

BURGESS SALMON

Local Government Association:

**Dealing with complications arising
from a backdated benefit payment
made under the 'LGPS (Member
Benefit) Regulations 2026'**

Note: This paper has been prepared solely for the Local Government Association, and we do not accept liability to any other person or body in respect of it, unless we have expressly agreed otherwise in writing.

1 BACKGROUND

- 1.1 We have been instructed by the Local Government Association (the “**LGA**”) to advise on the approach for administering authorities (“**AAs**”) to take when seeking to pay to an estate or beneficiary a backdated benefit which has become due as a result of the changes made to the Local Government Pension Scheme regulations as a result of the Local Government Pension Scheme (Miscellaneous Amendments) (Member Benefits) Regulations 2026.

2 INTRODUCTORY COMMENTS

- 2.1 The ‘Access and Fairness’ amendments were made to the Local Government Pension Scheme Regulations 2013 (the “**2013 Regulations**”) by the Local Government Pension Scheme (Miscellaneous Amendments) (Member Benefits) Regulations 2026 (the “**E&W 2026 Regulations**”) which came into force on 1 April 2026 and made various changes to the 2013 Regulations and to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the “**2014 Regulations**”), many of which had retrospective effect.
- 2.2 We note that the Draft Local Government Pension Scheme (Scotland) (Amendment) Regulations 2026 (the “**Scottish 2026 Regulations**”) had been intended to take effect on and from 1 April 2026. However, the plans were paused following the consultation¹.
- 2.3 This paper therefore relates directly only to English and Welsh AAs. However, it may be that (subject to the Scottish 2026 Regulations taking effect, being in substantively the same form², and any guidance issued in respect of them being in substantively the same form) this paper can be applied by Scottish AAs in the future too.
- 2.4 Very broadly, the E&W 2026 Regulations produce a new requirement for AAs to:
- (a) ensure that survivor benefits are equal regardless of the sex or sexual orientation of the member or survivor (the “**equalisation change**”), and
 - (b) make payments of death grants in respect of members who died after the age of 75 (the “**age 75 change**”)
- (together, the “**new payment obligations**”).

The backdating of the new payment obligations

- 2.5 Given that the new payment obligations are backdated³, we understand that AAs are anticipating, and in some instances are already encountering, issues relating to where⁴:
- (a) the appropriate beneficiary/beneficiaries or survivor are proving difficult to trace or have passed since the member’s death,
 - (b) the personal representative (“**PR**”) is refusing or unable to act (e.g. has passed since the member’s death), or
 - (c) the estate has been fully administered / ‘closed’ since the member’s death
- (together, the “**complicated cases**” and each a “**complicated case**”).

¹ The Scottish Public Pensions Agency stated in March that: “... *SPPA intends to pause the proposed changes to the LGPS (Scotland) Regulations. They will continue to consult on further changes after the Scottish Parliamentary election concludes in May 2026*” (see [here](#)). We are not aware of any update since the conclusion of the election, including the recommencement of the consultation process. See **Schedule 3** for further comment.

² With reference to the draft Scottish 2026 Regulations (see [here](#)), we note that the age 75 change was intended to be made in the Scottish LGPS. However, the equalisation change was already made in the Scottish LGPS via the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 – see regulation 17(9A) [here](#). See **Schedule 3** for further comment.

³ In respect of the age 75 change, this is backdated in respect of deaths on and from 1 April 2014. In respect of the equalisation change, this is backdated to deaths on and from 5 December 2005 in some cases (and on and from 13 March 2014 or 31 December 2019, in other instances). See **Schedule 2** for further information.

⁴ As a non-exhaustive list.

- 2.6 The LGA has instructed us to advise on the approach for AAs to take where a complicated case arises, and further where the AA has taken steps to make contact with and payment to the relevant person or persons, but has been unsuccessful in doing so.

3 EXECUTIVE SUMMARY

- 3.1 Please refer to **Schedule 1** for a summary of our advice, and to the schedules of this paper for further information on each area.

