

## Ombudsman's Determination

<b>Applicant</b>	Ms Pearlina Lettman
<b>Scheme</b>	Government Pension Scheme ( <b>LGPS</b> )
<b>Respondents</b>	London Borough of Hammersmith and Fulham ( <b>LBHF</b> ), London Pension Fund Authority ( <b>LPFA</b> ), and Capita Employee Benefits Limited ( <b>Capita</b> ).

### Complaint Summary

Ms P Lettman has complained about the death benefits payable from the LGPS in respect of her late son, Mr K R Lettman, being subject to a 40% tax charge as an unauthorised payment, due to not settling the death benefit within two years.

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

The complaint should be upheld against LBHF and to a lesser extent LPFA because:

- LBHF and LPFA ought to have been aware of the two-year time limit for making the payment of the death grant;
- LPFA should have informed Ms P Lettman of the two-year time limit and the tax consequences if the death grant was not paid within this timescale;
- although the papers were provided at the 11th hour, there was still 13 working days to settle the death grant, and this should have been sufficient time to process the papers and arrange for the payment by cheque.

## Detailed Determination

### Statutory Provisions and Scheme Regulations

1. The Finance Act 2004, and the regulations which govern LGPS, are not in dispute. Relevant extracts are included in the Appendix for completeness.

### Material facts

2. Mr Lettman was employed by LBHF from 18 August 1997 to 30 June 2008; firstly as a Chief Technician and then as a Senior Laboratory Technician. There was no break in service between the first and second position.
3. Mr Lettman was a member of the London Borough of Hammersmith and Fulham Pension Fund (**the Fund**), which is part of the LGPS.
4. On 30 June 2008, Mr Lettman resigned from employment and left the LGPS.
5. Mr Lettman passed away on 21 November 2008, aged 44.
6. At that time, LPFA carried out the day-to-day administration of the Fund on behalf of the Administering Authority, LBHF.
7. On 25 November 2008, Ms P Lettman wrote to LPFA informing them of Mr Lettman's death, and enclosed his death certificate. Ms P Lettman requested LPFA to close/cancel any outstanding agreement and return any monies due to or belonging to Mr Lettman. She also asked if he owed any monies. Ms P Lettman's letter was received on 28 November 2008.
8. In its reply to Ms P Lettman of 9 December 2008, LPFA told her that a death grant was payable to Mr Lettman's estate. It said, in due course it would give details on receipt of letters of administration or grant of probate.
9. Ms P Lettman approached the Fulham Legal Advice Centre (**the Centre**), for help with obtaining the grant of letters of administration (**Grant of LoA**). On 23 February 2009, the Centre wrote to LPFA asking about the monies payable to the estate in respect of Mr Lettman's pension.
10. LPFA replied to the Centre on 27 February 2009, confirming that the death grant payable was £21,095.52.
11. Ms P Lettman sent another letter to LPFA on 10 April 2009, referring to LPFA's letter to the Centre. She queried the amount of £21,095.52 because her son had told her in 2004 that the lump sum on death would be in the region of £71,000. Ms Lettman also said,

"Please provide a statement with a breakdown of K... Lettman's pension. In addition to this, please can you confirm if there is a nominated beneficiary, under the terms of the pension, & name that person.

K... Lettman had paid into the pension scheme for 12 years & unfortunately he passed away leaving three children & no will. His estate will now go to probate for which I require, in writing, the confirmation of the above. Please view this as a matter of urgency. ...".

12. In its response to Ms P Lettman of 21 April 2009, LPFA said:

"I have to advise you that death grants are calculated depending on whether the member who had died was an active, deferred or pensioner member and the relevant regulations. Mr Lettman has sadly died as [a] deferred member and calculation of his death grant has changed from (2 x final pay) that would have been in 2004 while being as an active member to 3 x annual pension in respect of [his] duty [as a Chief Technician which] ceased on 31/08/2004 (£13,563.62) and to 5 x annual pension in respect of [his] duty [as a Senior Laboratory Technician which] ceased on 30/06/2008 (£7,531.90) amounting to £21,095.52.

To enable me to establish any entitlement to benefits, I would be grateful if you could confirm whether Mr Lettman has left a widow and any children who may be eligible. The deceased's legitimate or adopted child is [an] eligible child if ... wholly or partly dependent on the deceased at the time of death and is less than 18, or a child who has reached age 23 and is in full time education.

I confirm that there is not a death nomination on the file. London Borough of Hammersmith and Fulham has absolute discretion as to who the death grant is paid to."

13. Ms P Lettman replied to LPFA on 27 April 2009, saying:

"Further to your letter dated 21/04/09, I can confirm that my son left three children under the age of 18 years. The[ir] names & date of birth follows:-

[BKL] ...

[TDL] ...

[CCL] ...

Unfortunately, my son was divorced.

14. On 6 May 2009, LPFA sent a letter to Ms P Lettman which said:

"... Please find the enclosed application for children's pensions and payment forms. Please arrange for the forms to be completed ...

...

