



South Tyneside Council

Safeguarding Protocol

Until recently the LGPS Regulations did not provide for any other person to receive payments on behalf of an adult Scheme member. Payments could only be made to the actual member concerned.

However, for a variety of reasons, some members may reach a point where they can no longer manage their affairs. It is preferable that the only way in which a third party is able to take control of a member's affairs and have access to their LGPS pension is by way of a Power of Attorney or the Court of Protection.

It is hoped that Scheme members will have made arrangements in advance by way of a power of attorney, appointing someone (the Attorney) to make decisions on their behalf on matters ranging from property and finance to health and welfare. Alternatively if a person cares for a member who has lost the capacity to make their own decisions but did not make a power of attorney beforehand, they should apply to the Court of Protection for a court order that appoints them (as Deputy) to make decisions for the member.

Lasting Power of Attorney

A Lasting Power of Attorney is a legal document by which a member appoints an Attorney to make decisions on their behalf. In order for the Attorney to be able to act under the Lasting Power of Attorney it must be registered with the Office of the Public Guardian.

Lasting Power of Attorneys replaced Enduring Power of Attorneys (which dealt with property and financial affairs only) but an Enduring Power of Attorney can still be used, subject to registration with the Office of the Public Guardian, if made and signed before October 2007.

Court of Protection

In circumstances where a person has not appointed an Attorney and since lost the mental capacity to do so, it will be necessary to apply to the Court of Protection. The Court of Protection makes decisions for people who are unable to do so for themselves and can order that an Attorney (in this case called a Deputy) be appointed to make decisions for the person who has lost mental capacity.

The Fund should always ensure that that member has made arrangements by way of a Power of Attorney. If a member has lost capacity to make their own decisions

without making a Power of Attorney beforehand, we should always insist that their family member/friend applies to the Court of Protection for a court order that appoints them as a Deputy to make decisions for the member.

We should always have sight of an original or certified copy Power or Attorney or Court of Protection Order before any changes are made to bank account details or address details.

In recognition of the fact that the Court of Protection process is lengthy and expensive, and as many people do not make provision for someone else to control their affairs in the event of their incapacity, the Fund is agreeable to offer an alternative process, where the appointment of a Deputy is not reasonable. This should be considered on a case by case basis.

Regulation 83 of the Local Government Pension Scheme Regulations 2013 states as follows:

“Payments for persons incapable of managing their affairs

83. If it appears to an appropriate administering authority that a person other than an eligible child is entitled to payment of benefits under the Scheme but is, by reason of mental disorder or otherwise, incapable of managing his or her affairs—

(a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and

(b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.”

This regulation provides the Fund with a fairly wide discretion as to how pension payments can be made for persons incapable of managing their own affairs, including making payments into the account of a third party.

TWPF Appointee

When a member is unable to manage their LGPS Pension benefits, we could allow someone else to do it on their behalf.

Appointee action should only be taken where the member is incapable of managing their affairs. This will usually be because the member is mentally incapable but, exceptionally, may also be appropriate when the customer is physically disabled, e.g. if they have suffered a severe stroke.

A TWPF Appointee cannot be appointed simply because it is more convenient to have one, or because the person does not want to go to the effort of being appointed by the Court of Protection. This should always be explored first.

An individual who wishes to act as a TWPF Appointee will need to make a written request to the Fund by way of the Personal Appointee Form (Pen26I) or the Corporate Appointee Form (Local Authority) (Pen26LA) or the Corporate Appointee Form (Hospital/ National Health Service institutions) (Pen26H). We should always advise the applicant to discuss the matter with other close relatives and if possible with the member concerned. The applicant will be asked to sign to confirm that they have read and understood what this role entails. The applicant will, without exception, need to produce medical evidence that the member does lack the capacity to manage their finances.

There may be a fee incurred for an applicant to arrange for a medical assessment. However, this is absolutely necessary for all applications and an application should not be progressed without medical evidence.

If the Fund decides that the appointment is appropriate, and if an application is successful, the Fund will need to send a letter to the TWPF Appointee confirming the appointment and explaining what their responsibilities are.

Whether or not an appointment is appropriate is a decision for the Head of Pensions, in consultation with Legal Services.

Physical Disablement

If a member is mentally capable but is severely disabled making an appointment is not precluded. In particular, if the disablement prevents the member from signing or making a mark then an appointment will be needed to enable options etc. to be made. For example: advanced motor neurone diseases where the member experiences extreme physical difficulties; Parkinson's disease where the member still has mental capacity but is no longer physically able to write or a member who has suffered a severe stroke which impairs their ability to write.

Welfare Benefits – Department of Work & Pensions

When a person is unable to manage their welfare benefits, someone else can do it on their behalf.

The Social Security (Claims and Payments) Regulations 1987 allows the DWP to appoint individuals with regards to employment and support allowances.

The DWP Appointee has no role beyond welfare benefits and therefore the Fund should not rely upon an Appointee of the DWP.

Remember: An appointment must never be made because it is 'convenient' either for the Fund or the prospective Appointee. The member must, because of mental incapacity or, exceptionally, severe physical disability, be incapable of managing their affairs. If challenged we must be able to justify our decision to make an appointment. And at all times we must be able to provide the necessary paperwork to show that we followed procedures.

23 March 2015