

Ombudsman's Determination

Applicant	Mr GY
Scheme	Local Government Pension Scheme – the Leicester Pension Fund (the Fund)
Respondents	Leicestershire City Council (the Council) Leicestershire Fire and Rescue Service (the Employer)

Outcome

1. I do not uphold Mr GY's complaint, and no further action is required by the Council or the Employer

Complaint summary

2. Mr GY's complaint concerns the Council's decision to split the death grant, arising on the death of his brother, Mr Y, between him and his brother's partner in equal shares.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr GY is currently represented by Roythornes Solicitors (and previously by another firm) (the **Solicitors**) in connection with his complaint.
5. The Fund is administered in accordance with the Local Government Pension Scheme Regulations 2013 (**the Regulations**).
6. It is Regulation 40, of the Regulations, that sets out the conditions for payment lump sum death grants on the death of an active member. This Regulation states that:

"Death grants: active members

40.—(1) If an active member dies before attaining the age of 75, an administering authority shall pay a death grant.

(2) The appropriate administering 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) The death grant is three times the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) as at the date of the member's death".

7. For the purposes of this, "**Dependent**" is also defined in the Regulations as:

"... in relation to a person means that in the opinion of the administering authority, at the date of the member's death—

(a) the person was financially dependent on the member,

(b) the person's financial relationship with the member was one of mutual dependence, or

(c) the person was dependent on the member because of physical or mental impairment;"

8. Finally, before moving on from the Regulations, it is worth noting that Regulation 41 deals with a separate benefit, a survivor's pension, that may become payable on the death of an active member. This pension may become payable to a cohabiting partner, the definition of which is more difficult to fulfil than that of "Dependent" in relation to Regulation 40. For example, a potential cohabiting partner in this case must have been living together "...for a continuous period of at least 2 years on the date the member ... died".

9. However, importantly, a survivor's pension under Regulation 41 (if indeed one is being paid) is not the subject matter of this complaint.

10. Mr Y worked for the Employer, and he was a member of the Fund, a defined benefit occupational arrangement. The Council is the administering authority.

11. On 24 July 2014, Mr Y completed an expression of wish form (**EOW**) and nominated Mr GY, and his father, Mr HY, to receive an equal share of the death grant (the **Death Grant**) payable on his death. However, Mr HY pre-deceased Mr Y.

12. On 8 August 2019, Mr Y died.

13. On 24 August 2019, Mr Y's partner, Mr CN, informed the Council that Mr Y had died. He explained that at the time of Mr Y's death they were living together as co-habiting partners.

14. In response, the Council, on 27 August 2019, sent Mr CN a "Declaration of Pension Entitlement" form (**the Form**). This letter was addressed to the residence that Mr CN had been sharing with Mr Y. The Council asked Mr CN to complete the Form and

provide supporting evidence that he and Mr Y were living together and were financially dependent on each other at the time of his death.

15. The Form appears to be one related to the payment of a survivor's pension under Regulation 41. It explained that in order for Mr CN to be eligible for a survivor's pension, he and Mr Y must have satisfied three conditions. Over a two-year period, prior to Mr Y's death, Mr CN and Mr Y had to have been:
 - free to enter into a civil partnership and they had not been living with another individual as if they were civil partners;
 - they had been living together as if they were civil partners; and
 - Mr CN was financially dependent on Mr Y, or they were financially dependent on each other.
16. On 8 September 2019, Mr CN returned the completed Form and provided a copy of his birth certificate. He also enclosed a copy of a bank statement covering the period 4 December 2018 to 2 January 2019, and a copy of a Council Tax statement in both his and Mr Y's names for the period between 1 February 2019 and 31 March 2019. The Council Tax statement related to the address to which the Form was sent.
17. On 1 October 2019, the Council decided to split the Death Grant, payable under Regulation 40, equally between Mr CN and Mr GY. This decision was made based on the evidence provided by Mr CN, the nominees named in the EOW, and the fact that Mr HY had died.
18. On 9 October 2019, the Council sent confirmation of its decision to Mr GY and Mr CN and explained that the Death Grant of £56,385 would be split equally.
19. On 15 October 2019, the Solicitors contacted the Council to query its decision to split the Death Grant between Mr GY and Mr CN.
20. In response, the Council explained that it had considered Mr Y's EOW. However, as Mr HY had died it was unable to fully consider fully implementing Mr Y's EOW. The Regulations provided the Council with absolute discretion in deciding how the Death Grant should be distributed. A decision was made to split the Death Grant between Mr GY and Mr CN. Mr CN was Mr Y's partner at the date of death, so he was an eligible beneficiary.
21. On 13 December 2019, the Solicitors submitted a complaint under stage one of the Fund's Internal Dispute Resolution Procedure (**IDRP**). The Solicitors said that:-
 - As Mr HY had since died, Mr GY should have been the sole beneficiary of the Death Grant.
 - Mr Y did not nominate Mr CN to receive a share of the Death Grant. This meant that no consideration had been given to the EOW by the Council.