As the Death Grant is in excess of £5,000, before we can pay this, we must see either a Grant of Probate of your late son's will or, if he did not leave a will, Grant of Letters of Administration. The appropriate documents can be obtained from your nearest District Probate Registry, the address of which can be obtained from your local post office. If you are dealing with this matter through a solicitor, please show this letter to them".

15. Ms P Lettman says the Centre subsequently assisted her with attaining the Grant of LoA. The exact date of applying for the Grant of LoA is not known, though Ms P Lettman believes from correspondence the date for this was late 2009, when the three mothers of the three children agreed for her and her daughter (Ms J M Lettman) to act as their power of attorney, by letter received on 7 February 2010.

16. On 1 July 2009, LPFA completed a 'child's pension' form for BKL, with KDT's bank details on it, and sent it to LBHF instructing them to pay an annual pension of £1,328.07 to the child's mother (KDT).
17. On 9 October 2009, LPFA wrote to Ms P Lettman referring to its letter of "06/06/2009" (which may have been its letter of 6 May 2009). It repeated the contents of its letter of 6 May 2009 about the death grant.
18. In its letter of 16 December 2009 to Ms P Lettman, LPFA asked for confirmation about whether or not she was in receipt of the Grant of LoA for the late Mr Lettman's estate. It said it required sight of the original document before the money could be released to the appropriate beneficiary.
19. LPFA chased Ms P Lettman again on 28 January 2010, enclosing copies of its earlier correspondence, and asked if she was in a position to respond. It said her "assistance in this matter will be appreciated".
20. LPFA wrote once more on 15 April 2010. It referred to its numerous letters dating back to 6 May 2009, and enclosed copies. It repeated what it had said in earlier letters about its requirements in order to settle the death grant. It also said "Please note that if I do not hear from you, I shall be closing my files pending your response".
21. On 15 September 2010, the High Court (Family Division) issued the appropriate Grant. It said:

"BE IT KNOWN that KENNETH ROGER LETTMAN  
of ...

died on the 21st day of November 2008

domiciled in England and Wales INTESTATE

AND BE IT FURTHER KNOWN that the Administration of all the estate which  
by law devolves to and vests in the personal representative of the said  
deceased was granted by the High Court of Justice on this date to

PEARLENA LUDEVICA LETTMAN of ...

and JULIETTE MARSHA LETTMAN of ...

for the use and benefit of [BKL], [TDL] and [CCL] limited until one of them shall  
attain the age of 18 years and for the use and benefit of [KDT], [SL] and [HCC]  
until further representation be granted.

It is hereby certified that it appears from information supplied on the application  
for this grant that the gross value of the said estate in the United Kingdom does  
not exceed £312,000 and the net value of such estate does not exceed £9,000".

[KDT, SL and HCC are the respective mothers of the three children]

22. Ms J M Lettman wrote a letter on Sunday 24 October 2010, which is marked for both LBHF's and LPFA's attention (albeit with only LPFA's address). It is date stamped as being received by LPFA on Friday, 12 November 2010. It said:

"To whom it may concern

I am writing to you to confirm my mother and I are both administrators of My Brother[’s] – The late Kenneth Lettman’s – estate. In doing so I will also advise to bring a close to this pension payment; I have absolutely no objections to the cheque being written out to my mother P. Lettman of the monies owed being placed directly into an account bearing her name only.

Do not hesitate to call me on [mobile number] if there are any queries but I would hope this letter is enough to bring this matter to a close and for this situation to not be any more prolonged than necessary".

23. The Grant of LoA was hand delivered by Ms P Lettman to the offices of LBHF. The copy of the Grant is date stamped by LBHF as being received on Tuesday, 9 November 2010.
24. Ms J M Lettman’s letter of 24 October 2010 and a copy of the Grant of LoA were passed to LPFA.
25. LPFA completed a form headed "Death Grant Payment – Decision by Administering Authority" on Wednesday, 17 November 2010. The top of the form notes personal information about Mr Lettman (e.g. his date of birth, date of death, Scheme membership, amount payable and marital status). It is also noted that he died without a will, and he had not nominated any beneficiaries under the Scheme. The form also said:

"Names of other known family  
Members who should be considered

Mother Pearl Lettman  
Sister Juliette Lettman  
Children: BKL  
TDK  
CCL

LPFA comments

Please see the attached letter from J Lettman and the grant probate. We have already establish[ed] that there is no spouse and children’s pensions are already implemented".

26. LPFA’s form was sent to LBHF asking for a decision to be made. It was date stamped as being received on 26 November 2010 – though it is unclear if this is the date it was received or returned. The name on the date stamp is unclear (though the date is clear) on the copy provided. However, given the sequence of events it is more likely that it is the date returned.
27. A separate form, dated 23 November 2010, also headed "Death Grant Payment – Decision by Administering Authority", said:

"DECISION BY LONDON BOROUGH OF HAMMERSMITH AND FULHAM

Please pay death grant to Mrs Pearlena Ludevica Lettman.

