

Payment of LGPS death grants to genealogy companies
21 August 2024

1 Introduction

- 1.1 The Local Government Association (**LGA**) has instructed us to advise on whether administering authorities of the Local Government Pension Scheme (**LGPS**) can make payment of a death grant to a genealogy or tracing company (**genealogy company**) for onward payment by that company to a potential beneficiary.
- 1.2 The LGA, amongst other things, provides technical advice and information on the LGPS and related matters to LGPS administering authorities and employers.
- 1.3 Different considerations apply in relation to payment of a death grant:
 - (a) during the period of two years after the member's death (or two years after the date when the administering authority could reasonably be expected to have become aware of the member's death); and
 - (b) after the period in paragraph 1.3(a).
- 1.4 This advice note is legally privileged and provides general advice to the LGA on the various factors that administering authorities should consider in these scenarios. Administering authorities should, however, seek their own legal advice in relation to specific cases, as appropriate. The advice contained within this note should not be relied on by any third party.
- 1.5 This advice has been provided solely for the benefit of the LGA. We understand that the LGA may wish to publish this advice on the LGA website so that it may be shared with administering authorities, but please let us know before you do that. However, this advice is prepared solely for the LGA as our client, and we do not accept any liability to administering authorities (or any other person) in respect of the advice. Publication of this advice note on the LGA website (or any other sharing or disclosure of it with or to third parties) does not constitute a waiver of privilege (or confidentiality) in any other legal advice we provide to the LGA.
- 1.6 This advice provides legal advice only and should not be considered as accounting, actuarial, financial or tax advice.
- 1.7 This advice relates to the laws of England and Wales only as at the date of this advice note. We will only update this advice note if the LGA specifically requests us to do so.

2 Executive Summary

- 2.1 During the period of two years after the member's death (or two years after the date when the administering authority could reasonably be expected to have become aware of the member's death), administering authorities have an absolute discretion as to whom they may pay the death grant, within the categories of persons provided for in the relevant LGPS regulation.

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- 2.2 The relevant LGPS regulation provides that the death grant may be paid in that period 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.
- 2.3 Accordingly, if an administering authority is approached by a genealogy company in relation to the payment of a death grant within two years of death, the administering authority must, in accordance with the administering authority's public law and fiduciary duties, as a quasi-trustee, apply its discretion properly when taking a decision about whom to pay the death grant.
- 2.4 The administering authority must be reasonably satisfied that the potential beneficiary is eligible for payment of a death grant, by establishing to its reasonable satisfaction that the potential beneficiary's identity and relationship to the member is evidenced properly. The administering authority must also be reasonably satisfied that the genealogy company is properly authorised to act as agent or attorney on behalf of the potential beneficiary.
- 2.5 If a genealogy company refuses to disclose full details of the potential beneficiary's identity and relationship to the member, the administering authority will need to consider whether it is reasonably satisfied that these points have been evidenced on the information that it has seen. Without sufficient evidence to establish these points to its reasonable satisfaction, the administering authority may not be able to exercise its discretion properly.
- 2.6 After the period of two years since death, administering authorities must pay the death grant to the member's personal representatives. This means that administering authorities do not have discretion over the recipient of the death grant, but must pay it to the member's personal representatives.
- 2.7 Accordingly, if an administering authority is approached by a genealogy company in relation to the payment of a death grant after two years, the administering authority must establish who the member's personal representatives are and must then pay the death grant to the personal representatives.
- 2.8 In either case, ideally, to minimise the administering authority's risk of paying a death grant to a genealogy company that is not properly authorised, payment will be made to the beneficiary directly (or the personal representatives, as appropriate) rather than the genealogy company.
- 2.9 However, if the administering authority is reasonably satisfied that the genealogy company is properly authorised to act as the beneficiary's (or personal representative's) agent or attorney in relation to the death grant, with reasonable confirmation from the beneficiary (or personal representative), then the administering authority may consider it appropriate to make payment to the genealogy company in its capacity as the beneficiary's (or personal representative's) agent or attorney. However, this is something that only each relevant administering authority can decide, having sought legal advice where necessary.
- 2.10 If the administering authority is not reasonably satisfied that sufficient safeguards are in place, the administering authority may decide to insist that payment is made to the beneficiary directly.
- 2.11 If, either during or after the two year period, the total amount due to the personal representatives is less than £5,000¹, the administering authority has a discretion under regulation 82(2) of the LGPS Regulations 2013 to pay

¹ Being the current amount specified in the order which is in force under section 6 of the Administration of Estates (Small Payments) Act 1965, namely, the Administration of Estates (Small Payments) (Increase of Limit) Order 1984.

