

Death grants and spouses benefits

Death Grants

A death grant is payable when an active, deferred or in some circumstances a pensioner member dies. Under the current regulations the value payable is;

Status	Death Grant
Active member	3 times assumed pensionable pay
Deferred member	5 times deferred pension
Pensioner member	(If the member has died within 10 years of retiring) the balance of 10 years' worth of pension

There is no specific LGPS regulation or guidance that funds must follow when determining the recipient of a death grant. It is not a pension matter per se, it's more a matter of the correct exercise of powers under public law principles that have accrued over time through case law.

The most often cited case is the Associated Provincial Picture Houses Limited v Wednesbury Corporation 1948 ("Wednesbury"). During the case the Lord Green gave his view that:

a person entrusted with a discretion must direct himself properly in law, calling his attention to the matters which he is bound to consider and excluding from his consideration matters which are irrelevant to what he has to consider. Failure to obey these rules may be said to be acting unreasonably. However, at the extreme end, there may arise something so absurd that no sensible person could ever dream that it lands within the powers of the authority.

This is why you often see quoted in Independent Dispute Resolution Process cases, words to the effect that:

a decision by an employer/administering authority can only be overturned if in reaching their view they have either acted ultra vires, failed to consider a relevant matter, considered an irrelevant matter or reached a decision that no reasonable person could have reached.

In short, the Fund must listen to all sides of the story, weigh up all the relevant arguments, not break the law and not do something out of the ordinary. An expression of wish form can help guide the Fund in its determination, but it does not necessarily need to follow this.

Funds usually consider how much weight to put on each piece of evidence available to it. Most funds naturally place considerable weight on an up to date expression of wish form which names the deceased's wife and children as beneficiaries. However, if a fund were faced with a decade old expression of wish form that named a former partner but you knew that the member had since got married and had children it would be difficult to make the judgment that that was really what the member intended. Among the things a fund might consider in making a decision are the member's domestic arrangements when they died, whether they left a will or not, and in some cases it may be necessary to talk to the member's surviving relatives.

For the West Sussex Scheme...

The Administering Authority Discretions include the following:

Decide to whom a death grant is paid

Where it is clear, having taken account of all the circumstances, payment is taken in accordance with the member's expression of wish. If no wish has been made, then payment is made to the legal spouse, cohabiting partner or civil partner following receipt of Grant of Probate or Form of Indemnity.

Where there is any doubt this is delegated to the Principal Pension Consultant (Administration and Employers)

Payment of Spouse's, civil partner's or cohabitees Pension

The situation when paying a pension is different, as the fund is not exercising a discretion. The LGPS regulations establish to whom you must pay a pension and the fund is simply establishing that the individual meets the criteria and then paying the pension to them. In the case of a spouse or civil partner that is a simple case of having sight of the legal paperwork. However, proof of meeting the cohabiting criteria is more difficult and does require some judgment. As it stands in the LGPS (and please note this area is constantly subject to legal challenge) a cohabiting partner must at the time of death:

- Have been able to marry or form a civil partnership with the deceased
- Not have been living with anyone else as if they were married or in a civil partnership
- Been financially dependent on the member or been financially interdependent with them.

The above situation must have endured for at least 2 years (we believe this criteria may eventually be challenged in court).

Typically when considering eligibility, funds will look for things like a joint mortgage statement, joint bank account or utility bills in both names. Even receipts for the family shopping could support a cohabiting partner's claim.

The ever expanding scope and definitions of who is eligible to receive these benefits has been reflected in the actuarial assumptions (i.e. the probability they will be paid on death is increasing), which leads to slightly higher liabilities.

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Verification of marriage, civil partnership etc. is obtained by Hampshire Pension Services or the team establish whether the deceased and their partner were living together, financially dependent on each other, and whether they were free to marry.