28. LBHF’s form was signed by the Pensions Liaison Manager (LG) for LBHF.

29. A photocopy of the Grant of LoA has been provided with a handwritten annotation which said:

“Over 2 yrs  
unauthorised payment.  
we knew of death  
f 25/11/2008”

30. On 6 December 2010, LPFA wrote to Ms P Lettman confirming that the death grant would be payable to her. In that letter, LPFA told her that the death grant would be an unauthorised payment because it had not been paid within two years of when it knew of Mr Lettman's death and, as a result of the Finance Act 2004, the lump sum death benefit would be subject to a 40% tax charge. LPFA said, in this case, it was not possible for them to make the payment within the statutory period for reasons beyond their control [although in practice, it is LBHF who physically makes the payment].

31. Ms J M Lettman wrote to the Operations Manager at LPFA on 9 January 2011 and said:

“On 24<sup>th</sup> October 2010 the probate information and a letter from me stating that the death grant could be paid directly to my mother Ms P Lettman was handed to you. This was delivered by hand directly to your representative and the letter was signed for by this gentleman. In handing the information over questions were asked at this point if the payment would be subject to tax as the payment was going to 3 sons under the age of 18. This gentleman checked with his superiors and came back to clearly stating that no tax will be taken as the paperwork was handed over within the appropriate timescale.

Your letter DD 6-12-10 contradicts this information. I am obviously very concerned that the sum is being cut by 40% which is totally unacceptable. Why was it not possible for you to make the payment within the statutory period?? The “reasons beyond your control” stated in your letter were also outside of our control and therefore we should not be penalised for this. We have done all [in] our power to ensure the information is handed over and checked within reasonable timescales. Mr Lettman and his 3 sons should not have to bear the brunt of administrative issues at your end which were beyond our control. Therefore please see fit to inform HMRC of the circumstances of this situation as this should not fall into the category of an unauthorised payment. The 40% tax liability should be lifted and the death grant of £21,095.52 should be paid in full”.

32. LPFA replied to Ms J M Lettman on 17 January 2011, reiterating HMRC's requirements. LPFA also said,

“However, I can see that you did hand the paperwork into the Hammersmith and Fulham Town Hall on the 9 November which was still within the 2 year period (...). The forms were then received on the 12 November with not enough time to arrange for payment to be made within the 2 year ‘window’.

I have enclosed a letter for the tax office which might be useful for you to claim a refund of the tax deduction that has been made.

I am sorry that you were assured that there would be no tax deduction and can understand that the legal technicalities must seem very frustrating to you at this difficult time”.

33. On 12 April 2011, the Centre wrote to LPFA and said:

“... they propose deducting 40% tax from the payment due, on basis that the claim was not processed within two years of death.

Please note the deceased died on 21st November 2008 and the executors lodged the Grant (copy here within) in person with the Council on the 9th November 2010 within the two year period. You will see the Council’s receipt when confirmation was given by the Council that the tax would not be deducted.

You should further note that the executors were dealing with the grant application in person, they are not professionals, they were grieving and inevitably the application takes longer.

It seems inequitable that the beneficiaries are now being penalised by having tax deducted at 40% when the total value of the estate was below threshold. Finally treat this letter as formal complaint ...”

34. LPFA contacted LBHF asking them to decide who they wished to consider Ms Lettman’s complaint.
35. The Pensions Liaison Manager at LBHF replied by email to LPFA on 26 April 2011, saying the normal stage one decision maker at LPFA should deal with any complaint. He noted the personal representatives did supply ‘the Probate’ just within two years, and said “we should have paid as a matter of urgency to comply with 2y deadline. Do you know why we did not pay in time and still have not paid?”
36. There was a further exchange of emails between LPFA and LBHF on that day. LPFA said “no payment has been made yet as it would have been outside the 2 year window if authorised when received”. It was proposed that they would write to HMRC to obtain a concession, and also clarify who had liability for any tax charge. LBHF agreed with taking that action.
37. LPFA wrote to HMRC on 26 April 2011, informing them that the probate was received just inside the two year limit but it was not possible to make the payment within the two year deadline. It asked if the Scheme or executors (personal administrators) could lodge a claim for easement.
38. LPFA also wrote to the Centre, saying it would make arrangements for the balance of the death grant to be paid to Ms P and Ms J M Lettman but it required the details of the bank accounts for the credit to be paid into.

39. HMRC replied to LPFA on 20 May 2011, stating that the requirement to make the death benefit lump sum payment within two years was a statutory requirement, and HMRC had no discretion to make easements.
40. In its letter, HMRC also thought it would be helpful to clarify what it meant by the lump sum having to be 'paid' within two years. It explained the reason for the two year time limit was to place a time limit on allowing the underlying fund to be continuing to be held within the tax-privileged environment. But it was not necessary for a payment to be made to the ultimate beneficiary by that time. The circumstances in many cases may be that the process of establishing entitlement may still be ongoing. So the payment made from the registered pension scheme within two years might be in the form of a payment to the personal representatives of the deceased member, or to a separate trust. So if the Scheme rules provide that the amount in question is held upon trust within the two year point, and is so held, then it may be that a 'payment' had been made at that point for the purpose of the tax rules. Further, HMRC said this was essentially a matter for schemes to look at their own situation to see whether a payment may be said to have been made within the two year time limit.
41. The administrator for the Fund changed on 30 September / 1 October 2011, from LPFA to Capita.
42. HMRC contacted LBHF on 10 August 2012, saying it understood the LGPS had made unauthorised payments of £10,547 to both Ms J M and Ms P Lettman on 23 February 2012.
43. LBHF's Pensions Liaison Manager replied to HMRC on 18 September 2012, and said:

"Grant of Probate was received by Hammersmith and Fulham Council on 9 November 2010 but it was not possible to make payment within two years of the date of death ... as we were not supplied with bank details and the Council's normal procedure is to make payment by BACS.