4 TABLE OF CONTENTS

No.	Schedule Title	Schedule Summary
Schedule 1	Executive Summary	Sets out MHCLG's key remarks on the process for AAs to adopt and the cornerstone principles for AAs to have in mind when seeking to establish potential beneficiaries, trace them, decide who to pay to, and establish contact with them. <i>Look at this if... You want a high-level overview of our advice in this area.</i>
Schedule 2	Background regarding the relevant regulations and guidance in E&W	Sets out relevant legislation and guidance on the area (including how the age 75 change and equalisation change were given effect to and when the changes take effect from), including MHCLG's expectations in terms of process and timings. <i>Look at this if... You are an AA based in E&W, and want to understand the legal background and MHCLG's expectations on administering the benefits.</i>
Schedule 3	Background regarding the relevant regulations and guidance in Scotland	As above, but in respect of Scotland.
Schedule 4	Dealing with complicated cases arising from the age 75 change or the equalisation change	Sets out in detail the key considerations and principles for AAs when identifying beneficiaries and seeking to establish contact with them, including addressing principles to note where an AA is dealing with likely "complicated cases". <i>Look at this if... You are dealing with a complicated case and need some guidance on next steps.</i>
Schedule 5	Step-by-step guides to the decision-making process for paying benefits arising from the age 75 change and the equalisation change	Sets out a high-level summary of steps for AAs to consider taking, in particular in respect of (a) identifying beneficiaries, and (b) establishing contact with them. <i>Look at this if... You want some guidance on steps to consider taking and key principles to note when taking these steps. It also addresses complicated cases, but the detail of these principles should be referred to in Schedule 4.</i>

Burges Salmon LLP
6 October 2026

SCHEDULE 1

EXECUTIVE SUMMARY

1 AGE 75 CHANGE

MHCLG Guidance

- 1.1 MHCLG expect that AAs *“will make every reasonable effort to make payment of backdated death grants, as soon as is practically possible, and in any event by 1 January 2028”*.
- 1.2 In particular, MHCLG have set out expectations as to when the two steps referred to in this advice note should be completed. Namely:
- (a) Identification of beneficiaries of deaths in scope – For most funds, MHCLG expect for this to be completed by **1 January 2027**.
 - (b) Establishment of contact with beneficiaries/PRs – For most funds, MHCLG expect for this to be completed by **1 January 2028**.

Cornerstone principles to note

- 1.3 In **Schedule 4**, we set out in detail the key considerations and principles for AAs when identifying beneficiaries and seeking to establish contact with them, including addressing principles to note where an AA is dealing with likely “complicated cases”. In terms of a very high-level summary of these principles, we note as follows:
- (a) Identification of beneficiaries of deaths in scope – this should occur in all cases and should not be reduced in scope simply because the benefit is of low value. Where the case is complicated (as will often be so, given the historic nature of age 75 change cases), a higher level of enquiry may be appropriate. That being said, the Pensions Ombudsman (“**TPO**”) has also stated that this exercise does not need to *“exhaustively identify every possible beneficiary, particularly where the class is wide.”*
 - (b) Establishment of contact with beneficiaries/PRs – TPO have stated that the AAs may reasonably *“take a proportionate approach in gathering information about potential beneficiaries once it has identified the main potential beneficiaries”*. The MHCLG guidance states that at least three contact attempts should be made in a twelve-month period. That being said, TPO expects that, generally speaking, there should be no point at which no action is being taken or planned to be taken. Therefore, if attempts to contact a beneficiary fail, then the AA should consider who to attempt to contact next.
 - (c) Dealing with a low benefit sum – AAs should consider, where the value of the grant is low (currently set by statute as £5,000 but subject to change), applying the discretion under regulation 82 of the 2013 Regulations. This regulation permits payment to the PR or to a person appearing to the AA to be beneficially entitled to the estate, without production of the appropriate documentation.
 - (d) Dealing with a beneficiary that is incapacitated – We note that regulations 40, 43, and 46 of the 2013 Regulations and Earlier Regulations refer to paying *“to or for the benefit of the”* appropriate beneficiary. In our view, this permits AAs to pay to, e.g. the carer of the proposed beneficiary on the condition that it is applied for the benefit of the beneficiary.
 - (e) Payment to a PR or estate – This may arise if the PR/estate is deemed to be the appropriate recipient, or if the appropriate recipient has died since the member’s death. Please refer to section 6 of **schedule 4** for further detail on the approach to take here, but broadly we note that if the AA is struggling to obtain the necessary documentation for payment to a PR/estate, then they must ensure to take *“appropriate action to obtain”* it, otherwise there is a risk of maladministration. Generally, this means making repeated clear requests for the documentation, and widening out the requests to other people if the primary contact does not respond. In some cases, it may be appropriate to adopt a more proportionate approach to tracing and contact attempts where it appears unlikely to be able to pay to the PR / estate (e.g. due to the passage of time).
 - (f) Where it is deemed not reasonably practicable to pay to the PR or estate – If deemed that it is not reasonably practicable to pay to that person’s estate/PRs, then we consider it reasonable to move onto exploring payment to another beneficiary. Another option that an AA may consider is paying to a relative (rather than estate / PR) of the beneficiary; although we consider doing so to incur legal risk (noting

that it is the estate / PR that should decide how to distribute, and actually distribute, the residuary estate of the beneficiary, rather than the AA).

