

## Ombudsman's Determination

Applicant	Mrs H
Scheme	West Yorkshire Pension Fund ( <b>the Fund</b> )
Respondents	City of Bradford Metropolitan District Council ( <b>Bradford</b> )

## Outcome

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

## Complaint summary

3. Mrs H's complaint is about how the Fund distributed the death grant payable on the death of her husband Mr H, and the level of service that she received from the Fund.

## Background information, including submissions from the parties

4. In 1999 Mr H and his wife Mrs H adopted two daughters, Miss C who was born in 1993 and Miss E who was born in 1998. Miss C lived with Mr H and Mrs H until 2004, when she was fostered outside the family because her relationship with Mr H and Mrs H had broken down. Miss C later had her own children, but Mr H never met them. Meanwhile, Miss E continued to live with Mr H and Mrs H.
5. Mr H was a member of the Fund, part of the Local Government Pension Scheme (**LGPS**). Bradford is the administering authority in respect of the Fund.
6. In 2001 Mr H completed a death grant nomination form (**Nomination Form**), nominating Mrs H to receive 100% of the death grant payable from the Fund if he were to predecease her.
7. On 28 April 2016 Mr H's employment was terminated after an investigation into his behaviour at work. He then became a deferred member of the Fund.
8. On 28 July 2016 Mr H wrote to the Fund to ask for details of his cash equivalent transfer value for the purposes of proposed divorce proceedings; he said that a house purchase for Mrs H and Miss E was ongoing.

9. In August 2016 Mr H was admitted to hospital. Sadly, he died on 3 September 2016, aged 53. Mrs H and Miss E were present when he died. Mrs H made all the funeral arrangements. Miss C did not attend the funeral.
10. Under regulation 43 (see **Appendix** hereto) of the Local Government Pension Scheme Regulations 2013 (**the Regulations**) a death grant became payable by Bradford.
11. On 14 October 2016 Mrs H phoned the Fund to find out how her death benefit claim was progressing. She expressed the view that Miss E should receive more money than Miss C.
12. In a letter to Mrs H dated 9 November 2016, the Fund queried whether Mr H would have changed his Nomination Form as he was in the process of getting divorced. The letter said that "We also understand that you were separated from Mr [H] when he died and are now living with someone else."
13. A close friend of Mr H emailed the Fund on 12 November 2016 to say that its letter was inflammatory, and that they would challenge any decision that did not honour the Nomination Form.
14. On 14 November 2016 Mrs H complained that the Fund's letter was inaccurate and had appalled her: she said that she and her husband were not separated, and they were still cohabiting; her petition for divorce was an attempt to make Mr H deal with his financial and drinking problems. She also said that Miss C had to be placed with foster carers from the age of 11 and had fallen out with the rest of the family. Mrs H also complained that the Fund had not shown any empathy or sent its condolences.
15. On 17 November 2016 Mrs H made a formal complaint that the Fund had failed to inform her of the amount of the death grant, had failed to give her a timescale for making payment, and had failed to keep her updated on progress made.
16. The Fund replied on 24 November 2016. It apologised for the distress caused to Mrs H, saying that Mr H's letter of 28 July 2016, which mentioned proposed divorce proceedings, had implied to it that Mr H and Mrs H had separated. The Fund explained that under the Regulations it had an absolute discretion over whom to pay the death grant. It queried whether Mr H would have rethought his earlier nomination in order to include his two daughters. The Fund said it hoped to make a final decision within two weeks.
17. In a letter dated 29 November 2016 Mrs H noted the apology. She was aggrieved that the Fund had spoken to Miss C, who had been estranged from the family for many years, but not to Miss E; she thought Mr H would not have rethought his nomination as his relationship with Miss C was virtually non-existent until a few days before he died, and Miss E was a vulnerable adult unable to look after her own money (the Jobseekers Allowance that she had been awarded was paid into Mrs H's bank account).

18. On 9 December 2016 the Fund said that it was gathering information from third parties and was hoping to give its final decision during the following week.
19. On 13 December 2016 the Fund said that it should be able to give its final decision later that week or the next week.
20. On 16 December 2016 the Fund told Mrs H that it had spoken to all relevant parties and a decision would be made on 19 December 2016 and emailed to her.
21. On 19 December 2016 the Fund told Mrs H that a payment of £80,299.47 including gross interest of £299.47 would be sent directly to her bank.
22. On 20 December 2016 the Fund confirmed to Mrs H that she would receive £80,000 plus interest for late payment; a payment of £7,355.20 plus interest (the balance above £80,000) had been paid to a third party that could not be named; Mrs H's payment included a similar share for Miss E, so that she could manage the money in an efficient and effective way, acting in Miss E's best interests.
23. On 23 December 2016 Mrs H formally complained that the Fund had taken too long to conclude the matter; it had ignored the Nomination Form; she felt harassed, victimised and scrutinised by its investigation of her; the Fund had made many incorrect statements; it had spoken to Miss C but never spoke to Miss E; in view of the family circumstances it would have been fairer to award more money to Miss E than to Miss C.
24. Mrs H's complaint was considered under the Fund's internal dispute resolution procedure (**IDRP**). Stage 1 was conducted by Bradford. On 23 February 2017 a Fund Director responded under regulation 74 of the Regulations. He said that due to the issues that Mrs H had raised about Miss E's vulnerability, the Fund had decided not to press Miss E for more information. The Fund had contacted Mr H's former work colleagues, best friend and trade union representative to obtain more information on his circumstances and state of mind. Miss C had recent contact with Mr H, and he knew that she was to marry soon. Under regulation 43 of the Regulations, the Fund had an absolute discretion over whom to pay. It followed its policy guidelines. The payment was made within about 16 weeks, well within the usual time limit of two years. However, the Fund Director admitted there was poor service, a delay and badly worded communications. He apologised for the way in which the case had been handled and said that Bradford as administering authority would be willing to pay Mrs H £500 for any distress and inconvenience caused.
25. Mrs H confirmed receipt of the payment by Bradford on 27 February 2017.
26. On 3 March 2017 Mrs H said the payment was quite insulting, and complained that she had not been kept informed; Miss E had not been given the opportunity to state her case; contacting Mr H's workplace was inappropriate as he had been dismissed; the Fund's letters of 19 and 20 December 2016 demonstrated poor communications.

