

Ombudsman's Determination

Applicant	Miss H
Scheme	Local Government Pension Scheme (LGPS)
Respondent	West Yorkshire Pension Fund (WYPF)

Outcome

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

Complaint summary

3. Miss H has complained that the decision by WYPF regarding the distribution of the death grant payable on the death of her mother has not been properly taken.

Background information, including submissions from the parties

4. Miss H's mother, Mrs S, retired on 1 May 2015 on the grounds of redundancy. She died unexpectedly on 19 June 2015.
5. The relevant regulations are the Local Government Pension Scheme Regulations 2013 (SI2013/2356) (as amended). As at the date of Mrs S' death, regulation 46 provided:
 - "(1) If a pensioner 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) Subject to paragraph (4), the death grant is 10 times the annual amount the member would have been entitled to receive as retirement pension at the date of death if there had been no commutation under regulation 33 (election for lump sum instead of pension), but the

amount so calculated is reduced by the amounts of any such commuted lump sum and any retirement pension paid to the member.

(4) ...

(5) 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 member's death or, where the authority did not know about the member's death before the expiry of 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."

6. Although not specifically required by the above regulations, WYPF has a Death Grant Policy in place. The Policy in place at the time of Mrs S' death was dated November 2014. It has since been updated.

7. On 20 May 2015, Mrs S completed a death grant nomination form indicating that she wished the lump sum to be divided equally between her partner, Mr BS, and her daughter, Miss Joanne H. Mrs S had completed three previous nomination forms:

October 1996 100% to Miss Jennifer H

November 1999 100% to her late husband, Mr N

July 2007 Equally between her son, Mr RS, and her two daughters, Miss Jennifer H and Miss Joanne H

8. Having been notified of Mrs S' death, WYPF contacted Mr RS, Miss Jennifer H, Miss Joanne H and Mr BS. Mrs S' children responded that their mother would want the death grant to be paid to her children and grandchildren. They provided a copy of a note written by Mrs S in 2000 stating that, in the event of her death, she wanted any monies divided equally amongst her children. A copy of the 2000 handwritten note has been provided. According to WYPF, Mr BS responded that Mrs S would have wanted the death grant to go to her children and the survivor's pension to go to him.

9. WYPF established that Mr BS did not qualify for a survivor's pension.

10. On 16 December 2015, WYPF recorded a telephone conversation with Miss Joanne H. The file note records that Miss Joanne H said she had been told by Mr BS that he had been nominated to receive 50% of the death grant. It records that she said Mr BS had informed her that, if he received a survivor's pension, he had asked that the death grant be paid to Mrs S' children. The note also records that Miss Joanne H had said that, if Mr BS did not receive a survivor's pension, he should receive some of the death grant. She suggested less than 50% because otherwise he would receive more than Mrs S' children. WYPF asked about Mrs S' grandchildren and also who had paid for Mrs S' funeral. Miss H provided details of Mrs S' grandchildren and explained that her sister had paid for the funeral. She said she and her brother were of the opinion

that their sister should receive more of the death grant to cover the costs she had incurred. She also provided details of colleagues who were close to her mother.

11. On 18 December 2015, Miss Joanne H contacted WYPF. She informed WYPF that she had received correspondence from a counselling service stating that Mrs S had been receiving counselling for domestic violence. WYPF was subsequently provided with copies of documents from the counselling service. Copies of the counsellor's notes from two sessions in August and September 2014, together with a note from a meeting in June 2015 have been provided.
12. WYPF contacted Mrs S' local domestic violence service asking if she had ever accessed its services. It was informed that the service had no record of Mrs S.
13. On 14 January 2016, WYPF met with Mrs S' former manager and one of her former work colleagues. They had both known Mrs S for over 20 years. Amongst other things, the colleagues said Mrs S had moved out of Mr BS' house into rented accommodation approximately 12 to 18 months prior to her death, but had then moved back. Mrs S' manager said Mrs S used to say Mr BS looked after her and she believed that Mrs S wanted to be looked after. Both colleagues described Mr BS as strange and said he had put Mrs S in an awkward position by asking her for information relating to her job. They said Mrs S had kept her finances separate from Mr BS. Both colleagues agreed that Mrs S lived for her children and that her main reason for retiring was to spend more time with her family, particularly her grandchildren. They both agreed that she would have wanted any money to be paid to her children. They also confirmed that Mrs S was undertaking private counselling.
14. Miss Joanne H subsequently contacted WYPF to inform it that Mrs S' family were exploring options in relation to prosecuting Mr BS. On 3 March 2016, WYPF met with Mrs S' family. Amongst other things, WYPF said it believed Mrs S had attended its offices on her own to complete the nomination form. It said the nomination form had been scanned onto its system approximately 40 minutes after it had been printed. It said a cohabitation form printed at the same time had been scanned a few days later. WYPF suggested that this was because the form required Mr BS' signature and Mrs S had taken it away to get it signed by him, indicating that he was not present at the time.
15. WYPF obtained advice from one of its in-house lawyers. It was advised:-
 - Mrs S had made previous nominations, so the nomination of her partner was not unusual.
 - The partner would be entitled to half the death grant, with a named family member being entitled to the remainder, under the last recorded nomination.
 - Some months after Mrs S' death, a counsellor had provided notes of meetings she had had with Mrs S. The document was not attributed or attested to be a statement of truth.