A delay occurred while we sought the beneficiaries banking details which meant the two year time limit was exceeded and a further delay occurred as we asked for an easement as the Grant was supplied within the two year time limit but we were unable to make the payment in time.

Payment of the death grant was made in equal shares on 8 March 2012

Payment made to Juliette Marsha Lettman ...

Death Grant	10,547.92
Interest	237.66
40% unauthorised payment charge	<u>- 4,219.17</u>
Net payment	6,566.41



Payment made to Pearlana Ludevica Lettman ...

Death Grant	10,547.92
Interest	237.66
40% unauthorised payment charge	<u>- 4,219.17</u>
Net payment	6,566.41

I confirm that these payments were made to the above named people, as executors of the estate of Mr Kenneth Roger Lettman, for the use and benefit of [the three children] limited until one of them shall reach attain age 18 years and for the use and benefit of [the three mothers] until further presentation be granted”.

44. In April 2013, LBHF noticed that the cheques had not been presented, and so cancelled the payments on their system (Cedar).
45. Capita subsequently asked the personal representatives for their bank account details.
46. In an internal email within LBHF, the Pensions Liaison Manager noted that HMRC had sent a Notice of Assessment for the £8,438 unauthorised payment charge but LBHF had paid this in January 2013. He also queried when the £3,164.25 scheme sanction charge had been paid.
47. On the subject of tax owed to HMRC, the Finance & Corporate Services section of LBHF confirmed that both payments were paid by BACS on 8 February 2013.
48. Ms Lettman’s complaint was initially dealt with by Capita under the first stage of the Scheme’s internal dispute resolution procedure (**IDRP**), which gave its decision on 17 February 2014. Though Capita thought administrative process could have been more robust, it concluded that LBHF had to comply with the Finance Act 2004. The complaint was not upheld.
49. LBHF’s Director of HR dealt with Ms Lettman’s complaint under the second stage of the Scheme’s IDRP, and gave her decision on 28 March 2014. LBHF noted Capita’s comments, but it had not ruled that overall LBHF had acted in an inappropriate way or supported Ms P Lettman’s claim that lax internal bureaucracy had caused late payment. LBHF therefore agreed with the first stage decision for the appeal not to be upheld.
50. Towards the end of this investigation, Ms P Lettman has submitted a letter dated 7 October 2014 which she and her daughter (Ms J M Lettman) wrote to LBHF. That letter was made on a ‘without prejudice’ basis to accept LBHF’s offer of payment for £12,657.50, being part of the death grant due, but without renouncing their claim for the balance amount of £8,438.24 and any other remedies they might have. That letter acknowledged the fact that Ms P Lettman (and her daughter) wished to continue pursuing a complaint to this service, and the Council should not disclose it to any other party including the Pensions Ombudsman Service.

### **Summary of Ms Lettman's position**

51. She applied within two years of her late son's death, whilst the scheme administrator's case is that she did not. This is her (and the beneficiaries') case in a nutshell (i.e. that she was in time).
52. In December 2008, she was informed that a death grant was payable to her son's estate. LPFA's letter does not mention a time limit in which to apply for the payment out, or of a possible tax. As such, it is defective and unfair.
53. Additionally, her complaint concerns not being informed that the payment was discretionary.
54. LBHF appear to blame her for not obtaining the Grant of LoA earlier, and that she actually provided it two months after it was issued. This is irrelevant and spurious. She was within two years and therefore within the rules.
55. She (and her daughter) accept that the probate process took some time. There were many family reasons why she got the Grant of LoA when she did. There were three mothers of three children to deal with, and they did not get on. In one case, one mother was unaware of another mother's and child's existence. Each mother had a potential claim on the estate, and had to be pacified and harmonised so that the children could benefit and the estate could be brought in.
56. She relied heavily on her daughter, who at the time was travelling a lot as part of her job and could not assist as much as she wanted. She was unwell, depressed and continues to suffer from grief, as supported in a letter submitted from her GP. From her perspective, had she known about the two year time limit, then she could have reacted more quickly by having a third party take over.
57. LPFA's letter of 6 December 2010 says a 40% tax charge would be imposed because she failed to notify LPFA and LBHF of her son's death within two years of the death. This position is unsustainable in light of the above records and the position that LBHF has adopted.
58. She applied for the death grant on 9 November 2010. This was the earliest that she could get the Probate.
59. It would appear that LBHF's and LPFA's position on non-payment is they could not process the application on 9 November 2010, or soon thereafter, as the period of expiry was upon them on 22 November 2010. If this is LBHF's position, it seems unfathomable and illogical. More so, given that the internal memo of 17 November 2010 makes no reference to the 40% tax.
60. The heart of the matter is whether there was unnecessary delay. It is conceivable that both these institutions (LBHF and LPFA) could have made payment in the 13 days if they had reacted within the service level agreement time lines.

