

## Death Grants Policy – Wiltshire Pension Fund

Full publication status: Internal

### 1. Purpose

1.1. Regulations 40(2), 43(2) and 46(2) of the LGPS Regulations 2013 (“the Regulations”) state:

*“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”*

*(Note: All terms in bold relate to definitions; blue bold is a LGPS Regulations definition, black bold is stated elsewhere and defined in section 3)*

1.2. The Fund’s Administering Authority Discretions Policy briefly outlines out how the Fund exercises the discretion outlined in 1.1, amongst all other admin authority discretions; this is an externally published document approved by Committee. The latest version states the following in relation to death grants:

*“Wiltshire Pension Fund (WPF) has absolute discretion when deciding to whom any death grant shall be paid upon the member’s death.*

*In exercising this discretion, WPF will endeavour to comply with the member’s wishes by taking into consideration the nominee(s) stated on a completed ‘expression of wish’ form, where one exists. Where WPF reasonably believes any expression of wish to be invalid or inappropriate for any reason, including if it believes the expression of wish may not have reflected the member’s final wishes, it reserves the right, in accordance with its absolute discretion, to ignore any such wishes as expressed. Where no expression of wish has been made, WPF will consider the claims of anyone appearing to be a relative or dependant of the member and exercise its absolute discretion, accordingly, taking into account the contents of the Will (if one exists). In exceptional circumstances, WPF also reserves the right to pay the death grant to the estate via the personal representatives, if it considers this an appropriate form of action.”*

1.3. The purpose of this policy is to expand upon the details of the Administering Authority Discretions Policy to provide a more detailed policy to help officer decision-making. However, each case is unique and there will always be an element of professional judgement in making any determination.

### 2. Scope

This policy covers all death grants in relation to active, deferreds and pensioners members as referred to in the Regulations above.

### 3. Definitions

Absolute discretion: The Fund determines the meaning of this expression as the ultimate decision on how to make the payment lies with the Fund, as long as it is consistent with the quoted Regulation, the text within its Admin Authority discretions policy and it can show it has acted reasonably. Whilst the Fund may have 'absolute discretion', its decision still needs to be justifiable to reduce the risk of challenge. This term is not defined with the LGPS Regulations.

Act reasonably and professionally: The Fund has a general legal responsibility to 'act reasonably and professionally' when exercising its discretion. The Fund has determined in this instance that should mean that it can demonstrate:

- It took due time, care and all reasonable and proportionate endeavours to collect all relevant information needed to make a determination on a particular case;
- The decision was made based on reasonable, guiding principles or a policy to ensure a degree of consistency of approach (although still allowing each case to be decided on its own merits);
- A clear, recorded rationale exists outlining the determination made;
- Staff with appropriate knowledge and skills make the determination; and
- Appropriate decision-making controls were in place, proportionate to the size of the death grant and perceived complexity of the case.

Administering Authority: In this instance, Wiltshire Pension Fund, as part of Wiltshire Council is appropriate administering authority as per the Schedules to the Regulations.

Administrator - If there is no Will (or if there is no executor named in the Will, or if the executor is unable or unwilling to act), the Administration of Estates Act 1925 sets out who can apply to court to be the personal representative (usually a close relative of the deceased). The personal representative is in this case known as the Administrator.

Dependant: "*dependent*" in relation to a person means that in the opinion of the administering authority, at the date of the member's death-

- a). the person was financially dependent on the member,*
- b). the person's financial relationship with the member was one of mutual dependence, or*
- c). the person was dependent on the member because of physical or mental impairment;*

This definition is outlined in the LGPS Regulations.

Executor: If there is a Will that names the personal representative, they are known as the Executor.

Grants: Grant of probate (if a Will exists) or Grant of letter of administration (if no Will exists) – these are evidence that the person has authority to act as the Personal Representative or Administrator (respectively).

Next of Kin: There is no legal definition of this term, so the Fund will normally broadly follow the order of intestacy, as follows: widow(er), surviving children, grandchildren, parents, siblings, children of deceased siblings (nieces/nephews). Beyond this list, the Fund should seek to pay to personal representative.

Nominee(s): The deceased nominee is the person(s) nominated on their expression wish form or the expression of wish section of their My Wiltshire Pension (MSS) member portal login.

Any signature on a paper form should be assumed to be that of the member (even if does not match exactly other signatures held) and it should be assumed the member freely completed the form and was sound of mind doing so unless there are any particularly strong reasons to doubt this.

Personal Representative: For the purpose of this policy, a Personal Representative(s) is a person who has been issued with a grant to administer a deceased person's estate.

A minor: A minor is someone under the age of 18 years according to a definition under the Births and Deaths Registration Amendment Act (No 1 of 2002). This is called the age of majority.

Parental responsibility: All mothers and fathers have legal rights and responsibilities as a parent known as 'parental responsibility', the term attempts to focus on the parent's duties rather than the parent's rights over the child. A mother automatically has parental responsibility of her child from birth. A father usually has parental responsibility if he's either: married to the child's mother or listed on the birth certificate

Guardianship: this is governed by the Children Act 1989. Under section 5(3) of the Children Act, a parent who has parental responsibility can appoint another individual to be the child's guardian in the event of his or her death. This is legally binding unless revoked by the court.

#### 4. Principles

All of the following, guiding principles shall apply to decision making process:

Principle 1 – Deceased preference:

The Fund shall endeavour to pay out the death grant based on an assumption of the deceased's wishes, at such a time where they were capable of making a reasonable decision. The Fund will assume that any expression of wish decision was made freely, and the member was sound of mind, unless it receives evidence to the contrary.

In doing so, it will consider the information below in the following order of importance\* (subject to payees being permissible under 1.1):

- a). Expression of Wish: Subject to it appearing to be present, possible (beneficiaries can be found/are alive etc) and still relevant.
- b). The claims of any relatives and dependents and the strength of their relationship to the deceased; and
- c). The details of the Will/estate: If either exists, where necessary using this as guide to determine the proportions of any splits in death grant which may have established in a) and b).
- d). In line with how and any assets are being split outside of a Will/Estate process.

*\*Whilst a priority order is established above, this is **not** strict list. Therefore, for example, even if a valid expression of wish exists, other evidence shall still be taken into account.*

*\*\*For all of the above, relevant evidence is required e.g. a copy of the Will, confirmation of next of kin, family questionnaire, permission to distribute estates, grant of probate etc.*

Principle 2 – Reasonability of the deceased preference: The Fund shall consider the reasonability of the deceased wishes and reserve the right to override it if it deems appropriate. For example, if the deceased nominated a friend over a financial dependent such as their child, the Fund may consider this ‘not reasonable’ and seek to override the decision. This principle is likely to only apply in limited circumstances.

Principle 3 – Acting reasonably and professionally: The Fund shall *Act Reasonably and Professionally* (as defined in section 3), including ensuring it gathers all information it reasonably requires in order to make an informed decision. Wherever possible, the Fund should aim to clearly request all information it needs when it first writes to the next of kin/potential beneficiaries in the interests of efficiencies and sensitivities involved. However, it may need to contact such parties multiple times to ensure it is able to make a reasonable and professional decision; undertaking this process in sufficient detail shall be prioritised over the speed of payment.

When deciding what is a *reasonable* process for information gathering, the perceived complexity of the case and the size of the death grant should be taken into account.

**[The remaining sections have been redacted as they related to internal procedural elements and advice to staff and hence it is inappropriate to make these publicly available]**