- The Council had incorrectly assumed, based on evidence from Mr CN, that he and Mr Y had been living together for more than two years. Based on the evidence provided, the Solicitors was unsure how the Council had reached this conclusion. The evidence only accounted for the period from December 2018 onwards.
 - The Council did not have absolute discretion to decide how to distribute the Death Grant. Its discretion was limited to the principles of fairness and justice. If the Council held absolute discretion, the Death Grant could be paid to a third party completely unconnected to Mr Y.
 - If the Council had exercised its discretion in line with the basic principles of fairness and justice, then it would not have reached its decision.
 - Mr Y's estate (**the Estate**) was now incurring significant costs in pursuing Mr GY's complaint about the distribution of the Death Grant.
22. The Council asked Mr CN to provide additional documentary evidence of his relationship with Mr Y and that they were living together. Mr CN provided bank statements covering the period between 2015 and 2019, which confirmed that Mr Y would regularly send him money. He also provided confirmation that he was insured to drive Mr Y's car and information about a holiday they took in 2017.
23. On 14 February 2020, the Council provided its stage one IDRPs response and explained that:-
- The fact that Mr Y did not nominate Mr CN in the EOW was not indicative of the nature of their relationship at the time of his death, or whether Mr CN is eligible to a portion of the Death Grant.
 - Mr Y did not leave a Will or update his EOW before his death. The decision to pay Mr GY 50% of the Death Grant was made in line with the EOW. So, it had considered the EOW when exercising its discretion.
 - The Council took into account the Form and the initial evidence that Mr CN had provided. This led the Council to make the decision to pay an equal share of the Death Grant to Mr CN.
 - On receiving Mr Y's appeal about the distribution of the Death Grant, the Council considered that:
 - it was clear that Mr CN and Mr Y were in a long-term relationship as far back as June 2016, when Mr Y included Mr CN on his car insurance;
 - from 1 February 2019, Mr Y and Mr CN were registered as living together, as evidenced by a joint Council Tax bill;
 - Mr Y and Mr CN went on holiday together in 2017; and
 - Mr Y made a substantial number of regular payments into Mr CN's bank account from March 2015 up until August 2019.

- The Council believed that Mr Y and Mr CN were in a stable long-term relationship with an element of financial dependence between them. Consequently, the decision to split the Death Grant was not unreasonable or perverse.
- The Council had acted in accordance with its discretion under the Regulations.

24. On 18 May 2020, the Solicitors asked for Mr GY's complaint to be investigated under stage two of the Fund's IDRP and said that:-

- The Council had reached an incorrect decision in this case. Under stage one of the IDRP, it had taken into consideration the transfer of funds from Mr Y to Mr CN between 2015 and 2019. This information that was not available when it initially decided how to distribute the death grant.
- Mr Y's relationship with Mr CN was not long-term, nor was it stable. Mr CN would occasionally stay with Mr Y at his home. Mr CN was paying Council Tax for his own property until January 2019, while claiming State benefits as a single person. At the time of Mr Y's death, they had only been living together for a maximum of six months.
- Between 1 January 2015 and 21 November 2019, Mr CN received a total of £4,692.52 from Mr Y. During this period, Mr CN's total income was £96,420.74, so it could not be claimed that Mr CN was financial dependent on Mr Y.
- Mr CN sold two of Mr Y's cars and withdrew £41,000 from his bank account. Mr CN also continued to use Mr Y's credit cards after he died.
- The Council should reconsider its original decision and pay all of the Death Grant to Mr GY.

