

Ombudsman's Determination

Applicant	Mr L
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	City of Wolverhampton Council (the Council)

Outcome

1. I do not uphold Mr L's complaint and no further action is required by the Council.

Complaint summary

2. Mr L has complained about the Council's decision not to award him a lump sum death benefit from the Scheme, in respect of his late wife, Mrs R.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge that there were other exchanges of information between all the parties.
4. On 24 August 1992, Mrs R became a member of the West Midlands Pension Fund (**WMPF**), through her employment with the Council. WMPF is part of the Scheme.
5. On 13 October 2005, Mrs R submitted a death benefit nomination form for the Scheme. Mrs R nominated her daughter to receive the full proportion of any lump sum benefits payable in the event of her death.
6. On 18 September 2006, Mrs R submitted an updated death benefit nomination form (**the Nomination**). She again nominated her daughter (**the Nominee**) to receive the full proportion of any lump sum benefits payable in the event of her death.
7. On 31 March 2016, Mrs R began accessing her Scheme benefits through a 'flexible retirement' arrangement. This meant that she became a pensioner member of the Scheme.
8. On 2 July 2019, the administrator of WMPF (**the Administrator**) received notification that Mrs R had died on 21 June 2019, at the age of 67 years.
9. On 5 September 2019, the Administrator notified Mr L that a lump sum death benefit of £39,590.72 was payable from the Scheme. It explained that Mrs R had, via the

Nomination, requested that the Nominee receive any lump sum benefits due. The Administrator said it was minded to pay the benefits in accordance with the Nomination. It asked Mr L whether there were any circumstances that he considered to be relevant to the payment of these benefits.

10. On 9 September 2019, Mr L telephoned the Administrator to challenge the likely decision to award Mrs R's lump sum death benefits to the Nominee. He alleged that the Nominee had carried out fraudulent transactions on Mrs R's bank account.
11. On 11 October 2019, Mr L wrote to the Administrator to submit copies of Mrs R's bank account statements, in support of the allegation he made during the telephone call of 9 September 2019.
12. On 18 November 2019, the Council wrote to Mr L. It said that it had discretion under the Scheme's Regulations to propose that Mrs R's lump sum death benefits could be split equally between Mr L and the Nominee. However, this would need to be agreed by both parties, and if not, the benefits would be paid in full to the Nominee.
13. On 25 November 2019, Mr L was awarded a survivor's pension of £3,525.32 per year, through Mrs R's membership of the Scheme.
14. On 28 November 2019, Mr L confirmed that he was willing to agree to the proposed split of Mrs R's lump sum death benefits.
15. On 7 January 2020, the decision regarding payment of Mrs R's lump sum death benefits was escalated to the WMPF review panel. This was because the Nominee had not agreed to the proposed split with Mr L. The review panel concluded that the Nominee should receive the benefits in full, in accordance with the Nomination.
16. On 14 January 2020, the Administrator wrote to Mr L to inform him that the proposed split had not been agreed by all parties. So, it had decided to pay the lump sum death benefits in accordance with the Nomination.
17. On 27 January 2020, Mr L submitted a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
18. On 25 March 2020, the Administrator, on behalf of WMPF, issued a response to Mr L's complaint at stage one of the IDRP. It said that although a Scheme member's beneficiary would often be their next of kin, they could nominate a different person. The purpose of a nomination was to assist the Council in deciding to whom death benefits should be paid. The Administrator considered that the Council had acted appropriately in deciding to pay Mrs R's lump sum death benefits to the Nominee.
19. On 7 September 2020, Mr L requested that the complaint be moved to stage two of the IDRP.
20. On 13 December 2021, the Council issued its response to Mr L's complaint at stage two of the IDRP. It explained that the distribution of death benefits for the Scheme was governed by Regulation 46 of the Scheme's Regulations (**Regulation 46**), which

gave it absolute discretion to decide the beneficiary, or beneficiaries, of lump sum death benefits. Regulation 46 is quoted in the Appendix.