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the amount to the personal representatives or any person or persons appearing to be beneficially entitled to the estate, without the production of probate or letters of administration. Nevertheless, the administering authority will still need to be reasonably satisfied that any person claiming to be the member's personal representative or to be beneficially entitled to the estate does have that status in law.

2.12 The special lump sum death benefits tax charge of 45% will be payable on the death grant if it is paid after the period of two years since death to the member's personal representatives². The administering authority will need to consider and seek advice if necessary on the tax implications of payment of the death grant in their own specific circumstances.

2.13 In the absence of any potential beneficiaries (including via a genealogy company), the death grant will be payable to the Crown (or the Duchy of Lancaster or the Duchy of Cornwall, if appropriate) as '*bona vacantia*'.

3 Background

LGPS death grants

3.1 Where an active member of the LGPS dies before the age of 75, an administering authority is required to pay a death grant³.

3.2 Death grants are also payable in relation to deferred members, pension credit members, deferred pensioner members and pensioner members.

3.3 During the period of two years after the member's death (or two years after the date when the administering authority could reasonably be expected to have become aware of the member's death), administering authorities have an absolute discretion as to whom they may pay the death grant, within the category of persons provided for in the relevant LGPS regulation.

3.4 In relation to active members, regulation 40(2) of the LGPS Regulations 2013 provides as follows:

"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."

3.5 Similar provisions apply in relation to the other categories of member and in relation to earlier versions of the LGPS Regulations⁴.

3.6 After the period of two years since death, administering authorities must pay the death grant to the member's personal representatives.

3.7 In relation to active members, regulation 40(4) of the LGPS Regulations 2013 provides as follows:

² Sections 206 and 254 Finance Act 2004; see HMRC's Pensions Tax Manual [PTM073010](#) and [PTM073100](#).

³ Regulation 40(1) of the LGPS Regulations 2013.

⁴ See regulations 43(2) and 46(2) of the LGPS Regulations 2013, regulations 23(2), 32(2) and 35(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007, regulation 38(1) of the LGPS Regulations 1997, and regulation E8(1) of the LGPS Regulations 1995.

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"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 date of the member's death or, where the administering authority did not know about the member's death within 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."

3.8 Similar provisions apply in relation to the other categories of member and in relation to earlier versions of the LGPS Regulations⁵.

3.9 This means that, after the period of two years, administering authorities do not have discretion over the recipient of the death grant but must pay it to the member's personal representatives.

Bona vacantia

3.10 '*Bona vacantia*' means 'ownerless goods'. Where a person dies intestate (i.e. without leaving a will) and without blood relatives, their assets may pass to the Crown (or the Duchy of Lancaster or the Duchy of Cornwall, if appropriate⁶) as bona vacantia⁷, because there is no-one else to receive those assets.

3.11 Where administering authorities cannot identify any potential beneficiaries to pay a death grant to, they may refer the matter to the Treasury Solicitor (now known as the Government Legal Department's Bona Vacantia Division (**BVD**))⁸, or to Farrer & Co (as solicitors to the Duchies of Lancaster and Cornwall), as appropriate. For the purposes of this advice note, we shall refer to BVD's procedures (since the Duchies' procedures are very similar⁹).

3.12 In these circumstances, the relevant administering authority will first need to complete Form BV1A to refer an estate¹⁰ to BVD.

3.13 BVD will then add details of the estate to their unclaimed estates list¹¹. Claims can be made to BVD in relation to those estates by potentially entitled relatives¹².