25. The Council referred the complaint to Derbyshire County Council (**Derbyshire Council**) for an independent review.

26. On 8 June 2020, Derbyshire Council responded to the Solicitors under stage two of the IDRP and said that:-

- The Council's decision, to split the Death Grant between Mr GY and Mr CN, was fair based on the available evidence. The Council had sufficient information to make a decision on who to pay the Death Grant to and in what proportion.
- The complaint was considered appropriately under stage one of the IDRP. All the information available to the Council at that time was reviewed.
- Under the Regulations, there was no requirement for Mr CN to provide evidence that he and Mr Y were co-habiting as civil partners for at least two years for Mr GN to be considered as a potential beneficiary of the Death Grant. This was only required for the payment of a survivor's pension.

- It was not in dispute that Mr CN was in a relationship with Mr Y and co-habiting with him six months prior to his death. Consequently, it would be difficult for the Council to come to any decision that did not result in a portion of the Death Grant being awarded to Mr CN.
- However, the Council agreed that it should reconsider whether Mr CN met the requirements for a survivor's pension. This was because there was no evidence to support the claim that Mr Y and Mr CN had been co-habiting for at least two years prior to his death. Mr Y insured Mr CN to drive his car and they went on holiday together, but this did not mean that they had lived together for two years or more, as the Council had initially suggested.

Adjudicator's Opinion

27. Mr GY's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council or the Employer. The Adjudicator's findings are summarised below:-

- The Regulations provide that the Council may make payment of a Death Grant to a nominated beneficiary, relative or someone Dependent of the member at "its absolute discretion". There was no requirement for Mr CN to have been co-habiting with Mr Y for more than two years to be considered as an eligible beneficiary for the Death Grant.
- After Mr HY's death, the Council was unable to fully consider the EOW. In reaching its decision about the Death Grant the Council placed some weight, but not all, on the EOW. It also considered the Form and the joint February 2019 Council Tax bill Mr CN provided. Although it was noted that there was some contention over how long Mr Y and Mr CN were co-habiting as civil partners.
- The Adjudicator was satisfied that the Council had correctly considered Mr CN as an eligible beneficiary of Mr Y for the purposes of the Death Grant. If the Council had ignored Mr CN's status as a potential beneficiary, it would have arrived at a perverse decision as it was clear that Mr Y and Mr CN were in a long-term relationship and were co-habiting from at least February 2019.
- The EOW was not legally binding. So, the Council was not obliged to follow it. It was up to the Council to decide whether to attach any weight to the EOW. The Adjudicator noted that it was completed in 2014 and Mr HY had pre-deceased Mr GY.
- The Adjudicator agreed that it was open to the Council to consider information provided by Mr CN after it had reached its initial decision and paid the Death Grant. In any event, the Adjudicator took the view that the Council was in possession of sufficient information to establish that Mr CN was an eligible beneficiary before it made that decision.

28. Mr GY did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr GY provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr GY.
29. Mr GY has said that the Form indicated that in order to be entitled to a survivor's pension, Mr CN was required to have been co-habiting with Mr Y for at least two years prior to his death. Based on the evidence that he had been provided, he believed that Mr CN was living alone and was dependent on State benefits for at least a part of that two-year period. Mr CN only co-habited with Mr Y from between February 2019 to August 2019.