- The document contained information about Mrs S' relationship with Mr BS. However, it did not carry any legal force and Mrs S' family had not provided any other documents regarding the issues raised; such as medical reports.
- WYPF was unaware of any direct pressure from Mr BS on the day Mrs S made her nomination. She was not ill at the time.
- Mr BS had been open about their relationship to the point of losing entitlement to a pension.
- The break in the relationship contradicts the level of control Mr BS was said to exercise over Mrs S according to the counsellor's notes.
- Mr BS had access to Mrs S' funds but these were intact. This did not support a conclusion that he was interested in obtaining money from Mrs S. This indicated that it was unlikely that Mrs S was pressured into making a nomination.
- Relations between the family and Mr BS had broken down and the police had been involved. No further police investigation had been indicated nor was Mrs S' death determined to be suspicious.
- The only negative view of the relationship from a third party was from the counsellor's notes. The company, based in America, had been contacted to establish the authenticity of the document. The company had been aware of the case despite no name being given.
- Under UK law, data protection legislation governed how a living person's data could be processed. There were duties of confidentiality to consider.
- There was no clear right for the family to have access to the counsellor's notes because he/she was not a medical professional in the necessary legal sense.
- Because the notes mentioned Mr BS by name, it was doubtful that the family should have had access to them without his permission.
- Whilst WYPF was now aware of the counsellor's notes, in the normal course of events, it would probably not have had sight of them.
- There was a principle in English law, termed undue influence, whereby a person in a position of power over another compelled them to enter into an agreement they would not otherwise have entered into. This was very difficult to establish. Any action would have to be taken between the party which had lost the benefit and the party which had gained it.
- There were a number of factors which contradicted the possibility that undue influence had arisen in Mrs S' case: (i) the reduction in the death grant over time meant there was no guarantee that Mr BS would receive anything; (ii) previously Mrs S had nominated her husband to receive 100% of the death

grant, so it seemed unlikely that Mr BS would have forced her to nominate him for just 50%; and (iii) the contradiction between the counsellor's notes and Mr BS' behaviour towards Mrs S' funds in practice.

- WYPF would not be preventing Mrs S' family from making a claim for undue influence once it had paid Mr BS a share of the death grant. WYPF derived no benefit from who the nominated parties were.
- Mrs S had made a clear nomination in Mr BS' favour. WYPF was not in a position to adjudicate on whether Mr BS should be paid on the basis of the unsupported counsellor's notes.
- There was nothing to prevent WYPF from paying the death grant as it would have done if the counsellor's notes had not been produced.

16. In an email dated 30 March 2016, WYPF's decision-maker said the existence of the counsellor's notes had been discussed. She said Miss H had expressed the view that WYPF should take account of the notes and that they were "legally binding". She said Miss H had also informed her that she was waiting to hear from West Yorkshire Police concerning the notes and other testimony as to Mrs S' relationship with Mr BS. The decision-maker said that it had been agreed that WYPF would give Mrs S' family the opportunity to provide further evidence before making any payment. She also referred to the legal advice provided by an in-house lawyer. The decision-maker said no further information had been provided by Mrs S' family and the "legal view" was that there was nothing to prevent WYPF paying the lump sum in accordance with the nomination.
17. WYPF paid the death grant, on 19 April 2016, divided in accordance with Mrs S' most recent nomination.
18. On 26 April 2016, West Yorkshire Police contacted WYPF in connection with a report of fraud relating to the forms completed by Mrs S. West Yorkshire Police was provided with copies of the forms and, in October 2016, confirmed that no further action would be taken.