21. The Council said it had considered Mr L's claim that he and Mrs R had a financially interdependent relationship. It said that they were not living together at the time of Mrs R's death, and there was no evidence that Mrs R was contributing towards Mr L's living costs. Its conclusion was that Mr L was not dependent on Mrs R. It explained that, while it was not bound by any nomination made by a member, it had decided to place more weight on the Nomination. It added that there was no evidence to suggest that Mrs R's wishes had changed.
22. The Council set out its view that the information Mr L had submitted, in relation to the alleged fraudulent transactions on Mrs R's bank account, was inconclusive. The Council considered that if it were to undertake further investigation on this matter, it would represent disproportionate action within its role as decision-maker for the award of Mrs R's death benefits.
23. The submissions made to The Pensions Ombudsman (**TPO**) for the complaint, prior to the issue of the Adjudicator's Opinion, included further information setting out the position of both parties. These positions are summarised below.

Mr L's position

24. He and Mrs R had a close and financially interdependent relationship. For a number of years, they lived together at a property owned by the Nominee, and they paid rent to the Nominee. He cared for Mrs R in the period leading up to her death. The Nominee had less involvement in her life.
25. He retired from his employment in 2005 due to ill health. His health is now further deteriorating, and he only has a small income on which to live.
26. He and Mrs R agreed between them for Mrs R to nominate the Nominee, because of his poor health at the time of the Nomination. Mrs R subsequently intended to update this nomination, but she was diagnosed with dementia in 2017, so did not have capacity to make such a decision. She did not leave a Will.
27. The Nominee transferred money out of Mrs R's bank account in 2018, without either his or Mrs R's consent. He provided account statements to the Council in support of this allegation, but these statements have not been submitted to TPO. They did not go to the police at the time, as they were concerned about the effect this may have had on the Nominee's career.

The Council's position

28. It has absolute discretion to pay lump sum death benefits to a Scheme member's nominee, personal representative, relative, and/or dependant. It is not required to follow any nomination made. It will apply its discretion based on what it reasonably believes were the members wishes. If there is a nomination form, this will be considered, but it will also look at all potential beneficiaries, as well as the member's circumstances.
29. In this case, it notified Mr L and the Nominee of the Nomination, and asked whether there was anything that either party considered relevant to the payment of Mrs R's death benefits.
30. Mr L challenged the initial position that the death benefits were likely be paid to the Nominee. During its subsequent investigation, it received a substantial amount of information from the parties. Due to the conflicting nature of this information, it sought legal advice on the application of the Scheme's Regulations. The outcome of this was its proposal to split the lump sum equally between Mr L and the Nominee, with the caveat that if the split was not accepted by either party, the benefits should be paid in line with the Nomination.
31. The Nominee did not agree to the proposal, so it was escalated to the independent WMPF review panel; the panel had no prior involvement with the case. The final decision was to pay the benefits in full to the Nominee, in line with the Nomination.
32. Mrs R nominated the Nominee in 2005 and 2006. There was no indication that she later changed her mind about this. Mrs R retained mental capacity for a number of years, during which she could have updated the Nomination.
33. Mr L was given the opportunity to submit evidence to support his claim that he had financially interdependent relationship with Mrs R. When considering financial dependency, it looks at the extent to which the member's income and joint finances were relied upon to support the potential beneficiary's standard of living. At the time of Mrs R's death, Mr L was not living at the property owned by the Nominee, for which he and Mrs R had been paying rent, nor were they living together elsewhere. It was therefore unclear how this point would support Mr L's claim. He provided no other evidence in support of his position.
34. It reviewed the evidence, provided by Mr L, of financial transactions made by the Nominee. Conflicting information was received from other parties to the case, so it had been unable to reach a definitive view. It noted that there appeared to be a family dispute around these transactions.
35. In making a decision, it should consider relevant information and avoid going to disproportionate lengths in order to make an award. It would not have been productive to have further investigated the apparent family dispute and the allegations made by Mr L. Its decision to award the lump sum death benefits to the Nominee was reasonable.

