'semi adopted' into her family. She said that when she spoke to Mr N after Mr H's funeral, he did not seem to know that Mr H had a problem with his balance, which began in 2010. This suggested that Mr N had not seen Mr H for some time.
12. On 9 January 2016, Mr N asked for 70% of the death grant to be paid to him on the basis that he believed he was Mr H's closest living relative. He said he wanted the balance paid to Mr H's estate.
13. Mr N says when he was asked his views on how the death grant should be distributed, he contacted Camden Council and was told that the lump sum would usually be split in equal proportions. Consequently, he expected it to be shared equally.
14. Pensions Shared Service says it is unable to find any evidence to support that Mr N was informed by its staff that the death grant would be split equally.
15. On 20 January 2016, Pensions Shared Service informed Mr N that Ms S had proposed that the death grant be shared - 95% to her and 5% to him. He was asked to explain the reasons for his proposal. Pensions Shared Service said that [Camden] Council had absolute discretion to decide the distribution and had the option to pay the entire death grant to Mr H's estate. Pensions Shared Service said that it was intending to present the case to the trustees for a final decision by 31 March 2016.
16. On 24 January 2016, Ms S emailed Mr N saying that it was clear that they had made very different proposals on how the death grant should be shared. She suggested that they propose that it be shared equally between them rather than paid to the estate. She asked him to confirm his agreement.
17. On 19 February 2016, Mr N replied saying that having considered her suggestion, he did not agree with it. He said that her proposal seemed wrong to him.

18. Mr N says, Ms S seemed to be suggesting that she could decide how the death grant could be distributed. He had a bad feeling about it and did not trust her motives. While he would have been happy for it to be shared equally, he felt that it would be either immoral (or illegal) for them to come to an agreement. And he did not know whether it would be honoured by Camden Council.
19. On 10 March 2016, Mr N wrote to Pensions Shared Service saying that Ms S had contacted him but he had not made any agreement with her. He confirmed that he did not want to change his proposal for the split. He said that 70%, or even the entire death grant, should be paid to him as Mr H's cousin and closest living relative. He said that it seemed to him that Mr H did not want the death grant paid to his estate as he did not make any such provisions in his Will, or make a nomination. Mr N said that when he was growing up, Mr H was always around and was like a brother to him. After Mr H's parents died, they lost contact for a short time but remained in regular contact until his death.
20. Mr N provided copies of emails he exchanged with Mr H prior to 2012, in which they make arrangements to meet socially.
21. On 28 July 2016, the Pensions Manager sent a memo to the Director of Finance. He stated the amount of death grant payable on Mr H's death, and confirmed that he had not completed a death grant nomination form. He said that Mr N had asked to be considered for 70% of the death grant, and that Ms S had initially asked for 95% but had later said that an equal share would be acceptable to her. The Pension Manager said:

“[Ms S] can only receive a payment in respect of her capacity as an executor of the Estate as she is not a relative or nominee.

If we accept that both [Mr N and Ms S] maintained a relationship with [Mr H] to his death and in view of the provisions he made in his Will where both are provided for, **I recommend that the death grant is shared as follows: 45% direct to [Mr N] and 55% to the Estate. Please confirm your agreement.**”
22. The Director of Finance replied saying that the main issue was the relative weight to give to the competing claims from Mr N and Ms S. He said that he was more inclined to give greater weight to Mr H's wishes as expressed in his Will.
23. On 9 August 2016, the Pensions Manager advised that while the Will was relevant, it was not binding on Camden Council. He said that Ms S had indicated that an equal split would be satisfactory but that was not her preference. He said that it may be helpful to contact Mr N about the option of sharing the death grant equally. He said that Camden Council was limited to paying the death Grant to Mr H's personal representatives, relative or dependant. And that it could only consider Ms S in her role as the executor of the estate. He said that taking all the circumstances into consideration, it would also be reasonable to share the death grant equally. But case law did not prevent him from giving preference to the estate.

