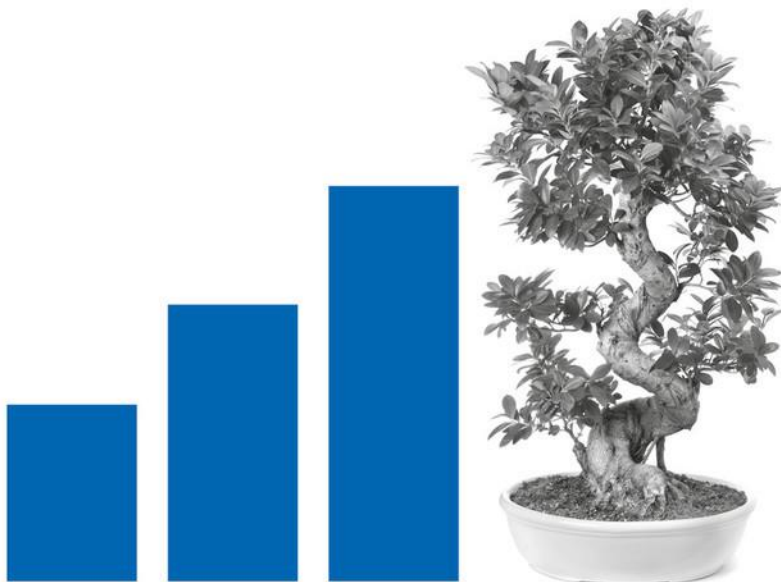


## Local Government Association

Distribution of death grant – disclosure of information

September 2021



## Distribution of death grant – disclosure of information

*This advice note has been prepared solely for the Local Government Association, and unless expressly agreed in writing, we do not accept liability to any other person in respect of the advice provided.*

### 1. Background

1.1 We have been instructed by the Local Government Association (the “LGA”) to advise on the extent to which administering authorities of the Local Government Pension Scheme (the “LGPS”) are able to disclose information relating to the distribution of a death grant payable under the LGPS Regulations 2013 (the “LGPS Regulations”).

1.2 The full copy of the instructions is provided at **Appendix 1**.

1.3 Broadly speaking there are two aspects to consider. The first is what an administering authority must disclose under the LGPS Regulations. The second is what is required by the Pensions Ombudsman. This is relevant because if a potential beneficiary were to challenge a death benefit award, the most likely route would be a complaint to the Pensions Ombudsman (assuming the matter couldn’t be resolved under the LGPS Internal Dispute Resolution Procedure).

### 2. LGPS Regulations

#### Who should be notified?

2.1 As has been noted in the instructions, the relevant legislation is at Regulation 72(3) and 73(1) of the LGPS Regulations 2013. This provides that where an administering authority has “*decide[d] any question concerning... the amount of any benefit... a person is or may become entitled to out of a pension fund*”, anyone whose “*rights or liabilities are affected by [the decision] must be notified of it in writing... as soon as is reasonably practicable after the decision has been made*”.

2.2 Clearly this means individuals who will be receiving an award are caught by the above wording and should be notified, but the position is less clear for individuals who will not be receiving an award. We take the view that an individual should only be notified of a decision not to award them benefits where the administering authority has (or should reasonably have) considered them as a potential beneficiary and where they could reasonably challenge the decision.

2.3 We would not envisage that the administering authority should be notifying everyone that is named on the response from the informant or next of kin (either via the standard form or other approach used by the administering authority) if that person is not someone who appears to the administering authority to be a relative or dependant of the member who would be a genuine potential beneficiary of the death grant under the LGPS Regulations. As such a person would not have ‘rights or liabilities’ under the Scheme, then they would fall outside of the requirements under Regulation 73 in terms of notification.

2.4 In other words, if some individuals are referred to in the response from the informant or next of kin who the administering authority instantly dismiss because they do not meet the criteria to be a genuine potential beneficiary, in our view the administering authority does not need to write to those individuals to notify them of this and/or provide details of how the death grant has been distributed.

2.5 It will, of course, be a decision for the administering authority as to whether such individuals are not potentially beneficiaries and the administering authority would need to record, for its own decision making and audit purposes, why it had decided that those individuals were not potential beneficiaries, but they would not need to write to them to inform them of that decision. However, if any of those individuals then subsequently raised a complaint, the administering authority would be able to communicate the reasons for their decision to that individual (based on the information in the administering authority’s decision making and audit trail).

2.6 It would not be reasonable to expect the administering authority to write to people who are not potential beneficiaries as this would create a significant administrative burden and could potentially lead to individuals making frivolous claims for a share of the death grant.