Step-by-step guide

- 1.4 Please refer to **Schedule 5** for this. We suggest this is used purely as a guide, because it is non-exhaustive and the circumstances that may arise in these cases will vary from case to case.

2 EQUALISATION CHANGE

- 2.1 MHCLG expect that AAs *"will make every reasonable effort to implement the backdated payment changes, as soon as is practically possible, and in any event by 1 January 2028"*.
- 2.2 In particular, MHCLG have set out expectations as to when the two steps relating to this advice note should be completed. Namely:
- (a) Identification of survivors of deaths in scope – For most funds, MHCLG expect for this to be completed by **1 October 2026**.
 - (b) Establishment of contact with survivors – For most funds, MHCLG expect for this to be completed by **1 October 2027**.

Cornerstone principles to note

- 2.3 Please refer to paragraph 1.3 above and **Schedule 4** below. As a summary of some key distinctions between the approach to age 75 change cases and equalisation change cases:
- (a) Tracing – It will be the survivor that is the proper recipient. The main tracing activity will therefore be to find the survivor, rather than identifying the "range of potential beneficiaries" as is the case with age 75 change cases.
 - (b) Dealing with a beneficiary that is incapacitated – Under regulation 83 of the 2013 Regulations, "If it appears to an [AA] that a person 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", then the AA may pay the benefits to someone else "for the benefit of the person entitled" or to "any beneficiaries of the person entitled"⁵. In our view, regulation 83 of the 2013 Regulations applies to survivor benefits (and not death grants) given the language used in the regulation⁶ (although this position is not completely clear-cut).
 - (c) Explicit prohibition on non-action – For the equalisation change, MHCLG explicitly state that there *"should be no prioritisation or non-action with regards to individual cases by administering authorities, on the basis of any protected characteristic or the amount to be paid."*
 - (d) Establishing contact – MHCLG note that this step *"is not necessary where an existing survivor benefit is being increased as the administering authority will already be in contact with the survivor."*
 - (e) Contact attempts – the MHCLG guidance is explicit that *"where a survivor has not responded to the minimum 3 attempts made by an administering authority to establish contact with them... the expectation is that the [AA] will not take any further action"*, subject to a change in circumstances. For the avoidance of doubt, this position is not stated in respect of the age 75 change⁷.

⁵ We also note that regulation 52A of the Local Government Pension Scheme (Administration) Regulations 2008 includes a similar provision. We are not aware of other regulations including a similar provision. Please note that this provision therefore applies only to the extent it applies in the respective member case, e.g. with reference to when they left active membership.

⁶ In particular, the regulation refers to the person being "entitled" to the benefit. Whereas for the death grant (relating to the age 75 change), there is only a discretionary right to the benefit

⁷ Please see section 6 of **schedule 2** for further detail. But in essence, we consider this distinction most likely to be due to the expectation that the AA will, rather than "give up" following three contact attempts in an age 75 change case, move onto attempting to contact another beneficiary (potentially with the aim of contacting the original beneficiary that could not be contacted). Whereas, for the avoidance of doubt, the survivor benefit is a legal entitlement and so (subject to the circumstances), having made three contact attempts, it may be reasonable to make no further contact attempts to the survivor (because there would be no other recipient to move onto in their place).

SCHEDULE 2

BACKGROUND REGARDING THE RELEVANT REGULATIONS AND GUIDANCE IN ENGLAND AND WALES

1 INTRODUCTION

- 1.1 On the basis of our instruction (see paragraph 1.1 of the main body of this paper), we will provide only high-level comments in relation to the law that gave effect to the age 75 change and the equalisation change.
- 1.2 For further detail in relation to the E&W 2026 Regulations, see [here](#).

2 AGE 75 CHANGE

LGPS Regulations

- 2.1 Under the 2013 Regulations, the position was that a death grant was only payable in respect of a member if that member “*dies before attaining the age of 75*”⁸.
- 2.2 Under regulations 16 and 22 of the E&W 2026 Regulations, the 2013 Regulations were amended to remove the “*before attaining the age of 75*” drafting within both regulations 40(1) and 46(1), respectively – resulting in the “**age 75 change**”.
- 2.3 Under regulation 1(2)(a) of the E&W 2026 Regulations, the age 75 change is stated as having effect from 1 April 2014 (when the 2013 Regulations came into force).
- 2.4 In order to further give effect to this backdating, regulation 42(1)(f) of the E&W 2026 Regulations (which has effect backdated from 1 April 2014) added in drafting to new sub-regulation 17(8A) of the 2014 Regulations in relation to death grants payable under the “Earlier Schemes” (as defined).