Miss H's position

19. Miss H submits:-

- WYPF failed to abide by its own policy in making the decision to pay 50% of the death grant to Mr BS.
- WYPF was shown evidence of domestic abuse and dismissed it. The papers provided by the counselling service are legally binding and should have been taken more seriously. WYPF failed to contact the counselling service itself. A statement from the counselling service, dated 22 December 2015, has been provided. This states Mrs S attended the counselling service because she was afraid of her partner and wished to leave him.

- The way in which WYPF made a decision as to the distribution of the death grant has caused emotional stress.
 - The family has recently found Mrs S' own notes which support those provided by the counselling service. However, WYPF has declined to see these.
 - Mr BS appeared on the nomination form for one month only; whereas Mrs S' children appeared on nomination forms for over 19 years. The family are of the opinion that Mr BS' nomination was made under duress.
 - WYPF could have paid the death grant to Mrs S' estate. It could then have been dealt with as a civil matter. This option is referred to in WYPF's policy but was not considered.
 - The family paid all the funeral costs and organised everything.
 - WYPF did not ask Mrs S' children what she would have wanted. It only spoke to Miss Joanne H on the telephone. It did not take an official statement.
 - Nor did it take official statements from Mrs S' friends. When spoken to, the friends were unaware their statements would be used as evidence and did not give permission for this. The friends disagree with WYPF's account of their views.
 - Mrs S had separated from Mr BS and moved into her own home. This separation lasted for six months. Mr BS was not in a relationship with Mrs S for longer than two years after this separation and it was for this reason that he did not qualify for a survivor's pension. The instability of the relationship shows there were issues.
 - WYPF should have done more research into domestic abuse.
 - WYPF placed too great a reliance on the fact that Mrs S did not contact her local domestic violence service. It was her choice as to whom she contacted for help.
 - Mrs S was extremely close to all her family and would have liked to see her children and grandchildren looked after; particularly her disabled grandchild.
20. Miss H suggested that WYPF should seek advice from a specialist in domestic abuse. She confirmed that Mrs S' family does not have any additional evidence to provide for WYPF. She explained that the purpose of a report from a specialist would be to educate the decision-makers about domestic abuse. Miss H is concerned by the statement from WYPF that its decision-makers are not experts on domestic abuse. She is of the view that this is vital knowledge which should be taken into consideration and that WYPF staff should be trained in this area.
21. Miss H has also pointed out that the notes provided by Mrs S' family were only a part of her record. She says her mother was attending the counselling service for a long

time. She says WYPF did not ask to see a full version of her mother's record with the company. Miss H has provided a copy of an email from the counselling company. This states that it is a US based company and comes under US jurisdiction. It states that, under US law, its counsellors are classed as therapists and everything said to them by a client is "confidential and legally binding". It states that the information "will stand up as evidence in any court".

WYPF's position

22. WYPF's position is taken from its internal dispute resolution response to which it referred and is as follows:-

- The completion of four nomination forms over a period of 19 years indicated that Mrs S understood the importance of the form and the value of completing one.
- Due to the fact that the nomination form was printed by a member of its staff in reception and scanned on to its system only 39 minutes later, it believes Mrs S completed the form in reception. The cohabitation form was printed on the same day but not scanned until six days later. It believes that this is because Mr BS had to sign it. If Mr BS had been in reception with Mrs S, it believes the form would have been signed by him at that time.
- It contacted the four parties with an immediate interest in the death grant: Mrs S' two daughters, her son and her partner.
- It investigated Mr BS' claim for a partner's pension and established that he did not qualify.
- It has an obligation to actively exercise its discretion in each case and it is not bound by its policy, such that it fetters its discretion.
- It has absolute discretion as to how it distributes a death grant. The key issue is whether it has taken into account all the relevant factors and its decision is not irrational or perverse. A perverse decision is one which no reasonable decision maker would reach.
- It took reasonable steps to establish who Mrs S' relatives and dependants were and to consider their circumstances, including the nature of their relationship with Mrs S.
- The police confirmed that certain documents had been examined and that no further action would be taken.