27. Mrs H then invoked stage 2 of the IDRP. On 17 July 2017 the Bradford Chief Executive, as appointed adjudicator, sent a decision under regulations 76 and 77 of the Regulations. The Chief Executive dismissed Mrs H's appeal, saying that the Fund had applied the Regulations correctly, and had taken reasonable steps to identify Mr H's relatives and dependants before exercising its discretionary powers.
28. On 19 July 2017 Bradford apologised for sending a draft letter containing some typing errors, instead of a final copy.
29. Mrs H then contacted us.

### **The Pensions Ombudsman's position on Death Benefit cases**

30. My role is to consider whether the decision was reached in a proper manner. There are some well-established principles which a decision-maker is expected to follow in exercising its discretion. Briefly, it must take into account all relevant matters and no irrelevant ones. It must not make a perverse decision, that is a decision 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-maker's decision with a decision of my own, nor can I tell it what its subsequent decision should be.
31. 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. 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.

### **Adjudicator's Opinion**

32. Mrs H's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Bradford. The Adjudicator's findings are summarised below:-
  - Mrs H's complaint was essentially that nearly 10% of the death grant (the percentage that was paid to Miss C) should have been paid instead to Mrs H. Alternatively it should have been paid to Miss E.
  - Mrs H considered that the Fund should have complied with the Nomination Form. However, the Nomination Form was not binding on the Fund; it was only one piece of evidence for the Fund to consider.
  - Under regulation 43 of the regulations governing the LGPS, the Fund's administering authority had an absolute discretion to pay some or all of the death grant to various people, including Mrs H and Miss C, as relatives of the deceased member. This meant that neither Mrs H nor Miss C individually had an entitlement to receive 100% of the death grant. The decision to pay Miss C

nearly 10% of the total amount was, in the Adjudicator's opinion, within the range of reasonable decisions that could have been made. In the circumstances, the Adjudicator did not think that I would order Bradford to reconsider its decision.

- Bradford had paid Mrs H £500 for her distress and inconvenience, caused by the Fund's poor service. As that was the standard amount that I awarded nowadays in cases of non-financial injustice which had caused "significant" distress and inconvenience, the Adjudicator did not think I would award a greater amount to Mrs H.
- It was therefore the Adjudicator's opinion that this complaint should not be upheld.

33. Mrs H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs H provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs H for completeness.
34. Mrs H reiterated some of the points she had made previously, and complained that the Fund's decision was based on vindictive and hurtful lies made about the family by Miss C, who had spent only five years living with Mr H and Mrs H (and Miss E), and therefore the Fund should have asked Mrs H or Miss E to verify the information that Miss C had provided.

### **Ombudsman's decision**

35. Under Regulation 43 of the Regulations, Bradford (as the Fund's administering authority) has a wide discretion over whom to pay the death grant. This means that no individual family member has an automatic entitlement to receive all or any of the death grant, notwithstanding the completion of the Nomination Form. In this case the Nomination Form was fifteen years old.
36. Mrs H complained that the Fund had taken Miss C's evidence at face value and not challenged it. However, between the date that Mr H died and the date that the death grant was paid in December 2016, a period of over three months, Mrs H was asked by the Fund to provide her comments and then had several exchanges of correspondence with the Fund. She made clear that Miss C had fallen out with the rest of her adopted family. I am satisfied that Mrs H was able to present her side of the story before the decision how to distribute the death grant was made.
37. Following their adoption by Mr H and Mrs H, Miss C and Miss E became their daughters. Miss C's later separation from the family did not change that. Therefore, the Fund was entitled to include her within its distribution of the death grant. In the circumstances I do not consider it to be outside the range of reasonable outcomes that nearly 10% was paid to Miss C, with the balance being paid to Mrs H, including a similar allowance for Miss E.

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38. Therefore, I do not uphold Mrs H's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 January 2019

**Appendix**

Regulation 43 of the Local Government Pension Scheme Regulations 2013

“(1) If a deferred member dies 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.”