Explanatory notes to the E&W 2026 Regulations

- 2.5 These state that the E&W 2026 Regulations: “*remove the prohibition on paying a death grant in respect of a member who had reached the age of 75*”.

Consultation response

- 2.6 To summarise one relevant comment from MHCLG within their response to the “Access and Fairness” consultation⁹:

“[AAs] commonly agreed that they expected the identification of beneficiaries would be particularly administratively burdensome and guidance would be welcomed”, although MHCLG also noted that “a software supplier confirmed their expected ability to identify members in scope, subject to legacy data being in place”.

MHCLG guidance on the age 75 change

- 2.7 On 1 April 2026, partially in response to calls from AAs in the “Access and Fairness” consultation to provide guidance to address the administrative issues arising from the age 75 change, MHCLG published guidance on the “survivor benefits and death grants” changes made under the E&W 2026 Regulations (the “**MHCLG guidance**”).
- 2.8 Given the importance of the MHCLG guidance to the topic of this paper, we will address it in detail at section 3 below.

Other guidance and regulation

- 2.9 We note that the LGA has issued technical guidance regarding the calculation of death grants. Whilst this does not hold legally binding force, it is referred to within the MHCLG guidance and therefore we consider it can reasonably be treated as a persuasive document.

⁸ See regulations 40(1) and 46(1) of the 2013 Regulations before they were amended by the E&W 2026 Regulations.

⁹ See [here](#).

- 2.10 Finally, we note regarding interest payable on a death grant arising from the age 75 change in connection with a death before 1 April 2026¹⁰, regulation 81 of the 2013 Regulations is the relevant statutory provision, along with regulation 29 (in particular (3)) of the E&W 2026 Regulations¹¹.

3 MHCLG GUIDANCE ON THE AGE 75 CHANGE

General guidance on timings

- 3.1 MHCLG expect that AAs “will make every reasonable effort to make payment of backdated death grants, as soon as is practically possible, and in any event by 1 January 2028”.
- 3.2 MHCLG acknowledge that six steps need to be taken, in all, in order to make a payment required because of the age 75 change (see the table below for these six steps). They state that: “it is for each administering authority to justify its process and timelines.”

MHCLG’s expectations on process and timeframe

- 3.3 Within the MHCLG guidance, a timeline is included to set out the government’s expectations in terms of the “reasonable timeframe” for AAs to complete the preparatory steps of making a payment required due to the age 75 change. The MHCLG guidance states that they expect AAs to “make every reasonable effort to meet the following process and timelines, notwithstanding exceptional circumstances”.
- 3.4 The MHCLG guidance then sets out the following expectations on the four preparatory steps, along with comments on the approach to finalising the payment:

No.	Step	Minimum reasonable process to be followed by administering authorities	Reasonable timeframe	Our comments
Preparatory Steps				
1.	Identification of deaths in scope	To examine historic records of membership to identify all deaths in scope. Where membership data may be missing or incomplete, to take further reasonable steps to source evidence of deaths of members in scope.	To be completed by 1 July 2026 , 3 months from SI coming into force date.	We note that the deadline for this step has already passed.
2.	Calculation of death grants	To calculate the death grants owed to eligible beneficiaries. To follow SAB/LGA technical guidance for assistance with calculations.	To be completed by the earliest of 1 October 2026 , or 3 months from previous step concluding.	
3.	Identification of beneficiaries of deaths in scope	To examine membership data to identify possible beneficiaries. Where membership data is insufficient, to engage tracing companies to attempt to identify beneficiaries/PRs. To use standard member communications (e.g., newsletters (digital and print), notices on fund	To be completed by the earliest of 1 January 2027 , or 3 months from previous step concluding.	We note that there is no explicit “de minimis” limit or reference to tracing activities needing to be “proportionate”, beyond the previous references to “every reasonable effort”.

¹⁰ For deaths on and from 1 April 2026, AAs should refer to the “interest regulation” from the relevant LGPS regulations (with reference to when the member left active membership).

¹¹ We have not been instructed to advise on the interest payable.

		websites) to raise awareness of potential death grants.		
4.	Establishment of contact with beneficiaries/ PRs	Once beneficiaries/PRs have been identified, to make multiple attempts to contact them, using both digital and physical methods. To make a minimum of 3 attempts over a 12-month period.	To be completed by the earliest of 1 January 2028 , or 12 months from previous step concluding.	This is the focus of our paper. Please see Schedule 4 below for our advice.
Final Steps				
5.	Exercise their discretion about who the death grant is paid to	The MHCLG guidance states that AAs are expected to complete steps “ <i>in line with their standard timescales for payments</i> ”.		This is the focus of our paper. Please see Schedule 4 below for our advice.
6.	Pay the death grant (including interest)			

3.5 As a general comment on the above, we emphasise that the MHCLG guidance requires for AAs to take “*every reasonable effort to meet the... process and timelines [set out in the table above]*”. Whilst there is an acknowledgement that this may not be possible in “*exceptional circumstances*”, we note that the MHCLG guidance, on the whole, prescribes a relatively firm expectation in terms of compliance with process and timeframes.

