

NORTHUMBERLAND COUNTY COUNCIL PENSION FUND
Pension Fund Panel Meeting 22 February 2019



South Tyneside Council

Death Grant Protocol

The Legal Team has been carrying out a review of the Death Grant Protocol in light of some recent Pension Ombudsman decisions.

The Tyne & Wear has absolute discretion over who receives any lump sum death grant and may pay a 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.

In order for the Fund to make an informed decision as to who receives a death grant, this revised Protocol must be followed at all times to ensure consistency and to ensure a robust procedure is in place, should the Fund ever be challenged on a decision.

Recent decisions by the Ombudsman have shown that when exercising its discretion, the Fund must determine the following;

1. Who are the legitimate potential beneficiaries for the death grant and;
2. How the benefit should be distributed amongst the potential beneficiaries.

In order to do this, current guidance shows the Fund must investigate the personal and financial circumstances of the deceased and the potential beneficiaries. Once the Fund knows who the main people were in the life of the deceased, they need to consider who, if anyone was financially dependent upon the deceased at the time of death.

The Fund are expected to have a process to check, so far as is reasonable, who may fall within the class of potential beneficiaries. Investigations must be carried out to determine the facts on which to base a decision upon. Further, where allegations are made against a potential beneficiary, that person must be given an opportunity to refute them.

Please note the nomination form should no longer be used as the starting point, but as a factor when establishing the circumstances of the deceased.

In most circumstances, where a person leaves a surviving spouse, civil partner or cohabiting partner, it is likely they will be able to show financial dependence upon the deceased, if the deceased was paying towards housing or other household costs.

Below is a non-exhaustive list of information which the Fund should obtain to understand the personal and financial circumstances of the deceased and potential beneficiaries. A written record of the information received should be made and recorded on UPM for audit purposes.

Personal Circumstances of the deceased – Required Information

- Does the deceased leave a Partner, be that a surviving spouse, civil partner or cohabiting partner?
- Has the deceased ever been married or in a civil partnership
- If the deceased is divorced or if their civil partnership has been dissolved, the Fund requires a copy of the Decree Absolute or Final Order
- If the deceased left a cohabiting partner, does the person (P) satisfy the conditions below for a continuous period of at least 2 years on the date the member (M) died—
 - M is able to marry, or form a civil partnership with P,
 - M and P are living together as if they were husband and wife or as if they were civil partners,
 - neither M nor P is living with a third person as if they were husband and wife or as if they were civil partners, and
 - either P is financially dependent on M, or M and P are financially interdependent
- Who did the deceased actually live with?
- Did the deceased have any children? This could include adopted children, step-children or child accepted by the deceased as a member of the family
- If yes, what their ages and were they still in full time education or vocational training
- If the deceased has children but they do not live with them, did the deceased pay maintenance for their benefit
- Did the deceased leave any other relations, such as Mother, Father, Brother, Sister
- Is there anything worth noting about the deceased health before the date of death (for example, were they suffering from a long term illness, were they being cared for by someone)

Other information to consider

- Who is the Personal Representative - This is the generic term which includes an executor for the estate of a deceased person who left a will or the administrator of estate where the deceased did not leave a will. Please note that the Personal Representative may not necessarily be the Next of Kin.

- Did the deceased leave a Will
- Is Probate being applied for - either Grant of Representation (Will) or Grant of Letters of Administration (no Will). If Probate has already been obtained, a copy needs to be provided before a decision can be made. Remember, if the deceased left a small estate it may not be necessary for their Personal Representative to obtain Probate. The Administration of Estates (Small Payments) Act 1965 (as amended) states that for deaths on or after 10 May 1984, the maximum amount transferable without a grant should not exceed £5,000. This does not necessarily include the death grant, as this can be paid outside of the estate.
- Is a Solicitor instructed to deal with the estate – if so, what are their contact details
- Has the deceased completed a Nomination form, if so what is the date of Nomination Form, what is the name of the nominated person(s) and what is their relationship to deceased
- Has there been a change in circumstances since the nomination form was completed (for example, children being born, relationship breakdown or marriage). Please note that it cannot be assumed that a change of circumstances leads to a change in nomination.
- Cause of death – Copy death certificate must be received

From the above information, it should be possible for you to identify:

1. Who are the legitimate potential beneficiaries for the death grant and;
2. How the benefit should be distributed amongst the potential beneficiaries

Where you feel the circumstances warrant the decision to be made by the Head of Pensions, a memo detailing the facts of the case, together with supporting documentation and evidence needs to be sent by email to the Head of Pensions, and copied to Nicola Rawlinson – Principal Solicitor and Dave Smith – Principal Pensions Manager.

The memo should clearly identify who the main people are in the life of the deceased, who was financially dependent upon the deceased at the time of death and whether there was a Death Grant Nomination Form, a Will, Probate, etc. There is no set list for the information to be provided, as each case will need to be considered on its own individual facts.

Further information to consider

Children

It is the Fund's policy not to pay death grants or child pensions direct to children under the age of 18. A pension payment or death grant payment for the benefit of a

child needs to be paid into a Trust or Custodian Account for the benefit of the child until they reach age 18.

A trust is a legal type of ownership in which property is held by a trustee, for the benefit of the child, called a beneficiary. We will not see Trust Accounts often, instead, we can accept a custodial account, which is any account that is managed by an adult for a minor that is under the age of 18. The bank account name may be in the name of the child, or in the name of an adult for the benefit of the child.

Those administering a custodian account must be a responsible adult. There may be circumstances when detailed consideration is required as to the appropriate trustee or custodian, and this should be raised in the memo to the Head of Pensions.

Payment made to the Estate

Where payment of a death grant is to be made to the Estate, the executor or administrator (i.e. the personal representative) takes responsibility for dealing with all of the estate, and this involves opening a bank account on behalf of the Estate. For an Estate account, you should expect the name of the account to be, "*Alice Pleasence Liddell, Executor, Estate of Lewis Carroll, Deceased*".

Before payment is made to the Estate production of Grant of Probate or Grant of Letters of Administration of the person's estate is required.

Where a solicitor is acting for the Estate payment should be made to the Solicitor's Client Account.

Overpayments

Where a death grant is payable and there has been an overpayment of pension we must ensure that, where possible, any overpayment is recovered from the death grant before any payment of the death grant is made to a beneficiary.

Where possible, any overpayment of pension and the death grant payable should not be treated separately.

Where payment is to be made to an Estate or a solicitor acting for the Estate, the overpayment should be deducted before payment is made, as the overpayment will be a debt of the Estate.

Where a surviving spouse, civil partner, cohabiting partner, eligible child or any other person appearing to have been a relative or dependent of the deceased member are to be paid a death grant direct as beneficiary (notwithstanding their eligibility to receive survivor benefits), and where that surviving spouse, civil partner, cohabiting partner, eligible child or other person is also the sole beneficiary of the deceased's Estate, any overpayment should be recovered from the death grant before any payment of the death grant is made.

APPENDIX 6
(continued)

The Scheme Regulations provides the Tyne and Wear Pension Fund (“the Fund”) with a range of discretions on managing specific employer and employee issues. The Pensions Committee receives a report which allows it to set policies on how the discretions will be exercised. The policies were last reviewed by the Committee on 27 February 2014. Pensions Committee confirmed the practice of delegating the decision making in respect of these member related administering authority discretions to the Head of Pensions on 4 June 2013.

1 May 2014