3.14 If the deceased member has been survived by any relatives, there will be no bona vacantia interest in the estate and BVD will close their file. The relatives or their representatives may then contact the administering authority to request payment of the LGPS death grant. The administering authority would then need to consider the merits of any such request.

3.15 If the member has not been survived by any relatives, BVD (as the member's personal representative¹³) will request payment of the death grant from the relevant LGPS fund through its administering authority.

⁵ See regulations 43(4) and 46(5) of the LGPS Regulations 2013, regulations 23(5), 32(4) and 35(4) of the LGPS (Benefits, Membership and Contributions) Regulations 2007, regulation 38(6) of the LGPS Regulations 1997, and regulation E8(5) of the LGPS Regulations 1995.

⁶ For the majority of England and Wales, bona vacantia passes to the Crown. However, if the last known address of the person who died is within the County Palatine (largely Lancashire and parts of Merseyside, Greater Manchester, Cheshire and Cumbria) bona vacantia passes to the Duchy of Lancaster. If the relevant address is within the County of Cornwall (including The Isles of Scilly) bona vacantia passes to the Duchy of Cornwall.

⁷ Section 64(2)(vi) of the Administration of Estates Act 1925.

⁸ <https://www.gov.uk/guidance/refer-a-deceased-persons-estate-to-the-treasury-solicitor>

⁹ <https://www.farrer.co.uk/campaigns/bona-vacantia/>

¹⁰ <https://www.gov.uk/government/publications/bona-vacantia-estates-referral-form>

¹¹ <https://www.gov.uk/government/statistical-data-sets/unclaimed-estates-list>

¹² <https://www.gov.uk/guidance/make-a-claim-to-a-deceased-persons-estate>

¹³ Rule 22(2) of the Non-Contentious Probate Rules 1987.

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Genealogy companies

- 3.16 For the purposes of this advice, it is necessary to generalise about the involvement of genealogy companies in the payment of LGPS death grants, since the precise circumstances will vary in practice.
- 3.17 Genealogy companies may become involved in this process following the publication of BVD's unclaimed estates list (see paragraph 3.13 above).
- 3.18 Genealogy companies may carry out their own research to identify potential blood relatives of the deceased and then contact those potential beneficiaries of an unclaimed estate.
- 3.19 A potential beneficiary may then sign up to a contractual arrangement with the genealogy company whereby:
- (a) the genealogy company may be appointed as the potential beneficiary's agent or attorney in relation to the unclaimed estate;
 - (b) the genealogy company may be authorised (if appropriate) to act as administrator of the estate;
 - (c) the potential beneficiary agrees to pay a commission (which may be a percentage of the value of the potential beneficiary's entitlement), or professional fees calculated on an alternative basis, to the genealogy company as payment for the genealogy company doing their work on behalf of the potential beneficiary.
- 3.20 Genealogy companies may then approach administering authorities to request payments of death grants on behalf of potential beneficiaries.

4 Payment of a death grant within two years

- 4.1 During the period of two years after the member's death (or two years after the date when the administering authority could reasonably be expected to have become aware of the member's death), administering authorities have an absolute discretion as to whom they may pay the death grant, within the category of persons provided for in the relevant LGPS regulation.
- 4.2 The relevant LGPS regulation provides that the death grant may be paid in that period 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.
- 4.3 More broadly, this discretion must be exercised in accordance with the administering authority's public law¹⁴ and fiduciary duties, as a quasi-trustee¹⁵, in particular (but not exclusively):

¹⁴ *"The interaction between the public law and fiduciary duties of an administering authority for the purposes of the LGPS is a matter of some uncertainty...an administering authority is a public body exercising statutory functions of a public nature and is accordingly subject to normal public law principles, including the obligation to exercise powers for a proper purpose and the obligation to have regard to relevant, and to disregard irrelevant, considerations."* (Croydon LBC v Oasis Community Learning [2023] EWHC 2 (Ch) at [27]).