4 EQUALISATION CHANGE

LGPS Regulations

- 4.1 Under the 2014 Regulations, in some instances, survivors of a marriage or civil partnership with a member may have been due to receive under those regulations a different amount depending on the sex or sexual orientation of the member or survivor¹².
- 4.2 Under regulation 42(1)(h) of the E&W 2026 Regulations, new sub-regulations 17(16B) and (16C) of the 2014 Regulations were added as to equalise survivor benefits for spouses and civil partners under the Earlier Schemes, regardless of the sex or sexual orientation of the member or survivor – the “**equalisation change**”.
- 4.3 Under the E&W 2026 Regulations, the equalisation change is stated as having effect from various historic dates (5 December 2005, 13 March 2014, or 31 December 2019) depending on whether:
- (a) the member and spouse/civil partner were in a same-sex or opposite-sex relationship, and
 - (b) the member and spouse/civil partner were in a civil partnership or marriage at the date of the member’s death.
- 4.4 The effective dates of the equalisation change can be summarised as follows...

	Opposite-sex marriage	Same-sex marriage	Same-sex civil partnership	Opposite-sex civil partnership
Effective Date	5 December 2005 ¹³	13 March 2014 ¹⁴	5 December 2005 ¹⁵	31 December 2019 ¹⁶

¹² See regulation 17 of the 2014 Regulations before it was amended by the E&W 2026 Regulations – which did not previously include any specific caveats to ensure equal benefits.

¹³ See new sub-regulations 17(16B)(b)(i) and 3(5D) of the 2014 Regulations, as inserted by the E&W 2026 Regulations.

¹⁴ See new sub-regulations 17(16B)(b)(ii) and 3(5E) of the 2014 Regulations, as inserted by the E&W 2026 Regulations.

¹⁵ See new sub-regulations 17(16B)(b)(iii) and 3(5D) of the 2014 Regulations, as inserted by the E&W 2026 Regulations.

¹⁶ See new sub-regulations 17(16B)(b)(iv) and (16F) of the 2014 Regulations, as inserted by the E&W 2026 Regulations.

Explanatory notes to the E&W 2026 Regulations

- 4.5 These state that the E&W 2026 Regulations: *“equalise survivor benefits for spouses and civil partners, regardless of the sex or sexual orientation of the member or survivor...”*

Consultation comments

- 4.6 One relevant comment from MHCLG within the “outcome” document from the “Access and Fairness” consultation¹⁷ was as follows:

“Modification of the LGPS Regulations to ensure that the survivor pension payable to the survivor of a marriage or civil partnership with a member is calculated in the same way, regardless of the sex or sexual orientation of the member or survivor. This equalisation is proposed to be to the highest level of entitlement currently available (given the date of the marriage or civil partnership) and to be backdated.”

MHCLG guidance on the equalisation change

- 4.7 The “**MHCLG guidance**” also provides guidance on the equalisation change.
- 4.8 Given the importance of the MHCLG guidance to the topic of this paper, we will address it in detail at section 5 below.

Other guidance

- 4.9 We note that the LGA has issued technical guidance regarding the calculations / approach to backdating payments arising from the equalisation change. Whilst this does not hold legally binding force, it is referred to within the MHCLG guidance and therefore we consider it can reasonably be treated as a persuasive document.

5 MHCLG GUIDANCE ON THE EQUALISATION CHANGE

General guidance on expectations of AA

- 5.1 The MHCLG guidance states that the equalisation change:

“may result in payment of survivor benefits being made to a survivor for the first time i.e., where there was no entitlement before, there now is. Administering authorities must make every reasonable effort to identify, calculate the entitlement of, and make payment to those survivors.”

- 5.2 Regarding prioritisation of cases, the MHCLG guidance further states that:

“There should be no prioritisation or non-action with regards to individual cases by administering authorities, on the basis of any protected characteristic or the amount to be paid. However, it is up to administering authorities to justify their approach to their overall caseload and any decisions they take to prioritise individual cases.”

MHCLG’s expectations on process and timeframe

- 5.3 MHCLG acknowledge that five steps need to be taken, in all, in order to make a payment required because of the equalisation change (see the table below for these five steps).
- 5.4 Within the MHCLG guidance, a timeline is included to set out the government’s expectations in terms of the “*reasonable timeframe*” for AAs to complete the preparatory steps of making a payment required due to the equalisation change. The MHCLG guidance states that they expect AAs to “*make every reasonable effort to meet the following process and timelines, notwithstanding exceptional circumstances*”.
- 5.5 The MHCLG guidance then sets out the following expectations on said preparatory steps¹⁸:

¹⁷ See [here](#).

