



Committee and date  
Pensions Committee

21st June 2010

10.00am

Item No

**13**

Public

## FUND DISCRETION FOR THE PAYMENT OF DEATH GRANTS

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### Summary

The report provides Members with an update to the policy on the local discretion for the payment of death grants from the Fund. Recent ombudsman rulings involving the payment of death grants have highlighted that it is necessary for the Fund to update its discretion guidelines in this area so as to avoid any potential challenge. The report requests Members agree the revised wording for the local discretion for the payment of death grants which will be included in the Governance Compliance Statement.

### Recommendations

- A. To agree to the policy on the local discretion for the payment of death grant is amended to;-

“The death grant will normally be paid to or amongst nominated beneficiaries. Where no nomination has been made, we will normally pay a death grant to the deceased’s personal representatives (in that capacity). Where both of these options are seen to be inappropriate or impossible, perhaps because nominees have died, circumstances appear to have changed since the nomination made or other persons are claiming some or all of the death grant or would seem to have a claim, we may pay the grant as we see fit to or between surviving nominees or personal representatives or any person appearing to us to have been a relative or dependant of the deceased at any time.”

# Report

## Background

1. The Fund has a number of “discretions” in how it applies the local government pension scheme regulations. A “discretion” is taken to include instances where the administering authority is required to do something but an element of choice exists as to how it is done.
2. The discretions mainly arise from the three principal sets of Regulations (as amended) that prescribe the Local Government Pension Scheme (the LGPS). These are:
  - LGPS (Benefits, Membership & Contributions) Regulations 2007;
  - LGPS (Administration) Regulations 2008;
  - LGPS (Transitional Provisions) Regulations 2008
3. The Shropshire Fund has formal policies for its discretions. These are published in the Governance Compliance Statement.

## Payment of Death Grant

4. The LGPS Regulations state that the appropriate administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member’s nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.
5. The current policy guideline states that the Fund will pay the grant to nominee or estate if impractical.
6. A recent Pensions Ombudsman case (76288/1) Winterstein v London Borough of Camden (Camden), has highlighted that the current policy may open us up to challenge of not using our discretion fully, and does not clearly define how we would make that decision.
7. In this case a scheme member made a nomination in 2006 requesting that any death grant be paid to his partner at the time and his sister in equal shares. However, following the nomination the scheme member married his partner and they obtained a joint mortgage. At the time of death they were also expecting a child.
8. Camden followed the nomination (made in 2006) and paid a death grant to the deceased member’s wife and sister in equal shares. The wife disagreed with Camden’s decision to pay half the lump sum death benefit to her sister-in-law on the basis that their circumstances had changed since the nomination.

9. The Ombudsman upheld the complaint and instructed Camden to revisit its decision. He stated that the complaint should be upheld against Camden because it failed to properly exercise its discretion to distribute the lump sum death benefit.
10. In the conclusion it was stated that the questions for Camden were who were the legitimate potential beneficiaries for the lump sum death benefits and how should the benefit be distributed amongst them.

## Conclusion

11. Following the recent Pensions Ombudsman case outlined above it is considered necessary to amend the Fund's local discretion on the payment of death grants to state;-  

“The death grant will normally be paid to or amongst nominated beneficiaries. Where no nomination has been made, we will normally pay a death grant to the deceased's personal representatives (in that capacity). Where both of these options are seen to be inappropriate or impossible, perhaps because nominees have died, circumstances appear to have changed since the nomination made or other persons are claiming some or all of the death grant or would seem to have a claim, we may pay the grant as we see fit to or between surviving nominees or personal representatives or any person appearing to us to have been a relative or dependant of the deceased at any time.”
12. The Pensions Administration Team will also introduce an indemnity to be signed by the death grant beneficiary to indemnify the Fund against all claims and demands against the Fund by any other person relating to that death grant.
13. The updated local discretion for the payment of death grant will be incorporated and published in the Governance Compliance Statement.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

**Human Rights Act Appraisal**

The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998

**Environmental Appraisal**

Impossible to quantify.

**Risk Management Appraisal**

Having a clear policy on use of discretions helps cut down on appeals and cases being taken to the Pension Ombudsman.

**Community / Consultations Appraisal**

NA

**Cabinet Member**

NA

**Local Member**

NA

**Appendices**

NA