

Ombudsman's Determination

Applicant	Mr Y
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Greater Manchester Pension Fund (GMPF)

Outcome

1. Mr Y's complaint is upheld and to put matters right GMPF should consider wholly afresh whether the death grant should be paid to the Estate. GMPF should also pay Mr Y £500 to recognise the distress and inconvenience caused to him.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y disagrees with the decision of the GMPF not to award him and his wife the death in service benefit following the death of his son, and the decision to award the death grant to the Estate.

Background information, including submissions from the parties

4. Mr DY (the member of the LGPS) died on 17 March 2016. On 21 January 2016, Mr DY made a Will. It gives provision for the repayment of debts to his parents and the residual of the estate to be split as two thirds to his niece and nephews and the remaining third to his ex-partner, Ms CY.
5. On 23 March 2016, Mr Y wrote to GMPF informing it of Mr DY's death. With this letter was a copy of the death certificate and Will. Mr Y identified himself as the next of kin and executor of the Estate.
6. On 15 April 2016, GMPF receive a completed "Death grant information form" (the **Form**) from Mr Y. The Form indicated that there was no spouse, partner or children of the deceased, but Mrs Y as the next of kin. In the box "Additional information – if there is any other person, information or significant event that we should consider to help us make a decision about payment of the lump sum death grant please provide details below", Mr Y only provided details of an AVC and possible transfer into the LGPS.

7. GMPF said it made the decision to award the death grant to the Estate on 6 May 2016. Mr Y was informed of the decision on 16 May 2016 (it is not clear what this decision was based on, so it is assumed that this is the Form and Mr DY's Will):

"Where no nomination has been made and there is no surviving spouse, civil registered partner or eligible co-habiting partner (or there is but the couple were separated at the time of the member's death), payment of the death grant should normally be made in equal shares to any known issue (ie. children of the deceased regardless of their ages). Otherwise payment will normally be made to the deceased's personal representatives (in that capacity).

As you are aware, your son did not make a nomination naming who he would like to receive the death grant. We have therefore used our discretion and have decided to pay the death grant to your son's estate."

8. Mr and Mrs Y were unhappy with this decision and their solicitor wrote to GMPF on 25 May 2016. Their argument against paying the benefit to the Estate was that they did not want Ms CY to benefit from the death grant. They also did not believe Mr DY was aware of the substantial amount payable following his death (and therefore would have made his Will differently). They asked that the death grant be paid to Mr DY's niece and nephews. GMPF said that it considered this letter as part of its review, in particular: the points raised about Mr DY and Ms CY's relationship at the time of death; the amount of the death grant and that this was provided to Mr DY in his annual statement in August 2015; and that Mr DY was clearly thinking about his future and his benefits as he had asked for information in November 2015. No reference is made in the response provided to this service as to whether or not Mr DY's niece and nephews were also considered as potential beneficiaries.
9. Following this, GMPF requested further information in relation to Ms CY and whether or not she should be considered as a potential beneficiary. Ms CY returned a completed Form and gave details explaining that she did not believe that she was entitled to either a co-habiting partner's pension or the death grant.
10. GMPF said it made the decision to uphold its original decision to pay the death grant to the Estate on 17 August 2016, although it has not said who made the decision or in what capacity. Mr Y was not informed of the decision until 2 November 2016. This letter did not explain how the decision was reached.
11. GMPF have submitted that Mrs Y telephoned it on 7 November 2016 to say she was unhappy with the decision to pay the death grant to the Estate. She also asked GMPF to ignore the solicitor's request to pay an amount to her grandchildren (Mr DY's niece and nephews).
12. In a letter to GMPF on 14 November 2016, Mr and Mrs Y explained that they were unhappy with the decision, mainly in that they still disagreed that by paying the Estate, Ms CY would receive a benefit. They also asked that the death grant be paid

to them, in order for them to make charitable donations. This letter was considered under Stage 1 of the internal dispute resolution procedure (**IDRP**) (via a letter on 13 January 2017), which did not uphold the complaint. In this, GMPF provided details of the relevant regulations (see Appendix I) and explained that:

- it was satisfied that Mr DY was aware of his death in service benefits prior to his death;
 - that Mr DY's relationship with Ms CY was the same as it was at the time he signed the Will and at his death;
 - it concluded that Mr DY was of sound mind when he made the Will and therefore it believes his wishes were made clear in that document; and
 - because no "significant event" had occurred between the signing of the Will and Mr DY's death, the decision remained that the death grant should be paid to the Estate.
13. Mr and Mrs Y asked for the complaint to be considered under Stage 2 of the IDRP on 20 February 2017. In this request, they again made it clear that they were unhappy that Ms CY would benefit from the death grant and clarified that they would not donate the full death grant to charity.
14. GMPF provided a Stage 2 IDRP decision on 5 April 2017, which did not uphold the complaint, essentially for the same reasons as previously given. Mr Y remained unhappy with this and, following advice from the Pensions Advisory Service, made a complaint to this service.