¹⁸ We have replicated the wording in this table word-for-word, apart from where the wording is the same as for the age 75 change guidance (in which case we have referred to the table in section 3 above) and with the addition of the final column for some high-level commentary.

No.	Step	Minimum reasonable process to be followed by administering authorities	Reasonable timeframe	Our comments
Preparatory Steps				
1.	Identification of deaths in scope	See table in section 3 above.	See table in section 3 above.	See table in section 3 above.
2.	Identification of survivors of deaths in scope	See table in section 3 above, plus... Where a new survivor entitlement is identified and membership data is insufficient, to engage tracing companies to attempt to identify survivors.	To be completed by the earliest of 1 October 2026 , or 3 months from previous step concluding.	We note that the MHCLG guidance explicitly prohibits <i>“non-action... on the basis of... the amount to be paid.”</i> This is the focus of our paper. Please see Schedule 4 below for our advice.
3.	Establishment of contact with survivors	See table in section 3 above, plus... A. Further NB that the MHCLG guidance explicitly notes that this step will not be necessary where an existing benefit is to be increased, as the AA will already be in contact with said survivor; and, B. Where the survivor has not responded to the minimum 3 attempts made, <i>“and providing no other circumstances change (e.g., the potential eligible survivor becomes responsive or willing to cooperate), the expectation is that the administering authority will not take any further action.”</i>	To be completed by the earliest of 1 October 2027 , or 12 months from previous step concluding.	This is the focus of our paper. Please see Schedule 4 below for our advice.
4.	Recalculation of survivor benefits	Recalculate benefits of eligible survivors, including recalculation of children's pensions. Follow LGA technical guidance for assistance with recalculations.	To be completed by the earliest of 1 January 2028 , or 3 months from (a) step 3 concluding for new survivor entitlements, or (b) step 2 concluding when an existing survivor benefit is being increased.	See table in section 3 above.
Final Step				
5.	Pay the survivor benefits	The MHCLG guidance states: <i>“Once entitlement has been recalculated, administering authorities are expected to make payment of survivor benefits in line with their standard timescales for payments.”</i>		This is the focus of our paper. Please see Schedule 4 below for our advice.

6 POINT TO HIGHLIGHT

6.1 We note in the MHCLG guidance in particular that:

- (a) At **step 3** of the table immediately above, there is explicit guidance that, where no response is received after three attempts to the survivor, *“and providing no other circumstances change... the expectation is that the administering authority will not take any further action”*; and,
- (b) Whereas, the equivalent table and step of the age 75 change does not include such wording (see **section 3** above).

6.2 Having discussed with LGA regarding the policy intention here, we understand this distinction may have been intentional. Namely, the distinction may have been motivated by the fact that there is only one survivor, but there are many potential people eligible for receipt of the death grant. Therefore, we consider that, where 3 attempts have been made to contact a potential beneficiary for a death grant but with no success, then:

- (a) Often, there will be no expectation for further attempts to be made to contact that person (unless the AA have reason to believe that further contact attempts would be likely to result in contact being made), but
- (b) There is an expectation for attempts to then be made to contact another suitable beneficiary.

6.3 We note that this approach is not free from risk, though, noting that the MHCLG guidance is not explicit here.

SCHEDULE 3

BACKGROUND REGARDING THE RELEVANT REGULATIONS AND GUIDANCE IN SCOTLAND

1 SUMMARY

- 1.1 We note that the Draft Local Government Pension Scheme (Scotland) (Amendment) Regulations 2026 (the “**Scottish 2026 Regulations**”) had been intended to take effect on and from 1 April 2026 – in line with the E&W 2026 Regulations.

Pausing of the consultation

- 1.2 However, the plans were paused following the consultation. Namely, The Scottish Public Pensions Agency stated in March that: “... *[they intend] to pause the proposed changes to the LGPS (Scotland) Regulations. They will continue to consult on further changes after the Scottish Parliamentary election concludes in May 2026*”¹⁹.

What the Scottish 2026 Regulations proposed to include

- 1.3 Very broadly speaking, the Scottish 2026 Regulations were proposed to be in substantively the same form and have substantively the same effect as the E&W 2026 Regulations²⁰. The key exception to this for the purposes of this paper relates to the equalisation change. Namely, the equalisation change was already made by regulation 17(9A) of the Scottish LGPS via the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014²¹. The Scottish 2026 Regulations therefore included no changes to give effect to the equalisation change.