61. LBHF knew the bank account details of all beneficiaries (i.e. the children). Also, it may well be true that there were other beneficiaries, but this is not that relevant. The reason it is pertinent is that LBHF claimed, in its letter of 26 April 2011, that it did not know where to make the payment. This clearly cannot be the case.
62. A pension payment was made on 29 May 2009 to SL, mother of TDL. Also, SL wrote to LBHF on 12 August 2009 regarding her child's pension. Ms Lettman says this letter becomes relevant because LBHF claim they did not have information about where to make payment. Clearly, from this letter they did have the information, and this is obtained from their files.
63. Also, the internal memo of 1 July 2009 concerns a child's pension (for BKL). Again, and throughout, LBHF knew where payment needed to be made, and later protestations by LBHF, that purport to show Ms P Lettman as being late with her documents for payment out of the death grant, rings hollow.
64. She accepts that LBHF did not have her (or her daughter's) bank details, though it would not have been hard to discover, or pay the amount by cheque, or put in a trust (outside of the LGPS) until a final decision was made. Once Ms P Lettman and Ms J M Lettman were appointed to deal with the estate then surely a duty fell on LBHF to make payment to them.
65. On 24 October 2010 the probate was obtained and delivered by hand to LBHF requesting payment for the benefit of beneficiaries/dependents to her (as supported by her daughter's letter of 24 October 2010). There is no other written evidence of the events surrounding 24 October 2010.
66. Further, it appears that on 24 October 2010 (based on the letter of 9 January 2011) there was a positive assertion made about there being no tax.
67. Ms P Lettman says she recalls visiting LBHF a few times. She attended the office of LBHF on 9 November 2010 (which is now not disputed) where she handed in the probate forms. She spoke to a man who reassured her that she had nothing to worry about, and the payment of the death grant would be processed, as her application was on time. This was not documented by LBHF.
68. The fact that the copy Grant of LoA is marked and received on 9 November 2010 shows that LBHF knew of the application on that date, and yet chose to do nothing about it. The deadline to process this payment was 21 November 2010, the payment was processed after this date as the internal bureaucracy was lax. This is reflected in an internal email of 26 April 2011 where the Pension Liaison Manager of LBHF clearly questions why the payment was not made within the deadline.
69. It is possibly understandable why LBHF could not make the full grant payment given that they had 13 days to make payment before the cut-off point when the 40% tax would be imposed. What is not understandable is that, if the Lettman family had been told of the duration of the internal process to issue a cheque; or that they had two years before tax is deducted at 40%; or that the service agreement between LBHF and LPFA of five days to pay the death grant was unrealistic, then they may have reacted more quickly enabling LBHF to make the payment.

70. LBHF and LPFA could have made payment of part of the death grant, say the proportion that was due and held -40% on trust for the beneficiaries, or paid the whole amount and warned her that she may have to pay the 40% tax at some future date soon after 9 November 2010 (date of application for death grant). This would not have compromised their position with HMRC, and avoided a penalty.
71. Indeed, HMRC has confirmed that the death grant need not be paid to the ultimate beneficiary within the two year time limit. It could have been held in trust, or paid to a personal representative of the deceased. LBHF had the details of a number of representatives, and as such LBHF's reasons seem thin.
72. In February 2012, LBHF asked again for an easement of payment from HMRC, which was refused. This is surely an admission of some fault.
73. The 40% deduction should not penalise her son's children. The deduction was made due to LBHF's late filing in respect of the pension. Therefore, LBHF are responsible to pay the tax, not her three grandchildren.
74. There are numerous inconsistencies and contradictions in the rejections which resulted in her son's death grant having a 40% tax imposed, which are unsustainable, unlawful and need resolution.
75. When Capita sent cheques on 6 June 2012, its letter said "there was over a 2 year delay in the London Borough of Hammersmith and Fulham being advised of the death". This is untrue. LBHF were advised during the 2 year-period.
76. Ms P Lettman (and the other personal representative) originally said she had not encashed the two cheques for £6,329.66, or given their bank details, as she was concerned this would amount to tacit consent. Her letter of 7 October 2014 was subject to legal privilege. Her acceptance on a without prejudice basis of LBHF's offer was accepted by them via a remittance advice. In order to put matters right, Ms P Lettman would now like the balance of £8,438.34 to be paid in order for the three children to be awarded the full pre-tax sum.
77. Ms P Lettman considers that interest should also be applied to the outstanding amount given that it should have been paid out from November 2010.
78. Given it has been a seven year 'struggle' with the various parties, she considers that the compensation for non-financial injustice should be more to reflect what she (and her family) has been through.
79. Ms P Lettman would also welcome an apology.

### **Summary of LBHF's position**

80. Based on the timeline of events, the Council's view is that it, and its administrators, made strenuous efforts on many occasions from November 2008 to contact Ms P Lettman to ask her to provide the necessary paperwork so that the death grant could be paid in a timely and efficient manner.
81. There is no requirement under the regulations governing the LGPS for LBHF to disclose the two year time limit.

