

# East Sussex Pension Fund

## Local Government Pension Scheme: Policy on the exercising of discretionary powers in relation to the payment of death grants

### Objectives of this policy

1. To ensure that the East Sussex County Council ("ESCC"), acting in its capacity as administering authority to the East Sussex Pension Fund exercises its discretion over who should receive a death grant in a way that is compliant with the Local Government Pension Scheme ("LGPS") Regulations, in accordance with acknowledged best practice and consistent with precedence established by The Pensions Ombudsman.
2. To ensure that the death benefit process is fair and transparent for all potential death grant recipients.
3. To provide a robust process that mitigates the risks of successful appeals under the Internal Dispute Resolution Procedure.

### Background

Payment of death grants under the LGPS is discretionary which means that when paid to an individual beneficiary they will not form part of the deceased's estate and so will not be subject to inheritance tax. Death grants are also paid free of other taxes in most circumstances.<sup>1</sup>, recognising that if this goes into Probate the Estate will be subject to Inheritance Tax.

The LGPS Regulations 2013 permit payment of death grants to beneficiaries following the death of an active, deferred and pensioner member. In all cases the definition of who receives the death grant is the same;

*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.*

### General Principles

The key phrase is "absolute discretion". While the administering authority should seek to establish the intentions of the deceased member and may consider the views of other relevant parties in reaching its decision, they are not bound by anyone else's will and the sole responsibility of the decision lies with the administering authority.

However, there are well established principles that public bodies should follow when exercising a discretion<sup>2</sup>. These are summarised below;

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<sup>1</sup> A special lump sum death charge is payable when the death grant is not discharged within 2 years of the date of death, or within 2 years of the date on which the administering authority could reasonably be expected to have become aware of the member's death and the payment is made to the personal representatives, as required by the LGPS regulations

<sup>2</sup> Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948)

- In making a decision, the decision maker must ask itself and others the correct questions and direct themselves correctly in law (in particular, they must adopt a correct construction of the relevant regulations).
- It is for the decision maker to decide how much weight to attach to any piece of evidence. The only requirement is that the evidence is considered, and the decision maker takes account of all relevant matters and disregards any irrelevant matters.
- The decision maker must not arrive at a perverse decision, i.e. a decision which no reasonable person, properly directing themselves, could arrive at in the circumstances.

Experience of Pensions Ombudsman decisions underlines these principles. It is possible for reasonable people, faced with identical circumstances, to reach different decisions about the payment of a death grant. The Pensions Ombudsman will not overturn or second guess decision where it can be evidenced that the above principles have been properly applied.

### **The decision-making process**

In reaching a decision ESCC operates a process based on the following principles;

#### **Gathering the relevant information**

An information gathering exercise will be carried out. This involves contacting the next of kin, personal representatives and/or family and friends of the deceased to obtain relevant documentation and information. On occasion legal advice may also be sought.

#### **Identifying all possible beneficiaries**

Using the information obtained, the full list of individuals with a beneficial claim to a death grant will be established.

#### **Considering all relevant factors and disregarding irrelevant factors**

There are a number of factors to consider in deciding who should receive a death grant, some will be relevant, and some will need to be disregarded as irrelevant. The Administering Authority has the absolute discretion to attach whatever weight to a factor as it chooses, nor is it bound by any single factor.

The ESCC process requires a note to be made of each factor, whether that factor has been considered or disregarded, the reasons why and the extent to which any factor has been relied upon.

#### **Reach a reasonable decision**

In making a final determination ESCC will start from the position that the member's wishes, where they can be identified, and reasonably be upheld. However, this will not always be the case and there may, on occasion, be sufficient reason for the death grant not be distributed in accordance with the member's wishes.

Where it exists, one of the prime factors in determining who should receive a death grant will be an Expression of Wish Form, completed by the member.

The presence of an Expression of Wish Form is not definitive. It is merely one piece of evidence to be considered alongside others.