Ombudsman's decision

30. Mr GY's complaint concerns the Council's decision to split the Death Grant, payable under Regulation 40, equally between him and Mr CN. Moreover, Mr GY believes no reasonable decision maker could have arrived at that decision based on the information provided by Mr CN.
31. Mr GY has provided extensive information to support his assertion that Mr CN did not live with Mr Y until February 2019. So, Mr GY believes that Mr CN did not meet the requirement of having lived with Mr Y for at least two years prior to his death.
32. However, having reviewed the relevant Regulations, I am satisfied that the two-year co-habitation period is only relevant when considering if an individual qualifies for a survivor's pension under Regulation 41. So, it is not relevant in determining eligible beneficiaries for the purposes of the Death Grant.
33. Furthermore, the complaint that was accepted for investigation by The Pensions Ombudsman relates to the Council's decision to split the Death Grant, payable under a different test found in Regulation 40, between Mr GY and Mr CN. Consequently, Whether Mr CN should have been eligible for a survivor's pension falls outside the scope of that complaint.
34. In this case, I need to consider whether the Council has acted in accordance with the Regulations in deciding to split the Death Grant equally between Mr GY and Mr CN. I also need to consider whether the Council exercised its discretion in line with common law principals. Namely, only relevant factors should be considered, the scheme provisions and the law should be construed correctly, the right questions asked, and the decision maker should not reach a perverse decision.
35. Regulation 40(2), states that in the event of the death of an active member, below the age of 75, the "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." I have also set out the definition of Dependent for the purposes of this provision, in paragraph 7 above, and note that the decision as to whether or not an

individual is dependent of the member is to be made “in the opinion of the administering authority”.

36. Mr GY’s main complaint is that the Council ignored the EOW. The Council has explained that in reaching its initial decision on how the Death Grant should be distributed it considered the EOW, the fact that Mr HY had pre-deceased Mr Y and the evidence returned with the Form, which the Council had sent to the address shared with Mr Y at the time of his death, including the joint Council Tax bill provided by Mr CN. The Council concluded from this evidence that Mr Y and Mr CN were co-habiting and were in a relationship at the time of his death. It confirmed that it considered that information in light of Regulation 40. Consequently, in its opinion, Mr CN could be considered an eligible beneficiary under the Regulations.
37. In my view, this information was sufficient for the Council to form a reasonable opinion that Mr CN was Dependent for the purposes of the Regulations at the time of Mr Y’s death, and so an eligible beneficiary. It does not, in my view, matter that the information used to form that opinion under Regulation 40 was in part obtained via the Form (which was designed to help the Council decide whether a survivor’s pension could be paid under Regulation 41). That does not make the information obtained irrelevant to the point that the Council had to consider. So, I find that the Council did not reach a perverse opinion on the relevant evidence it had in front of it, and applied that evidence to the correct question, that being the test in Regulation 40.
38. Accordingly, I disagree with Mr GY’s assertion that the Council reached a perverse decision in this case by paying Mr CN 50% of the Death Grant.
39. I find that the Council took into consideration all of the relevant information necessary to establish whether there were any eligible beneficiaries. The Council was unable to fully consider the EOW given Mr HY’s death. Furthermore, I agree with the Adjudicator that If the Council had ignored Mr CN’s status as a potential beneficiary, the process would have been at risk of challenge.
40. I understand that Mr CN provided additional information after the Council decided to split the Death Grant in equal shares. Namely, bank statements confirming transfers amounting to £4,692.52 from Mr Y to Mr CN between 2015 and 2019. Also, confirmation that Mr CN was insured to drive Mr Y’s car and details of a holiday they took together in 2017. While this information was provided after the Council issued its initial decision, I find that it only further confirmed that Mr Y and Mr CN were in a long-term relationship at the time of death and that the Council’s initial decision was reasonable in the circumstances.

I therefore find that the Council properly exercised its discretion regarding the Death Grant in accordance with the Regulations. While I understand that Mr GY will not be satisfied with this outcome, Mr CN was an eligible beneficiary and was entitled to be considered for a share of the Death Grant. I find that the Council took into account all relevant matters and no irrelevant ones in reaching its decision. I consider that the

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process followed by the Council was not flawed, and its decision to distribute the Death Grant equally between Mr GY and Mr CN was reasonable.

41. I do not uphold Mr GY's complaint.

Dominic Harris

Pensions Ombudsman

30 March 2023