23. WYPF has made the following further comments:-

- It read and considered the notes from Mrs S' counsellor. It also provided the family with the opportunity to submit further evidence, which did not materialise.

- Its decision-makers are not experts in domestic abuse and it does not consider it appropriate for them to be asked to consider further specialist evidence on this matter; particularly since the specialist would not have known Mrs S and it is now three years since payment was made.
- The counsellor's notes did not mention that Mrs S had left Mr BS in 2013. It questions why this key point was not mentioned.
- The counsellor's notes were not on headed or watermarked paper nor were they signed. It therefore questioned their validity. When the family insisted that the notes were legally binding, it sought legal advice. It also provided an opportunity for the family to produce further evidence.
- Mr BS was not aware that he had been nominated for 50% of the lump sum until it informed him. This indicates that Mrs S was not forced to nominate him and did so independently.
- The pattern of Mrs S' nominations showed that she had favoured the current man in her life over her children.
- Mrs S' colleagues had said they thought she would rather be with someone than on her own.
- The content of the counsellor's notes was considered but it was not given any weight because the family was unable to prove their validity or provide any further evidence.
- It contacted the American counselling service Mrs S had been using and was told by a director that she was aware of the case. It considered it unusual that a director would recall an individual case from another country.
- The counsellor's notes referred to Mrs S' intention to make a will to ensure her family was provided for. If her feelings had been that strong, it considers that she would have taken steps to do this as soon as possible. The notes also made reference to Mrs S being worried that Mr BS wanted her money, but her retirement lump sum was still in her bank account and had not been touched.
- It considers that the content of the counsellor's notes does not reflect Mrs S' own actions.
- In a telephone conversation on 16 December 2015, Miss Joanne H had expressed the view that Mr BS should get some of the lump sum, if not 50%.

Adjudicator's Opinion

24. Miss H's complaint was considered by one of our Adjudicators who concluded that no further action was required by WYPF. The Adjudicator's findings are summarised below:-

- Under regulation 46, payment of the death grant was at WYPF's absolute discretion.
- The Adjudicator explained that, because payment of the death grant was discretionary, the extent to which the Ombudsman could interfere with the decision was limited. The Ombudsman's role was limited to ensuring the decision-making process was correctly followed. The Ombudsman could only interfere with the decision if WYPF: had failed to take something relevant into account or had taken something irrelevant into account; had reached a decision no reasonable body could have reached based on the facts; had failed to ask the correct questions as determined by the regulations; or had failed to interpret and follow the regulations correctly.
- The first step was for WYPF to identify the people to whom benefits could be paid under regulation 46; that is, the range of 'potential beneficiaries'. The potential beneficiaries were defined in regulation 46 as "the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member". The degree of investigation needed would depend on the factual circumstances of the case.
- In this case, the potential beneficiaries included Mrs S' daughters and son and her grandchildren as her relatives. Mrs S' mother and siblings were also potential beneficiaries because they were also her relatives. Mr BS qualified as a potential beneficiary because Mrs S had nominated him to receive part of the death grant.
- In this case, the Adjudicator considered that WYPF had taken adequate steps to identify the range of potential beneficiaries. It had made contact with Mrs S' children, who were in a position to provide details of other family members, and also with Mr BS.
- Once WYPF had identified the potential beneficiaries, it then had to exercise its discretion to decide to whom the benefits should be paid. It was required to apply the principles referred to above: namely, to only take relevant matters into account and no irrelevant ones; to interpret regulation 46 correctly; to ask the right questions; and not to come to a decision no reasonable body could have reached on the facts. The Adjudicator said her role was to consider WYPF's decision-making in the light of these principles.
- WYPF has a policy document which sets out a check list of matters which it might consider in reaching a decision. Miss H had expressed the view that WYPF had failed to follow its own policy in making its decision. However, as WYPF had mentioned, it must not limit its discretion by applying this policy rigidly. This was referred to as fettering its discretion.
- In particular, Miss H had referred to WYPF's policy statement that, where there was a discrepancy between a nomination and other documents, it would

consult a member's family as to the member's wishes. In the Adjudicator's view, WYPF did take steps to do this. It had spoken to members of Mrs S' family and to colleagues who had worked with her. It may not have applied the information it obtained in the way in which Miss H felt it should have done, but it had taken appropriate steps to obtain the information.