82. Though the High Court's decision to issue the Grant of LoA was made on 15 September 2010, the Council was not provided with this information by Ms P Lettman until almost two months later, which in its opinion is an unnecessary delay that could have been avoided.
83. It disagrees with Ms P Lettman's claim that lax internal bureaucracy caused late payment.
84. Bank details could not be requested without knowing who the recipients of the death grant were.
85. It is also its view that it was therefore unreasonable to expect it to pay monies due to the beneficiaries within five working days of the receipt of the information by the Pensions Team on 9 November 2010.
86. It had acted in accordance with the Finance Act 2004 and overall LBHF did not act in an inappropriate way.
87. Once the tax charge was disputed by the Lettman family, LPFA rightly contacted HMRC to seek easement but in light of HMRC's reply the Council was clearly under an obligation to comply with the law in this respect.

### **Summary of LPFA's position**

88. Following LBHF's decision to change administrators, all records and paperwork has been passed to the new provider (Capita), and LPFA has not retained any details relating to members' records. Accordingly, it cannot submit any evidence. Further, its comments are based on the information the other parties have submitted for this complaint, and which has been shared with it.

### **Conclusions**

89. This complaint is primarily concerned with the non-payment of the death grant before the expiry of the two-year time limit, which has resulted in it becoming an unauthorised payment. Ms P Lettman accepts that Capita did not play any part until after 30 September 2011, but she has cited them as a respondent on the basis that Capita has refused to make payment for the whole of the death grant.
90. Capita was not involved with the administration of the Fund prior to 1 October 2011. This post-dates the events being complained about. Neither is it for Capita to make the payment, since payments seem to be made by LBHF. Further, Capita has to comply with the Finance Act 2004. For these reasons, I do not uphold the complaint against them.
91. I will now consider the complaint against the other two respondents.
92. LPFA's note records that it knew of the death from 25 November 2008. This is the date of Ms P Lettman's letter to them, which was received on 28 November 2008. Based on this evidence, LPFA became aware (and LBHF ought to have known) from 28 November 2008 of Mr Lettman's death, and so payment would have needed to have been made before 28 November 2010 in order to be regarded as an authorised payment.

93. Ms P Lettman says although her complaint is about a delay in making the payment, she also complains of not being informed about either the crucial two-year time limit, or that the payment was discretionary.
94. Both LBHF, as Administering Authority of the Fund, and LPFA, as the pension administrator, ought to have been aware of the two-year deadline in order to pay the death grant as an authorised payment. Clearly LPFA did, as it noted the death grant was an unauthorised payment once the time limit had passed.
95. It is evident that prior to November 2010, Ms P Lettman was never told by LPFA or LBHF about the two-year time limit, and the tax consequences if the payment was made after two years and became an unauthorised payment.
96. Neither LBHF nor LPFA were advising Ms P Lettman. Nevertheless, the information about the two-year limit and the result that any payment after two years became unauthorised is factual information rather than advice. It is therefore pertinent, and I note that LBHF has changed its practice in this regard. Even though the information is not Scheme specific information, and there is no duty to disclose it, either LPFA or LBHF should have volunteered it. In the circumstances, the failure to do so amounts to maladministration.
97. Ms P Lettman asserts that had she been forewarned about the two year time limit, she may have acted sooner than she did. Ms P Lettman has, however, already said she could not have obtained the Grant of LoA from the court any quicker. Whether the Grant of LoA would have been submitted at an earlier time between 15 September 2010 and 9 November 2010 is difficult to say. Although it is logical that a person would probably have acted more quickly if they knew of the time limit, there would, in any event, be no reason not to act as soon as Ms P Lettman was able to do so.
98. Ms P Lettman has also said that nobody told her the payment was discretionary. The payment of the death grant was not, itself, discretionary. It was payable following Mr Lettman's death. The discretionary aspect was to whom the death grant would be paid (i.e. the beneficiary(ies) who could receive the death grant).
99. LPFA's letter of 9 December 2008 to Ms P Lettman told her a death grant was payable (which was correct), but it also said it was payable to the late Mr Lettman's estate. That was misleading, and amounts to maladministration. The death grant was payable, at LBHF's discretion, to one or more suitable beneficiaries, which may have included Mr Lettman's estate. But the estate was only one of a number of beneficiaries which may have been paid the death grant.
100. But, in its later letter of 21 April 2009, LPFA corrected the position. It made it clear that LBHF had absolute discretion as to whom the death grant was paid. Ms P Lettman received that letter since she made reference to it in her reply of 27 April 2009. Based on that evidence, I cannot conclude that Ms P Lettman was not told the death grant was discretionary.
101. Mr Lettman died intestate. Accordingly, personal representatives had to be chosen to administer his estate.