24. On 10 August 2016, The Director of Finance replied saying that he thought 100% should be paid to the estate.
25. On 12 August 2016, Pensions Shared Service notified Mr N that, after careful consideration of the circumstances, [Camden] Council had decided to pay the entire death grant to the personal representative of Mr H's estate.
26. Mr N says that Pensions Shared Service informed him on 20 January 2016, that a final decision about the death grant would be made by 31 March 2016, but he was not notified of the decision until August 2016.
27. Mr N says he has noted that the Pensions Manager recommended to Camden Council that 45% of the death grant should be paid to him. But after Ms S said that he had refused her suggestion, that they share it equally, Camden Council then decided to pay the entire death grant to the estate. This implies that had he agreed the '50/50 split', Camden Council would have offered it. Mr N says Camden Council "gave prominence and credibility to the '50/50 split', and let it influence [its] decision". He questions whether it was appropriate for Camden Council to have acted in this way.
28. On 26 August 2016, in response to an enquiry from Mr N about the decision to pay the death grant to the estate, Pensions Shared Service said that Camden Council considered it to be a reasonable choice, as it reflected Mr H's wishes and provided portions to the beneficiaries of his estate.
29. Mr N says that Camden Council allowed the option of a '50/50 split' to overly influence their decision making. Some of Ms S' statements to Camden Council were not truthful and tended to play down his relationship with Mr H, these also seem to have influenced Camden Council.
30. On 10 October 2016, Mr N complained to Pensions Shared Service that he had not been given any reasons for the decision to pay the death grant to the estate. He said that it had not explained why the decision was delayed. Mr N said that he did not think it had properly considered the points he had raised in his letter of 10 March 2016. He said that Pensions Shared Service had not kept him updated, did not contact him when promised, and had not replied to an email he had sent on 6 July 2016, asking for an update.
31. Camden Council disputes that a problem has occurred and that Mr N has been disadvantaged as a result. It says that it has seen no evidence to support that Mr N and Mr H were particularly close or that he was financially dependent on Mr H. But it has seen evidence of the type of relationship that is not uncommon between cousins. In the absence of a specific nomination, Mr H's Will provided by far the clearest indication as to how he wanted his estate distributed. By paying the death grant to the estate it has given effect to that decision.
32. Mr N considers that redress of £36,830 - equivalent to 50% of the total death grant, would be reasonable compensation.

## **Adjudicator's Opinion**

33. Mr N complaint was considered by one of our Adjudicators who concluded that no further action was required by Pension Shared Services (Camden Council). The Adjudicator's findings are summarised briefly below:-
- Where the payment of a benefit is discretionary, the decision maker can choose which recipient(s) to pay it to. They are not bound by either the member's Will or the member's wishes (if any).
  - It is for the decision maker to decide how much weight to attach to any piece of evidence submitted by the potential beneficiaries. The only requirement is that the evidence is considered.
  - A Pensions Ombudsman would only seek to interfere where there is evidence that the decision maker has taken into account an irrelevant factor, ignored a relevant one, otherwise misdirected itself, or reached an unreasonable decision.
  - The decision made in this case was one that was within the range of reasonable decisions open to Camden Council.
34. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided his further comments but these do not materially change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

## **Ombudsman's decision**

35. Mr N says that Camden Council gave undue consideration to the '50/50 split' in its decision making process, misdirected itself by taking account of incorrect statements about his actions, and clearly let this error influence its decision making.
36. Mr N says an option for potential beneficiaries 'to strike a deal' is not part of Camden Council's process for discretionary death benefits. But Camden Council allowed it to happen in this case. He believed that any private agreement with Ms S concerning the death grant, would be immoral (and possibly illegal) and could be used to discredit him.
37. Contrary to Camden Council's assertion, he was not against the death grant being shared equally. But he did refuse to 'connive' with Ms S and come to a private agreement. It now seems that if he had agreed to Ms S' suggestion, Camden Council would have honoured it. But it did not make him aware of this at the time.
38. Firstly, I agree with the Adjudicator that Camden Council's decision in this case was within the range of reasonable outcomes available to it. The key question for me to answer is whether it followed a correct process in arriving at the decision. I am satisfied that it did.

39. Camden Council had absolute discretion to pay out the death grant to any category of person(s) as defined in the applicable regulations. I find that it asked the correct questions necessary to decide who the potential beneficiaries were. And that it considered representations from the potential beneficiaries: Mr N and Ms S.
40. The fact that neither Mr N nor Ms S were dependent on the deceased is not in dispute. There is no evidence to support that Mr H made a valid death grant nomination indicating how he would have liked the death grant distributed. But Mr H did make a Will.
41. In the absence of any explicit nomination, or statements expressing his preference, Mr H's Will likely provided a good indication of his wishes.
42. It is evident that Camden Council placed greater weight on Mr H's Will than the representations of the potential beneficiaries. But this is not wrong because it was for Camden Council, as the decision-maker in this case, to decide how much weight (if any) to attach to any piece of evidence. I am not persuaded that it was unduly influenced by representations made by Ms S.
43. In conclusion, I am satisfied that Camden Council followed a correct process in arriving at its decision in this case. Therefore, I do not uphold Mr N's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
19 October 2017