- WYPF was entitled to consider a nomination by Mrs S. A nomination was an indication given by the member during their lifetime about the person or people to whom they would like death benefits to be paid in the event of their death. However, because WYPF had a discretion about awarding death benefits, it must not unthinkingly follow a nomination. It was still required to properly exercise its discretion, including by identifying and considering other potential beneficiaries not just the person nominated by the member.
- Miss H was of the view that WYPF had not dealt with the nomination by Mrs S properly because:
 - Mrs S' family was concerned about the nature of Mr BS' relationship with her;
 - they were concerned that Mrs S had made the nomination under duress; and
 - the nomination appeared contradictory to other documents signed by Mrs S and to the views of those who knew her well.
- The first two issues were interrelated. On the question of whether Mrs S had completed the nomination form under duress, WYPF had said the evidence indicated that she had been alone when she completed the form. The form had been printed for Mrs S in WYPF's reception and scanned onto its system around 40 minutes later. A cohabitation form was printed at the same time but not scanned until a few days later. WYPF had said it thought Mrs S must have taken this form away with her because it needed Mr BS' signature. It was for this reason that WYPF was of the view that Mr BS was not with Mrs S at the time she completed the nomination form. In the Adjudicator's opinion, this was not an unreasonable view to take.
- With regard to the nature of Mr BS' relationship with Mrs S, WYPF had been provided with copies of notes from a counsellor consulted by Mrs S. Members of Mrs S' family had also spoken to WYPF. WYPF sought legal advice before proceeding to payment of the death grant.
- Having reviewed the points made by WYPF's legal adviser, the Adjudicator expressed some concern that the advice sought and given was on the basis of whether or not WYPF should deviate from the nomination. In her view, this was not the right question to ask. The question for WYPF was not whether or not it should apply the nomination; it was which of the potential beneficiaries should receive the death grant and, if appropriate, in what proportions.

- The Adjudicator acknowledged that WYPF was being called upon to make a decision in very sensitive circumstances and on the basis of evidence which might be disputed. WYPF's legal adviser had noted that the evidence from the counsellor had not been attested to be a statement of truth. He/she also raised concerns about data protection because the notes contained references to Mr BS. He/she suggested that the family should not have had access to the notes and that WYPF would not, ordinarily, have had sight of them either. The legal adviser had said WYPF was not in a position to adjudicate on whether Mr BS should be paid on the basis of the unsupported counsellor's notes.
- The Adjudicator acknowledged that there were issues with the counsellor's notes. On the first point, the counsellor could have been asked to attest as to the accuracy of the notes. On the question of confidentiality, WYPF could have asked for a redacted version to be provided.
- That being said, WYPF did appear to have given some consideration to the content of the counsellor's notes. It had taken the step of contacting the counselling service because of its concerns about their validity and it sought legal advice as to their standing.
- The weight which should be attached to the counsellor's notes was a decision for WYPF to make and it may attach little or no weight to this evidence¹. WYPF had stated that it gave no weight to the counsellor's notes because Mrs S' family was unable to prove their validity or provide any further evidence. Miss H had since confirmed that the family did not have any additional evidence to submit.
- The Adjudicator acknowledged that Miss H considered the counsellor's notes to be key to deciding who should receive a share of the death grant. However, giving the counsellor's notes little or no weight was not the same as failing to consider them at all. The evidence supported WYPF's assertion that it had given some consideration to the counsellor's notes but had decided not to give them any weight. It had given its reasons for doing so.
- As well as being obliged to correctly interpret and apply the law and the relevant regulations, WYPF may not act "erratically and without reason". In broad terms, this meant that WYPF must not act unreasonably; it must have a proper basis for acting in a particular way; and it must follow a fair procedure. This was often referred to as the responsibility not to come to a perverse decision. In this context, a perverse decision was one which no other decision-maker could reasonably come to on the basis of the facts of the case.
- However, there would generally be a range of decisions which would not be considered perverse and which could be taken by WYPF when faced with the

¹ *Sampson v Hodgson* [2008] All ER (D) 395 (Apr)

facts of a case. The Ombudsman's role was not to substitute his own decision for that of WYPF; the fact that WYPF chose one option rather than another would not be enough to render that decision perverse; even if the Ombudsman would not have reached the same decision himself.