¹⁵ *"As the Law Commission observed, administrators of local government schemes have duties which, at a practical level, are similar to those of trustees and they consider themselves to be quasi-trustees who should act in the best interests of their members."* (R(Palestine Solidarity Campaign Ltd) v Secretary of State for Housing Communities and Local Government [2020] UKSC 16 at [30] per Lord Wilson JSC). *"Despite it being established that the LGPS does not constitute a trust, it is also established that an administering authority does intend to assume fiduciary obligations as a quasi-trustee in relation to property it administers but does not own beneficially. Those fiduciary duties are owed to the members of the scheme and, arguably, to...other employers..."* (Croydon LBC v Oasis Community Learning [2023] EWHC 2 (Ch) at [33]).

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- (a) exercising the discretion reasonably, following a proper reasoning process and coming to a reasonable conclusion;
- (b) taking all relevant matters into account and ignoring any irrelevant matters;
- (c) considering any representations made;
- (d) considering and weighing all relevant evidence (but the weight to attach to any piece of evidence is for the decision maker to decide);
- (e) asking the right questions;
- (f) directing itself correctly in law, including interpreting the LGPS Regulations correctly;
- (g) taking into account any reasonable discretions policy the administering authority has made (but the policy must not fetter their discretion); and
- (h) not coming to a perverse decision (i.e. a decision which no reasonable decision maker, properly directing itself, could arrive at in the circumstances).

4.4 When considering to whom to pay a death grant, administering authorities are required to identify all potential beneficiaries. They should then collect sufficient personal and financial information about those potential beneficiaries to allow a reasonable decision to be taken, in light of all the available evidence. The level of enquiry which is appropriate will vary depending on the facts and circumstances of each case.

4.5 Prior to expiry of the two year period, LGPS death grants do not form part of the member's estate. Rather, because the payment is discretionary, it falls outside the member's estate (even if the discretion is exercised in favour of the estate or the personal representatives)¹⁶.

4.6 Accordingly, it is unlikely that an administering authority would make a referral to BVD within two years, because the death grant is not part of the member's estate during that time. It may also take up to two years to identify any potential beneficiaries. However, a referral may be made if an administering authority has, as an exercise of its discretion, concluded that the death grant is payable to the member's estate.

4.7 If an administering authority is approached by a genealogy company in relation to the payment of a death grant within two years, the administering authority must apply its discretion properly when taking a decision about whom to pay the death grant.

4.8 The administering authority must therefore be reasonably satisfied that:

- (a) the potential beneficiary is eligible for payment of a death grant (i.e. that the person appears to have been a relative or dependent of the member, or is the nominee or the personal representative of the member); and
- (b) the genealogy company is properly authorised to act as agent or attorney on behalf of the potential beneficiary.

4.9 As to paragraph 4.8(a) (eligibility), the administering authority will need to seek evidence of the potential beneficiary's identity and of their relationship to the member. The administering authority will need to establish to

¹⁶ Section 5(2) of the Inheritance Tax Act 1984; see HMRC's Inheritance Tax Manual: [IHTM17052](#)

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its reasonable satisfaction that the potential beneficiary's claim is legitimate (i.e. it is not spurious or fraudulent). The administering authority will also need to establish, to its reasonable satisfaction, that the potential beneficiary's identity and relationship to the member is evidenced properly. In deciding what evidence to accept, it may be helpful for an administering authority to consider BVD's guidance on the documents that BVD will accept as evidence of formal identification¹⁷.