### Summary of the process

Where the member **has completed** an Expression of Wish Form, the process can be summarised as follows;

1. The death grant can be paid to or for the benefit of the member's nominee(s) or for the benefit of the personal representatives or any person who was a relative or dependent of the deceased member.
2. Establish whether Expression of Wish is still valid?
  - Is/are the nominee(s) alive?
  - If a spouse/civil partner is named, were they still married/in the civil partnership and living together at the time of death?
  - If a partner is named, were they living together at the point of death?
  - If children are named, are there any other children born after the Expression of Wish was made?
  - Are there any other factors that would suggest not following the Expression of Wish Form, for example, the nominee was involved with the member's death or evidence of fraud. Has there been any other evidence provided that would challenge the members expression of wish form? If so, has that been investigated?
3. Are there any other individuals with a beneficial claim to a share of the death grant?
4. Is there a will and if it has been seen, who are the beneficiaries, and does it give any cause to question the Expression of Wish? The will does not override an Expression of Wish Form, but it can provide an indication of a member's intentions.
5. Is further information required from the nominee(s)/next of kin or other parties to assist with the decision?
6. Having considered the above, is there any reason why payment should not be made in accordance with the Expression of Wish?
7. Where the Expression of Wish is no longer valid or it is not considered payment can be made to the nominee(s), the case will be treated as if an Expression of Wish is not held.

Where an Expression of Wish Form **does not exist** or has been **discounted for a valid reason**, the process can be summarised as follows;

1. The death grant can be paid to or for the benefit of the personal representatives or any person who was a relative or dependant of the deceased member.
2. Establish the next of kin. What is their relationship to the member?

3. Are there any other people who it is considered might have or make a claim to a share of the death grant? If they are not relatives, they must be dependent on the member in some way.
4. Is there a will and, if so, who are the beneficiaries?
  - Is the main beneficiary the next of kin?
  - If there are other beneficiaries what is their relationship to the deceased member?
5. Is further information required to assist with the decision? Such information could come from, next of kin, family, friends or any individual or body that can provide information about the late member's situation and intentions.
6. Payment will typically be made to one or a combination of the spouse/partner, eligible child(ren) and/or other dependents.
7. Where there is no next of kin, beneficiary or other party to consider, payment will be made to the legal representative of the deceased member.

Note that the above scenarios are for illustrative purposes only and each case must be considered based on its own merits and evidence provided.

### **The decision maker**

East Sussex County Council has delegated the power to determine the recipient of a death grant to officers. This is consistent with the principle that officers should make operational decisions and it also prevents delays that can occur where such decisions are delegated to committees of the council, which meet infrequently.

ESCC, categorises decisions on death grants into 2 levels, according to the complexity and, therefore, risk that they pose.

#### **Level 1**

These cases are the most straightforward and may display some additional areas of complexity;

1. An up to date, valid Expression of Wish Form / or alternatively there is no Expression of Wish Form or there is evidence to suggest that the Expression of wish might be invalid
2. There is no evidence from other sources that the Expression of Wish form should be disregarded
3. There is no evidence of an alternative claim from any individual or organisation
4. Either, there exists a spouse/partner, eligible child(ren) and/or other dependent(s), or; There is no person appearing to the authority to have been a relative or dependent of the member, but there is a personal representative.
5. There is no evidence of an alternative claim from any individual or organisation

Level 1 cases can be decided by the Head of Pension Administration.

## Level 2

These cases are the most complex and will typically exhibit one or more of the following characteristics.

1. There is no Expression of Wish Form or there is evidence to suggest that the Expression of wish might be invalid.
2. The late member's domestic circumstances are unclear or complicated.
3. There is conflicting or contradictory evidence.
4. The entitlement of one or more of the potential beneficiaries is disputed by another party.
5. There is an involvement by agencies such as the Police, social workers or similar.
6. There is suggestion of fraud or other impropriety.

Level 2 cases will be decided by the Head of Pensions, who make seek advice from the ESCC monitoring officer and/or s151 officer as appropriate.

### Policy details

Policy Owner	Head of Pension Fund
Current Version	Version 1
Date	24 August 2020

This policy will be reviewed on an annual basis and updated where relevant.