- The Adjudicator acknowledged that Miss H disagreed with the decision reached by WYPF but was of the view that it fell within the range of possible decisions which could have been reached on the available evidence. She did not consider that it could be described as a perverse decision.
- The Adjudicator concluded that there were no grounds for the Ombudsman to ask WYPF to retake its decision as to the distribution of the death grant.

25. Miss H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss 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 Miss H for completeness.

Ombudsman's decision

26. Regulation 46 provides for WYPF, "at its absolute discretion", to pay the death grant to or for the benefit of Mrs S' nominee, her personal representatives or any person appearing WYPF to have been a relative or dependent of Mrs S.

27. As mentioned, the extent to which I, or the Courts, may interfere in the exercise of a discretionary power such as this is limited. If it can be shown that WYPF has:-

- failed to take relevant matters into account or taken irrelevant matters into account;
- incorrectly applied the relevant regulations or the law;
- failed to ask the right questions; or
- come to a perverse decision,

I may ask it to re-take the decision. I cannot substitute a decision of my own for that made by WYPF.

28. Essentially, Miss H is arguing that WYPF failed to take a relevant matter into account; namely, that there was alleged evidence of an abusive relationship between Mr BS and her mother. The evidence she is particularly concerned about consists of notes of consultations between her mother and a counselling service based in the US.

29. I note the comments from the counselling service as to the position of its counsellors under US law. I do not find that the notes were binding on WYPF in exercising its discretion in the way in which Miss H perhaps envisages. Whilst the notes might give an insight into Mrs S' relationship, they could not act to prevent WYPF considering Mr

BS as a potential beneficiary under regulation 46. WYPF was free to consider the notes and to assign such weight to this evidence as it considered appropriate.

30. The evidence indicates that WYPF did consider the evidence from the counselling service but assigned less weight to them than Miss H considers that it should have done. This is not the same as failing to take the notes into account. WYPF decided to give little weight to the notes and explained its reasons for doing so.
31. I note Miss H's concerns about the level of knowledge WYPF's decision-makers had about domestic violence. She has advocated that they receive input from a specialist in domestic violence before coming to a decision.
32. In coming to a decision on the distribution of a death grant, WYPF's decision-makers will be faced with a wide range of circumstances. They cannot be expected to have specialist knowledge of all the possible situations they might encounter. I find that it is sufficient that the decision-makers gave consideration to the question of Mrs S' relationship with Mr BS; as evidenced by the counsellor's notes, input from her family and the statements from her colleagues. They had to balance this evidence against Mrs S' clearly expressed wish for Mr BS to receive a share of the death grant. I do not find that they were required to do more than this.
33. WYPF considered Mr BS to be a potential beneficiary because Mrs S had completed a nomination form indicating her wish that he receive 50% of the death grant. This is the correct interpretation of regulation 46.
34. With regard to the nomination form, Mrs S' family has suggested that she completed the form under duress. I find WYPF's evidence more compelling. It has explained that there was a period of approximately 40 minutes between its staff printing the form for Mrs S and a signed copy being scanned on to its system. It has explained that a cohabitation form was printed at the same time but not returned until a few days later. The latter form required Mr BS' signature. WYPF took the view that this was evidence that Mrs S was alone when she signed the nomination form and was, therefore, not under any duress. I find this to be a reasonable conclusion to reach.
35. I note the Adjudicator's reservations as to the question asked by WYPF. I would agree that the question was not whether WYPF should apply the nomination form or not. WYPF was required to ask who the potential beneficiaries were and how the death grant should be distributed among them but, obviously, in doing so, to take account of the completed nomination form. On balance, I find that WYPF did ask the right questions. In the circumstances, it is understandable that the nomination form was a prominent feature of the decision-making process. However, I find that WYPF did look beyond the form and considered the question of how to distribute the death grant in the round.
36. This brings me to the question of whether WYPF's decision could be considered perverse. A perverse decision is often described as one which no other decision-maker, properly directing itself, could reasonably have come to. In other words, it would be a decision which it was not possible for WYPF to have made on the facts.

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However, there is often a range of decisions which could be reached within these parameters. It is not relevant whether I would have come to the same decision. The question is whether WYPF's decision on the distribution of the death grant fell within the range of possible decisions it could have reached. I find that it was.

37. Therefore, I do not uphold Miss H's complaint.

Anthony Arter
Pensions Ombudsman

29 May 2019