Adjudicator's Opinion

15. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by GMPF. The Adjudicator's findings are summarised briefly below:-
- The Adjudicator set out the legal principles to be considered when exercising discretion and that the Ombudsman would only involve himself in the exercising of that discretion if the decision making process was flawed. The Adjudicator felt that the legal principles had not been followed and therefore GMPF needed to reconsider its decision. The Adjudicator also felt that Mr Y should receive £500 to recognise the distress in having to make a complaint following the death and bereavement of his son;
 - The Adjudicator's view was that the decision process was flawed in four ways. First, the LGPS Regulations 2013 state that the administering authority should, when exercising its discretion, pay the death grant to a "member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member". While GMPF used its internal guidance

(see Appendix II) to reach its decision, it failed to consider the point in regards to claims brought by relatives. GMPF were made aware when Mr Y first contacted it that he was the next of kin. It was also aware on receiving a copy of Mr DY's Will that other relatives, his niece and nephews, were also beneficiaries of the Estate. However, it does not appear that at any time during the process did GMPF consider any of these relatives of Mr DY as potential beneficiaries. Therefore, the Adjudicator's view was that GMPF had not correctly applied the relevant regulations in relation to the death grant;

- Second, GMPF had not questioned whether or not the niece and nephews of Mr DY had a claim to the death benefit, even though they were also identified as beneficiaries in the Will. GMPF used the Will as the reason behind its decision to pay the benefit to the Estate, in that it represented Mr DY's last wishes. However, in deciding to take the Will into account in the decision making process, it failed to fully consider all of the details of the document – only the parts that Mr Y had objected to. Therefore, the Adjudicator's view was that GMPF did not explore the option of potential beneficiaries far enough and so failed to ask itself the correct questions, or to take account of all relevant factors;
- Third, while Mr Y's reasons for not wanting the death grant to be paid to the Estate are questionable, GMPF also made no attempt to establish whether Mr (or Mrs) Y could be beneficiaries in their own right. No questions were asked about their financial situation (including, for example, the details surrounding the loans mentioned in the Will) or any other reasons why the death grant should be paid to them, as the next of kin. The Form cannot be wholly relied on as to what Mr Y was seeking in terms of the death grant – GMPF have a responsibility to consider any potential beneficiary, as set out in the relevant regulations; and
- Fourth, that GMPF had not followed its own internal guidance. The guidance allows for the Executive Director to make a decision if there is an objection by an interested party. In Mr Y's case, it does not appear that his objection was considered by the Executive Director

Ombudsman's decision

16. Mr Y agreed with the Adjudicator's Opinion and GMPF did not respond. Therefore, I agree with the Adjudicator's Opinion.

Directions

17. Within 28 days of the date of this Determination:

- GMPF reconsider its decision to pay the death grant to the Estate. In making its decision, it must take into account the correct legal principles. When conveying the decision to Mr Y (and any other potential beneficiaries), it needs

to state the reasons for the decision, what regulations were used in making that decision, who made the decision and what information was taken into account to make that decision. If there are any outstanding queries, GMPF need to request these from the relevant parties before making its decision; and

- pay Mr Y £500 to recognise the distress and inconvenience he has suffered.

Karen Johnston

Deputy Pensions Ombudsman
19 October 2017

Appendix I

Local Government Pension Scheme Regulations 2013

Survivor Benefits

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 body 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 of dependent of the member.

Appendix II

Administering Authority Discretions – November 2016

‘Discretions’ is taken to include where the administering authority is required to do something but an element of choice exists as to how it is done. Unless stated otherwise, the discretions arise from the Local Government Pension Scheme Regulations 2013.

...

3. Payment of death grant

Our guidelines for the payment of a death grant are as follows:

- (a) Where a nomination has been made, payment of the death grant should normally be made to the nominee(s). However where a significant event has taken place since the nomination was made, eg. a marriage, divorce or separation, then this is to be taken into account.
- (b) Where no nomination has been made and the deceased had one immediate family (ie. a spouse or partner with or without children), payment of the death grant should normally be made to the deceased’s surviving spouse, civil registered partner or cohabiting partner, except where the couple were separated at the time of the member’s death.
- (c) Where no nomination has been made and the deceased had an immediate family (ie. a spouse, civil or cohabiting partner who were not separated at the time of the member’s death, with or without children), and had children from a previous relationship, preference will normally be given to where dependence on the deceased was greatest. The death grant may be split between two or more beneficiaries.
- (d) Where no nomination has been made and there is no surviving spouse, civil registered partner or cohabiting partner (or there is but the couple were separated at the time of the member’s death), payment of the death grant should normally be divided in equal shares to any known children of the deceased, regardless of their ages.
- (e) Otherwise payment will normally be made to the deceased’s personal representatives (in that capacity).
- (f) Where the Executive Director – Governance Resources and Pensions considers that the normal practices described in (a) to (e) are inappropriate, impossible or is or may be subject to objections by interested parties e.g. because:
 - 1. there is evidence that the nomination may not have represented the deceased’s wishes immediately before death; or
 - 2. because the nominee is no longer alive or cannot be traced, or because no personal representative can be identified; or
 - 3. because representations have been received from or on behalf of potential beneficiaries requesting a different treatment; or
 - 4. for other reasons,

PO-17599

he/she may determine on his/her own authority how the death grant should be distributed among potential beneficiaries (including nominees and personal representatives). Prior to so determining he/she may invite claimants to consider if they can propose a mutually satisfactory settlement.