Adjudicator's Opinion

36. Mr L's complaint was considered by one of our Adjudicators, who concluded that no further was required by the Council. The Adjudicator's findings are summarised below:-

- The Scheme's Regulations set out that the Council, as the appropriate administering authority, had absolute discretion to decide how Mrs R's death benefits should be distributed.
- Previous Determinations of the Pensions Ombudsman (**the PO**) have provided guidance, in line with the *Edge* principles, on the exercise of discretion by decision-makers for such decisions. If the Council was found to have followed these principles in reaching its decision, neither the PO, nor the courts, may interfere with the decision¹.
- Regulation 46 confirmed that Mrs R's beneficiary (or beneficiaries) was entitled to a lump sum death benefit from the Scheme. The available evidence supported that both Mr L and the Nominee met the criteria for a potential beneficiary.
- The Council was offered the opportunity to explain why it proposed the equal split of benefits, when it would otherwise revert to paying the Nominee in full. Other than stating that it obtained and followed legal advice, the Council offered no further rationale for proposing a split that differed from its decision.
- There was no evidence of maladministration by the Council in the process it undertook for the award of Mrs R's lump sum death benefits. In addition, there was no indication that the Council fettered its discretion by proposing the benefit split, then reverting to a decision to pay the Nominee.
- The Council placed greater emphasis on the Nomination, made in 2006, as it considered that this was the strongest indication of Mrs R's wishes. It made a reasonable assertion that there was a period of over ten years in which Mrs R had mental capacity to make a new nomination if she wished.
- There was nothing to suggest that the Council's conclusion, set out in its response at stage two of the IDR, that Mr L had provided limited evidence of financial or mutual dependence on Mrs R, was incorrect.
- The Council was not required to take action which could be deemed as disproportionate, as part of its decision on the award of death benefits; it should consider only relevant information. Given that Mr L's allegations, regarding transactions made on Mrs R's bank account, were unproven, it was reasonable that the Council did not pursue this line of enquiry any further.

¹ *Edge v The Pensions Ombudsman* [1999] 4 All ER 546

37. Mr L did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr L provided further comments, which are summarised as follows:-
- He and Mrs R had lived together for many years and moved to their most recent home in 2007. They loved each other, spent a significant amount of time together, and he was the primary carer for Mrs R in the period before her death. He had no help from other relatives. He has submitted personal photographs as evidence of their relationship.
 - They lived together until February 2019, when an argument between him, Mrs R, and the Nominee, resulted in the locks being changed at the property by the Nominee. He was effectively forced to move out as a result.
 - He and Mrs R both agreed that Mrs R should nominate the Nominee, because he was seriously ill at the time of the Nomination. His health remains poor.
 - The Nominee made withdrawals from Mrs R's account and changed the account details without her consent. This led to arguments among the family. He did not report the matter to the police, because he was concerned about the effect this may have on the Nominee's career.
 - Mrs R helped him financially and gave him money to use as a deposit for a car.
38. The Council accepted the Adjudicator's Opinion. It was offered the opportunity to comment on the points made by Mr L in his response to the Opinion, but said this did not change its position. It confirmed that it viewed Mr L as being eligible to receive Mrs R's death benefits by virtue of him being the husband, and therefore a relative, of Mrs R. However, it explained that, in line with the Scheme's Regulations, it exercised its discretion to pay the benefits to the Nominee, after reviewing the information and evidence provided. All the relevant parties were permitted to make submissions, and the benefits were paid in accordance with the Nomination. It considers that any allegation of fraud, in respect of access to Mrs R's bank accounts, should be referred to the police.
39. I have reviewed the additional comments, but it does not change the outcome of the complaint. I agree with the Adjudicator's Opinion.

Ombudsman's decision

40. Regulation 46 is the legislation that gave the Council absolute discretion to decide how Mrs R's lump sum death benefit (**the Lump Sum**) should be distributed, and is set out in the Appendix. In particular, Regulation 46(2) provides that "*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.*"