- 4.10 If a genealogy company refuses to disclose full details of the potential beneficiary's identity and relationship to the member, the administering authority will need to consider whether it is reasonably satisfied that these points have been evidenced on the information that it has seen. Without sufficient evidence to establish these points to its reasonable satisfaction, the administering authority may not be able to exercise its discretion properly.
- 4.11 As to paragraph 4.8(b) (authorisation), the administering authority will need to seek evidence of the appointment of the genealogy company as agent or attorney of the potential beneficiary, for example, a signed contract or appointment letter. The administering authority must, however, be mindful of its obligations under data protection legislation.
- 4.12 The administering authority will also need to establish to its reasonable satisfaction that the genealogy company is legitimate through reasonable due diligence, for example, through Companies House and checking registration with any applicable regulatory bodies (such as the Solicitors Regulation Authority) or professional bodies (such as the Society of Trust and Estate Practitioners).
- 4.13 Further, the administering authority will need to be reasonably satisfied that the genealogy company is properly authorised to act as agent or attorney on behalf of the potential beneficiary in relation to the payment of a discretionary death grant. As mentioned above, the payment of a discretionary death grant falls outside the member's estate (even if the discretion is exercised in favour of the estate or the personal representatives) if paid within the two year period, and therefore a generic appointment of the genealogy company as agent or attorney of the potential beneficiary *'in the estate of the member'* (or similar) may not be sufficient.
- 4.14 If the administering authority is reasonably satisfied that the potential beneficiary is eligible for payment of a death grant, then the administering authority may exercise its discretion in favour of that potential beneficiary.
- 4.15 The genealogy company may request that payment is made to the genealogy company as agent or attorney (rather than the beneficiary directly) so that (under the terms of its contractual arrangement with the beneficiary) the genealogy company may retain its commission or fees from the payment before returning the balance to the beneficiary.
- 4.16 Ideally, to minimise the administering authority's risk of paying a death grant to a genealogy company that is not properly authorised, payment will be made to the beneficiary directly. The beneficiary would then be responsible for payment of the genealogy company's commission or fees themselves, but such payment arrangements are not necessarily something that should concern the administering authority.

¹⁷ <https://www.gov.uk/guidance/make-a-claim-to-a-deceased-persons-estate#identity-documents>

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- 4.17 If the relevant administering authority is reasonably satisfied that, taking into account the points above, the genealogy company is properly authorised to act as the beneficiary's agent or attorney in relation to the death grant (with reasonable confirmation from the beneficiary), then that administering authority may consider it appropriate to make payment to the genealogy company in its capacity as the beneficiary's agent or attorney. However, this is something that only each relevant administering authority can decide, having sought legal advice where necessary.
- 4.18 Given that the administering authority may be taking on more risk by making payment to the genealogy company, rather than paying the beneficiary directly, the administering authority should carry out reasonable due diligence on the genealogy company (see paragraph 4.12 above) and should establish what measures are in place to protect the beneficiary in relation to the payment itself (e.g. whether the genealogy company has a separate client account subject to regulation, or whether the payment may be made to an escrow account).
- 4.19 If the administering authority is not reasonably satisfied in relation to these issues, including that sufficient safeguards are in place, the administering authority may decide to insist that payment can only be made to the beneficiary directly.

5 Payment of a death grant after two years

- 5.1 After the period of two years has elapsed since death of the member (or two years after the date when the administering authority could reasonably be expected to have become aware of the member's death), administering authorities must pay the death grant to the member's personal representatives. This means that administering authorities do not have discretion over the recipient of the death grant but must pay it to the member's personal representatives.
- 5.2 A 'personal representative' is defined in section 55(1)(xi) of the Administration of Estates Act 1925 as follows:
- "Personal representative' means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court, and "executor" includes a person deemed to be appointed executor as respects settled land".*
- 5.3 The member's personal representative may be, for example, an executor (where appointed by a valid will) or an administrator appointed to deal with the estate.
- 5.4 Administering authorities must therefore be reasonably satisfied that any person claiming to be the member's personal representative falls within this definition. Administering authorities will need to seek evidence of their identity (see paragraph 4.9 above) and their appointment as personal representative, for example by asking for and receiving a copy of the will, the grant of probate, or letters of administration.
- 5.5 If an administering authority is approached by a genealogy company in relation to the payment of a death grant after two years, the administering authority must establish who the member's personal representatives are and must then pay the death grant to the personal representatives.
- 5.6 As above, the genealogy company may request that payment is made to the genealogy company as agent or attorney (rather than the beneficiary directly).

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5.7 Ideally, to minimise the administering authority's risk of paying a death grant to a genealogy company that is not properly authorised, payment will be made to the personal representatives directly. The considerations set out in paragraphs 4.15 to 4.19 above also apply here.

6 Next steps

6.1 If you have any queries about this advice, please do not hesitate to contact us to discuss further.

6.2 We would be grateful if you could let us know before a final copy of this advice is either published on the LGA website (or elsewhere) or shared with any other third party (including an administering authority).

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