Relevance of this paper to Scottish AAs

- 1.4 This paper therefore relates directly only to English and Welsh AAs. However, subject to the Scottish 2026 Regulations and any connected guidance being in substantively the same form as the E&W 2026 Regulations, it may be that this paper can be applied by Scottish AAs in the future too.

¹⁹ See [here](#). We are not aware of any update since the conclusion of the election, including the recommencement of the consultation.

²⁰ See [here](#) for the draft regulations.

²¹ See [here](#).

SCHEDULE 4

DEALING WITH COMPLICATED CASES ARISING FROM THE AGE 75 CHANGE OR THE EQUALISATION CHANGE

1 INTRODUCTION

- 1.1 Given that the new payment obligations (stemming from the age 75 change and the equalisation change) are backdated²², we understand that AAs are anticipating, and in some instances are already encountering, issues relating to locating the recipient and making payment to the recipient.
- 1.2 This schedule therefore relates chiefly to dealing with the steps set out in the MHCLG guidance for a complicated case:
- (a) **steps 4, 5, and 6** of the MHCLG guidance on the age 75 change (see the table in **section 3 of schedule 2** above)²³, and
 - (b) **steps 3 and 5** of the MHCLG guidance on the equalisation change (see the table in **section 5 of schedule 2** above)²⁴
- (NB that the factors apply equally to dealing with a complicated case arising from the age 75 change and the equalisation change, unless explicitly stated otherwise).

2 GENERAL LEGAL POSITION ON DECISION-MAKING FOR DISTRIBUTING A DEATH GRANT

- 2.1 Whilst the complication noted in paragraph 1.1 above will be more common with historic cases arising from the age 75 change, the general legal position will still apply in these cases.

Discretion under the 2013 Regulations

- 2.2 Under Regulation 40 of the 2013 Regulations, the AA:

“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.” (our emphasis added)

- 2.3 In respect of the age 75 change, AAs therefore have “absolute discretion” as to who to pay to.

The point at which to assess eligibility

- 2.4 We consider that given the retrospective nature of the changes, the better interpretation of the 2013 Regulations, and indeed how the Pensions Ombudsman has consistently interpreted them, is that eligibility should be considered at the date of the member’s death.
- 2.5 Whilst the 2013 Regulations are not clear cut on this, we note the following Pensions Ombudsman decisions:
- (a) CAS-75613-N2J8 & CAS-75612-J0N8²⁵ – The Adjudicator’s opinion (which the Ombudsman did not explicitly disagree with) referred to the three relevant beneficiaries’ entitlement to the benefits on the basis of their relation “*at the time of [the member’s] death*”.
 - (b) PO-21940²⁶ – The Ombudsman stated at para 37: “*Following their adoption by Mr H and Mrs H, Miss C and Miss E became their daughters. Miss C’s later separation from the family did not change that. Therefore, the Fund was entitled to include her within its distribution of the death grant.*”
- 2.6 Further, we note that it would seem to be an illogical outcome if, say, a death grant could be paid to the grandchild of the member who was only born several years after the member’s death.

²² In respect of the age 75 change, this is backdated in respect of deaths on and from 1 April 2014. In respect of the equalisation change, this is backdated to deaths on and from 5 December 2005 in some cases (and on and from 13 March 2014 or 31 December 2019, in other instances). See **Schedule 2** for further information.

²³ These three steps are: Establishment of contact with beneficiaries/PRs, exercising the discretion as to who the death grant should be paid to, and then making payment of the death grant.

²⁴ These two steps are: Establishment of contact with survivors and then making payment of the survivor’s benefit.

²⁵ See [here](#).

²⁶ See

Exercising this discretion

- 2.7 Broadly speaking, the legal risk for AAs when administering a death grant is how the decision is made, rather than who the payment is made to. Namely, as per the legal case *Edge v Pensions Ombudsman*²⁷, it was confirmed that trustees (and, similarly, AAs) must:
- (a) Direct themselves correctly in law,
 - (b) Take into account all relevant but no irrelevant factors,
 - (c) Ask themselves the correct questions, and
 - (d) Reach a decision which was not perverse.
- 2.8 It is only (d) above which relates to the substance of the case, and broadly, the requirement for the decision not to be “perverse” is arguably a relatively low bar.
- 2.9 As above, therefore, the chief legal risk to AAs is making a “procedurally unreasonable” decision when paying a death grant. This is no different in respect of complicated cases arising from the age 75 change (and arguably, this risk is pronounced given the additional complexity in these cases).