41. The existence of such discretion means that neither I, nor the courts, can directly impose a different decision, apart from in very limited circumstances. It is also possible for the decision to be remitted back to the decision-maker for further consideration, if I find it has not shown that an appropriate process was followed in reaching its conclusion. However, even in this instance, I cannot prescribe how the decision-making process should be undertaken.
42. The *Edge*² principles provide guidance on the exercise of discretion, meaning a decision-maker:
- must ask the right questions;
 - needs to direct themselves correctly in law;
 - needs to consider all relevant factors, ignoring any irrelevant ones; and
 - avoid making a perverse decision, that is a decision which no other reasonable decision-maker could arrive at.
43. Mr L has made further submissions about his relationship with Mrs R, their living arrangements, and his allegations regarding activity on Mrs R's bank account.
44. It is important to set out that a decision for the award of death benefits should not be viewed as a personal or moral judgement on the closeness of a potential beneficiary's relationship with the deceased party. The decision-maker must show that it has adhered to the *Edge* principles in exercise of its discretion. In this case, the Council was required to ask the right questions to obtain relevant information, then review this information to reach what it considered to be a reasonable decision.
45. From the evidence I have before me, having been identified as the husband of the deceased, it would appear that Mr L was considered as a potential beneficiary of the Lump Sum. The Nominee was the other potential beneficiary. The Council informed my Adjudicator that "*an investigation was undertaken to determine who the Fund should consider as beneficiaries of the death grant following [Mrs R's] death. On 5 September 2019 the fund wrote to both [the Nominee] and [Mr L] ... , informing them that a nomination form had been completed and asking if there were any circumstances that should be considered prior to payment of the death grant*". I find that the Council obtained appropriate information during the course of its decision-making process for the award of Mrs R's death benefits. Although it placed greater weight on the Nomination, the Council has shown that it did review the other information it received and considered Mr L as a potential beneficiary.

² *Edge v Pensions Ombudsman* [2000] Ch 603

46. While I acknowledge it is possible that another decision-maker may have made a different decision to that of the Council, I do not find that its decision was perverse, meaning a conclusion that no reasonable decision-maker could have reached. The Council decided to pay the Lump Sum in accordance with the Nomination. I agree with the Adjudicator that there was a considerable period of time in which Mrs R could have updated her nomination. Mr L said Mrs R's intention was to change her nomination, but she did not do so, and there is no evidence to support that she was about to make such a change.
47. In response to the Adjudicator's Opinion, Mr L said that he and Mrs R were living together until shortly before Mrs R's death, when actions taken by the Nominee meant he had to move out of the property. This does not change my view of the complaint. Mr L was, properly, identified as a potential beneficiary, and was not excluded from the decision-making process by dint of any argument as to the nature of any dependency. Rather, the Council has confirmed that he was considered, as a result of him being a 'relative'. Ultimately, though, the discretion was exercised to pay the Lump Sum to the Nominee.³ As explained above, the award of the Lump Sum should not be taken as a comment on the quality of the relationships involved. Irrespective of whether Mr L and Mrs R had been living together at the time of Mrs R's death, it would not alter the basic principle that the Council had absolute discretion over the decision to award the Lump Sum to the Nominee. The Council was given the opportunity to review Mr L's comments and has confirmed that its position is unchanged.
48. Mr L also reiterated his concerns about transactions that took place on Mrs R's bank account, allegedly without her consent. The Council has confirmed that it did consider this as part of its decision, but said this was a matter for the police. I agree with this position and do not find that the Council should have carried out its own investigation of the allegations made by Mr L.
49. In conclusion, I do not uphold Mr L's complaint.

Dominic Harris

Pensions Ombudsman
6 March 2025

³ I was a little confused by earlier comments made by the Council, and set out in paragraph 30 above, that it would consider splitting the Lump Sum between Mr L and the Nominee, but only if the Nominee agreed. It would appear to me that the Council would have had the power to do this, when exercising its discretion, without needing the consent of the Nominee. However, my understanding of the process followed was that a decision was made to pay the Lump Sum to the Nominee, and the potential 'split' was being considered after that decision (which was subsequently confirmed), and so would only be acted upon if the Nominee agreed. It does not therefore affect my conclusion.

Appendix – Extract from The Local Government Pension Scheme Regulations 2013

“46 Death grants: pensioner members

(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) Where any pension paid to a member derived from a pension credit, the death grant is 5 times the annual amount the member would have been entitled to receive as that pension at the date of death if there had been no commutation under regulation 33 (election for lump sum instead of pension), reduced by the amounts of any such commuted lump sum and any pension paid to the member.

(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) For the purposes of a death grant payable in accordance with paragraph (3) (but not for the purposes of a death grant derived from a pension credit payable in accordance with paragraph (4)), if the member—

(a) died in the period beginning with 1st April and ending with 5th April in the Scheme year following the Scheme year in which the member ceased to be an active member; or

(b) ceased to be an active member in the period beginning with 1st April and ending with 5th April in a Scheme year and subsequently died within that same period,

the pension the member would have been entitled to receive as retirement pension at the date of death is deemed to include the revaluation adjustment that would have been due at the next revaluation date...

CAS-92761-H7Q6

... 'dependent' 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;"