## Distribution of death grant – disclosure of information

### What does the notification need to contain?

- 2.7 Regulation 73 goes on to say “a notification of a decision about the amount of a benefit must contain a statement showing how it is calculated” (Regulation 73(3)) and “a notification of a decision that the person is not entitled to a benefit must contain the grounds for the decision” (Regulation 73(2)).
- 2.8 We do not believe that it would be an issue for the administering authority to disclose to a beneficiary the amount that they are to receive and the percentage split that this represents of the death grant (where it is being split between number of beneficiaries). As to whether the administering authority also then provides any detail of the other beneficiaries and the percentages that they received will be a decision for the administering authority.
- 2.9 There are a number of approaches the administering authority could take:
- 2.9.1 it could simply confirm that the remaining amount was split between [x] number of beneficiaries (and not provide any further detail about the percentage split or categories of beneficiary);
  - 2.9.2 it could confirm that the remaining amount was split between other beneficiaries and provide details of the percentage share splits (i.e. beneficiary B – 30%; beneficiary C – 30% but not provide the names and/or categories of beneficiary, just the percentage shares in relation to each);
  - 2.9.3 it could confirm the category of beneficiary and the percentage share split they received (i.e. former spouse – 20%; co-habiting partner – 20%; surviving children – 20%) but without naming the individuals specifically.
- 2.10 Alternatively, the administering authority could take the approach of initially just notifying a beneficiary of the amount and percentage relevant to them only. If the individual then comes back and requests further information as to the other beneficiaries, only then would the administering authority potentially disclose further information in connection with the other beneficiaries (potentially adopting one of the example approaches outlined above).
- 2.11 The administering authority does not need to specifically provide the names of the other beneficiaries as the notification letter will presumably provide an overview/explanation of the approach which the administering authority takes in determining how it exercises the discretion (and/or will refer to its relevant policy on the issue) and an individual who wants to question a decision can do so without necessarily knowing the names of the other beneficiaries.
- 2.12 If an administering authority has decided that a potential beneficiary is not entitled to the death grant or a share of the death grant (where one is being paid but split between a number of beneficiaries), Regulation 73(2) requires that the administering authority must provide reasons for that decision. Therefore, it seems to us that those reasons would be focused on why that potential beneficiary was not entitled (rather than providing further information as to who actually received any death grant paid and in what percentage).
- 2.13 If the potential beneficiary then came back and queried the position and specifically asked how the death grant had been paid, then the administering authority could decide whether it wanted to provide further information (which could be limited to the type of example approaches outlined above).
- 2.14 Given that the Pension Ombudsman’s approach is that where a person is notified of a decision, they should be provided with enough information to enable them to know whether there are grounds to challenge the decision and, in effect, whether the administering authority’s discretion has been exercised appropriately, the individual’s issue would be about why they had not been considered by the administering authority to be a beneficiary (rather than how the death grant was distributed). Therefore, the reasons provided to such an individual by the administering authority would be about why they were rejected as a beneficiary (rather than how the death grant was actually distributed).

## Distribution of death grant – disclosure of information

### 3. Pensions Ombudsman Guidance

- 3.1 Administering authorities are not required to disclose all details relating to a decision. As confirmed above, the Pensions Ombudsman's approach is that where a person is notified of a decision they should be provided with enough information to enable them to know whether there are grounds to challenge the decision and, in effect, whether the administering authority's discretion has been exercised appropriately. Precisely how far administering authorities need to go to satisfy this threshold is a matter of judgment, but as a minimum it is likely to mean giving documented reasons which "*convey to the reader an understanding of the factors which have been given some weight*", and in some cases, which factors have been discounted (see PO-18953). Administering authorities should generally be as transparent as possible so as to minimise the risk of a challenge progressing, although care should be taken before disclosing confidential information or personal data.
- 3.2 What decision the administering authority has to make and communicate to individuals depends on the circumstances in relation to that individual and their part in the process. In our view:
- 3.2.1 if the individual is a genuine potential beneficiary but the administering authority decides not to award the death grant or a part of it to them, the decision to be communicated to them will be that the administering authority in exercising its discretion has not awarded a benefit to them and the reasons for that decision. The administering authority does not then need to go into detail as to who received the death grant;
- 3.2.2 alternatively, if the administering authority had decided to award a genuine potential beneficiary the death grant or a part of it, the administering authority needs to communicate that decision to that beneficiary (including the amount and, where it is being split, the percentage relevant to them). As highlighted above, it will then be for the administering authority to decide whether it offers further information about the other beneficiaries or not (and, if it does so, at what stage and the extent to which it does so).
- 3.3 The administering authority does not need to specifically provide the names of the other beneficiaries in those communications.
- 3.4 For the reasons above, it is important for administering authorities to keep detailed records of their decisions, including key facts, all reasons for the decisions and a record of the factors that were most influential. As a general rule we would suggest assuming any record of a decision will have to be disclosed in the event of challenge.

### 4. Additional Points

- 4.1 We note that on the final page of the instructions reference is made to informing individuals of an award out of courtesy (in circumstances where they have not made a claim) and in case they are in a position to highlight potential beneficiaries the administering authority has not been made aware of. Although in principle there is no issue with this (and in some circumstances it may be required by Regulation 73(2)), administering authorities are under a duty to make reasonable efforts to identify all potential beneficiaries before exercising their discretion. If there are individuals the administering authority believes could be in a position to highlight potential beneficiaries and provide information relevant to the exercise of the authority's discretion, we would expect those individuals to be contacted before an award is made.