102. As the death grant could potentially be paid to the late Mr Lettman's estate, LBHF needed to know who had officially been appointed as the personal representatives of his estate.
103. Both LBHF and LPFA have highlighted that LPFA told Ms P Lettman, on 6 May 2009, that it needed her to send the Grant of LoA before payment could be made. Further, LPFA chased for this document on four occasions between October 2009 and April 2010.
104. Mr Lettman's affairs were not straightforward, and Ms P Lettman has explained why it took time for the Grant of LoA to be obtained. Before going further, I believe one aspect needs clarifying. Representatives, formerly from the Centre and more latterly from Nucleus Community Action Limited, have made submissions for Ms P Lettman which suggest that Ms J M Lettman's letter of 24 October 2010 was handed in on 24 October 2010, along with the Grant of LoA. I believe those submissions have been made, based on the way Ms J M Lettman's letter of 9 January 2011 is phrased. But given the 24 October 2010 was a Sunday when the Council's offices would be closed, and there is no evidence of such a meeting, I am not convinced that that happened on that particular day. The letter may, though, have been posted to LPFA, although there is no evidence LPFA received it in October 2010.
105. From the evidence, it is my belief that Ms J M Lettman's letter of 24 October 2010 was, in fact, handed in on 9 November 2010 along with the Grant of LoA.
106. Ms P Lettman has stressed that she applied in time. However, the triggering or not of the tax charge is dependent on when the payment is made, and not when she applied. It seems Ms P Lettman's argument is that it is irrelevant how long it took her to obtain and send the Grant of LoA, if there was still sufficient time for the death grant to be paid without incurring the tax charge. So, an issue for me is whether there was any unnecessary delay after 9 November 2010, and whether LPFA and LBHF took appropriate action.
107. The last working day for LBHF to make the payment of the death grant before the two-year time limit expired, was Friday, 26 November 2010. Both LPFA and LBHF would need to complete their procedures prior to this date. This would include making a decision as to whom the death grant should be paid, following any accounting procedures, and then physically make the payment.
108. There were 18 actual days and, more importantly, 13 working business days between Tuesday 9 November 2010 and Friday 26 November 2010.
109. Early correspondence was between Ms P Lettman and LPFA, rather than LBHF. Indeed, prior to Ms P Lettman attending the office of LBHF on 9 November 2010, it is unclear from the evidence that Ms P Lettman had been in direct contact with LBHF. That is not to say that LBHF unaware of the death of Mr Lettman. It is apparent that the children's pensions had been put into payment by LBHF to the children's mothers around May and July 2009 following correspondence with LPFA.

110. Ms P Lettman says that she discussed the payment of the death grant with LBHF on her visit on 9 December 2010, and specifically asked if any tax would be payable if it was paid to the three children. There is, however, no record of the context of how such a question was asked, and what response was given. At that time, it had not been decided to whom the death grant would be paid. Nevertheless, the Grant of LoA gave the date of death, and so LBHF ought to have realised the urgency.
111. The procedures appear to be that the pensions administrator (LPFA) sets out all the potential beneficiaries who might receive the death grant for LBHF's consideration. I observe that there has been some criticism of the thoroughness of those investigations, but the complaint before me is not one concerning an allegation where a beneficiary was not properly considered (i.e. it was paid to an incorrect beneficiary).
112. The documents handed to LBHF were sent to LPFA, which were received by them on Friday, 12 November 2009. Comments have been made about the five working day service agreement that LBHF requires of LPFA. LPFA responded to LBHF within four working days, on Wednesday, 17 November 2010. That was within LBHF's service agreement for LPFA.
113. LPFA prepared a form listing five potential beneficiaries other than the estate. The date of death was written on that form. In spite of the imminent two year deadline for making an authorised payment, this was not flagged at that time. It is unclear how that form was sent to LBHF, e.g. by email, fax or post.
114. LBHF took the decision, on 23 November 2010, to pay the death grant to Ms P Lettman. It is not entirely clear whether LBHF decided to pay Ms P Lettman in her capacity as an eligible beneficiary in her own right (i.e. as the mother of the late Mr Lettman), or to the estate, and to her as a personal representative (since the other personal representative had said payment could be made solely to Ms P Lettman). Since the written record of the decision by LBHF stated it had decided to pay Ms P Lettman, and does not explicitly say the estate, it would seem to me that LBHF made the decision to pay her personally (and not the estate).
115. Having made its decision, LBHF says the payment would be subject to its accounting procedures. There were still three or four days to complete this. Its normal payment method is to make a payment using the Bankers Automated Credit System (BACS). However, it did not hold Ms P Lettman's bank details, which Ms P Lettman accepts. Though Ms P Lettman says it would not have been difficult to obtain her bank details, I observe her correspondence does not include her phone number. Besides, her letters had been sent to LPFA as opposed to LBHF. If the respondents had written to her, it would most probably have been too late to make the payment. Although, Ms J M Lettman's mobile phone number was included in her letter of 24 October 2010 and so was available.
116. Although, Ms P Lettman believes that LBHF could have made alternative payments since it held bank details belonging to the children's mothers, as they were each receiving a child's pension, its decision appears to have been that the death grant should be paid to her rather than the estate.