### 5. Next Steps

- 5.1 If you have any questions about the information contained in this advice, please contact either Gary Delderfield ([garydelderfield@eversheds-sutherland.com](mailto:garydelderfield@eversheds-sutherland.com)), Alec Bennet ([alecbennet@eversheds-sutherland.com](mailto:alecbennet@eversheds-sutherland.com)) or Oliver Hunt ([oliverhunt@eversheds-sutherland.com](mailto:oliverhunt@eversheds-sutherland.com)).

**Distribution of death grant – disclosure of information****Appendix – Instructions****Request for advice – death grants and information disclosure****Question**

Can an LGPS administering authority disclose to other interested parties who they intend to pay (or have paid) a death grant to and the amounts payable?

**Background**

An LGPS administering authority has a discretion to 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'. This is set out in the regulations listed below:

**England and Wales**

LGPS Regulations 2013 - regulations 40(2), 43(2) and 46(2)  
Benefit Regulations 2007 – regulations 23(3), 32(2) and 35(2)  
LGPS Regulations 1997 – regulation 38(1)  
LGPS Regulations 1995 – regulation E8

**Scotland**

LGPS (Scotland) Regulations 2018 - regulations 38(2), 41(2) and 44(2)  
LGPS (Scotland) Regulations 2014 - regulations 38(2), 41(2) and 44(2)  
Benefits Regulations 2008 - regulations 23(3), 32(3) and 35(2)  
LGPS (Scotland) Regulations 1998 – regulation 37(1)  
LGPS (Scotland) Regulations 1987 – regulation E11ZA

**Process**

When a member dies it is common practice for the administering authority to ask the informant or next of kin for information about living relatives and potential beneficiaries. The amount of information that is asked for varies across administering authorities, but essentially, they will be attempting to establish who the death grant should be paid to. They will also use the death grant expression of wish form to assist with making this decision if the member had completed one.

Once the administering authority has made a decision concerning how a death grant will be distributed, it must communicate that decision to interested parties as soon as is reasonably practicable.

The administering authority must tell a person who is receiving the death grant or a share of the death grant how the payment has been calculated. This is covered by regulation 73(3) of the LGPS Regulations 2013 and 68(3) of the LGPS (Scotland) Regulations 2018. In our view, this means that the individual must be told:

### Distribution of death grant – disclosure of information

- how the total death grant has been calculated
- what share of the death grant has been awarded to the individual, and
- the amount of death grant that they will be paid.

The administering authority must also inform a person who has made an unsuccessful claim against a death grant of the decision not to award them a share of the payment. That notification must include the grounds for that decision. This is covered by regulation 73(2) of the LGPS Regulations 2013 and 68(2) of the LGPS (Scotland) Regulations 2018. There is no requirement to disclose the death grant amount or how it has been calculated to a person who has not been awarded a share of it.

The administering authority is also responsible for informing the personal representatives of the amount of a [relevant lump sum death benefit](#) so that they can assess if there is a liability for a lifetime allowance charge.

### The right to appeal the decision

Having been informed of the decision concerning the death grant, the recipient of a share of the payment may wish to use the Internal Dispute Resolution Procedure (IDRP) to request a review of the decision. Similarly, a person who made an unsuccessful claim against the death grant or who is just an interested party may wish to appeal the decision.

An individual's decision to complain about the distribution of the death grant may be determined by:

- the amount of the death grant
- who has received the death grant
- what proportion of the death grant has been awarded to another recipient.

There are many possible scenarios where this information may affect whether a person complains about the distribution of a death grant.

1. A person who was not awarded a share of the death grant may not wish to appeal that decision if the total death grant is a small amount.
2. A person who has been awarded a 10% of a death grant may wish to appeal the decision if the remaining 90% has been awarded to a single individual. They may not wish to appeal if the death grant has been shared equally between ten recipients.
3. A person's decision to appeal may be based solely on who received the death grant. They may have no objection to the death grant being paid to or for the benefit of the children of the deceased, but may feel differently if payment was made to an estranged husband or new partner.

In certain circumstances, an administering authority may wish to disclose:

- who the death grant was / will be paid to
- the share of the death grant that has been awarded to an individual

### Distribution of death grant – disclosure of information

to others who have been awarded a share of the death grant. They may also wish to provide this information to an individual who has made an unsuccessful claim against the death grant, in addition to telling them the total death grant amount.

There could also be circumstances where the administering authority will want to inform people who have not made a claim, where it would seem appropriate and courteous to inform them how the death grant will be distributed eg the parents of the member if they are still living. The parents could be in a position to highlight where a person who they think should have received a share has not, for example a child from a previous relationship that the administering authority has not been made aware of.

Those who receive this information will then be able to make an informed decision about whether to use the IDRPs to complain about the distribution of the death grant. Is an administering authority able to disclose the information to certain individuals, as it deems appropriate, as set out in the paragraph above?

Privileged and confidential

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