117. Ms P Lettman contends that LBHF could have issued a cheque to her. There is merit to this argument. When LBHF realised it did not hold Ms P Lettman's bank details, it could have made a payment by cheque, which was subsequently done. I note the Pension Liaison Manager at LBHF questioned LPFA in April 2011 why the payment was not made urgently. It was LBHF which issued the payments, however.
118. LBHF should have taken urgent action, and its failure to do so amounts to maladministration. Had a cheque been arranged within three days, a payment could have been issued prior to 26 November 2010. The lack of action has caused a financial loss to Ms P Lettman.
119. The directions below reflect the fact that the death grant was payable to Ms P Lettman rather than the estate. It is entirely a matter for Ms P Lettman as to whether or not she subsequently passes on the death grant to her grandchildren.
120. Ms P Lettman has requested that interest is paid on any outstanding sum. I observe that LBHF previously paid interest when it settled the part-payment – see paragraph 43 above. Since the death grant, which is a benefit, has been paid late, I consider it is appropriate for the balance of the death grant to also attract interest. A suitable direction is made below.
121. Ms P Lettman would like the parties to apologise to her. The compensation payment for non-financial injustice is made to recognise that she has been caused distress and inconvenience. I will leave the matter of whether or not LBHF wishes to apologise to them, since any apology should be freely given.
122. I have considered Ms P Lettman's request for a higher award for the non-financial injustice. Taking into account all of the circumstances of this case, I am satisfied that the award of £500, split between LBHF and LPFA, is adequate.
123. Ms P Lettman has referred to HMRC's comments. This is not material, but my comments follow. LBHF (and LPFA) has to act in accordance with LGPS's Regulations. The LGPS's Regulations do not permit LBHF to pay the death grant to a trust pending an ultimate decision. That option was therefore not possible. Whilst LGPS's Regulations do permit LBHF to pay the personal representatives, this must be a conscious decision. I cannot see how LBHF could pay the personal representatives in the interim period, and then subsequently ensure that the death grant went to the ultimate beneficiary of its choosing if such ultimate beneficiary did not stand to gain from the intestate rules. Once the payment had gone to the personal representatives, they would be obliged to distribute it as part of the estate rather than how LBHF might subsequently decide.
124. Neither do I consider that LPFA's or LBHF's request of an easement by the HMRC is necessarily an admission of fault. In her letter of 9 January 2011, Ms J M Lettman asked for HMRC to be informed of the circumstances, so I do not consider that Ms P Lettman can say that by them doing so that that suggests LBHF (or LPFA) were admitting fault.

**Directions**

125. I direct that within 28 days LBHF pays Ms P Lettman the balance of the death grant of £8,438.34 from the Fund, plus simple interest at the average rate payable by the reference banks for the time being, from 26 November 2010 to the date of payment.
126. Within 28 days of the date of this Determination, LBHF and LPFA shall each arrange to pay Ms Lettman £250 in recognition of the significant distress and inconvenience caused.

**Anthony Arter**

Pensions Ombudsman  
30 March 2016

## Appendix

127. Section 168 (Lump sum death benefit rule) of Chapter 3 (Payments by Registered Pension Schemes) in Part 4 (Pension Schemes) of the Finance Act 2004 says:

“(1) This is the rule relating to the payment of lump sum death benefits by a registered pension scheme in respect of a member of the pension scheme ("the lump sum death benefit rule").

Lump sum death benefit rule

No lump sum death benefit may be paid other than –

(a) a defined benefits lump sum death benefit,  
...

128. Section 13 (*Defined benefits lump sum death benefit*) of Part 2 (*Lump Sum Death Benefit Rule - Defined benefits arrangements*) in Schedule 29 (*Registered Pension Schemes: Authorised Lump Sums – Supplementary*) says:

(1) For the purposes of this Part a lump sum death benefit is a defined benefits lump sum death benefit if –

- (a) the member had not reached the age of 75 at the date of the member's death,
- (b) it is paid in respect of a defined benefits arrangement,
- (c) it is paid before the end of the period of two years beginning with the earlier of the day on which the scheme administrator first knew of the member's death and the day on which the scheme administrator could first reasonably be expected to have known of it, and
- (d) it is not a pension protection lump sum death benefit, trivial commutation lump sum death benefit or winding-up lump sum death benefit.

129. Mr Lettman's first period of Scheme membership (from 18 August 1997 to 31 August 2004) was governed by 'The Local Government Pension Scheme Regulations 1997' (**the 1997 Regulations**). Regulation 38 (Death grants) of the 1997 Regulations say:

“(1) If a member dies before his 75th birthday, the administering authority at their absolute discretion may make payments to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

...

(4) The multiplier for a deferred member's death grant is the same as for his retirement grant.

...

- (6) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years –

- (a) beginning with his death or
  - (b) 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”.

130. Mr Lettman’s second period of Scheme membership (from 1 September 2004 to 30 June 2008) was governed by ‘The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (**the 2007 Regulations**)’. Regulation 32 (Death grants: deferred members) of the 2007 Regulations says:

“(1) If –

- (a) a deferred member, or
  - (b) a pensioner member with deferred benefits under regulation 20(9) dies,

a death grant is payable.

- (2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

- (3) The death grant is –

- (a) in the case of a deferred member, the member's retirement pension multiplied by 5; or

...

- (4) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years –

- (a) beginning with his death: or
  - (b) 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”.