Exercising this discretion in “normal” cases

- 2.10 Please note that this paper does not opine on the law for a “normal” case. It does not therefore go into any detail, for example, on:
- (a) who is eligible to receive a death grant under the 2013 Regulations; and,
 - (b) the extent to which the “nominee” under the member’s expression of wish form should be binding and/or persuasive to the AA when deciding whom to pay the death grant to.

Anticipated “complicated cases”

- 2.11 With reference to the above, “complicated cases” are expected as a result of the backdating requirement of the age 75 change where²⁸:
- (a) the appropriate beneficiary is proving difficult to trace,
 - (b) the appropriate beneficiary has passed since the member’s death, or
 - (c) the appropriate beneficiary is unable to receive the grant (e.g. due to incapacity).
- 2.12 We note that a “complicated case” may also arise where an appropriate beneficiary has been traced, has died, and either:
- (a) their PR is difficult to trace, refusing to receive the death grant, is no longer alive, or unable to act (e.g. due to incapacity), or
 - (b) their estate has since been fully administered / ‘closed’.

3 GENERAL LEGAL POSITION ON DECISION-MAKING FOR PAYING SURVIVOR BENEFITS (I.E. FROM THE EQUALISATION CHANGE)

- 3.1 As above in paragraph 2.1, whilst the complication noted in paragraph 1.1 above will be more common with historic cases arising from the equalisation change, the general legal position will still apply in these cases.

Legal position – payee entitlement

- 3.2 Under regulations 41(1), 44(1), and 47(1) of the 2013 Regulations, a survivor’s benefit is payable where a “*member dies leaving a surviving spouse, civil partner, or cohabiting partner*”. In such a case, “*that person is entitled to a pension which shall come into payment on the day following the member’s death.*”. The E&W 2026

²⁷ [1999] EWCA Civ 2013
²⁸ As a non-exhaustive list.

Regulations amend the 2013 Regulations and the “Earlier Regulations”, which are the regulations by which the “Earlier Schemes” (meaning those schemes dated 1974, 1986, 1995, 1998, and 2008) were governed.

Anticipated “complicated cases”

- 3.3 With reference to the above, “complicated cases” are expected as a result of the backdating requirement of the equalisation change where²⁹:
- (a) the survivor is proving difficult to trace,
 - (b) the survivor has passed since the member’s death, or
 - (c) the survivor is unable to receive the pension (e.g. due to incapacity).
- 3.4 We note that a “complicated case” may also arise where the survivor has been traced, has died, and either:
- (a) their PR is difficult to trace, refusing to receive the survivor benefits, is no longer alive, or unable to act (e.g. due to incapacity), or
 - (b) their estate has since been fully administered / ‘closed’.

4 CONSIDERATIONS WHEN DEALING WITH SPECIFIC TYPES OF COMPLICATED CASE ARISING FROM THE AGE 75 CHANGE

Difficulty tracing the appropriate beneficiary

- 4.1 Per the MHCLG guidance, the AA should rely on its membership data first. If this isn’t sufficient, then they should “*engage tracing companies to attempt to identify beneficiaries/personal representatives.*”
- 4.2 We are not aware of any explicit regulations or guidance regarding tracing requirements in death cases. Instead, the expectation on AAs is set by general principles (e.g. fiduciary duty), with Pensions Ombudsman cases providing some indication of the law and how it is applied in individual cases. We summarise key Pensions Ombudsman cases on this area below³⁰. Please note that Pensions Ombudsman determinations do not set strict legal precedents. While individual decisions are legally binding on the specific parties involved, they act as persuasive guidance rather than binding law for future cases handled by the Ombudsman or the courts.

No.	Case Ref	Relevant Background	Steps Taken	General Takeaway	Specific Takeaway re Complicated Cases
1)	CAS-92836-R6B0 ³¹	Following the member’s death, there was a nomination, an intervening will and several possible beneficiaries including a former husband and adult children.	The council asked one child whether the member was still married, obtained the husband’s contact address, contacted him, and asked him for the names and contact details of other potential beneficiaries.	Reasonableness is fact sensitive. TPO states that: “ <i>The level of enquiry which is appropriate may vary depending on the facts and circumstances of the case. In more complicated cases, a higher level of enquiry may be appropriate.</i> ”	Given the complicated nature of some age 75 change cases, we note therefore that TPO is likely to expect a higher level of enquiry in respect of them.
2)	CAS-31561-N2V0 ³²	Payment to the member was rejected but no confirmation of death was provided.	Teachers’ Pensions wrote repeatedly to the deceased at the shared home address after the bank rejected	TPO rejected the claim, because it “ <i>will only intervene where there has been maladministration</i> ”	We note that, for historic age 75 change cases, letters to the member’s last known address may not be

²⁹ As a non-exhaustive list.

³⁰ These are useful cases on the topic and AAs may find it useful to read the cases more fully, although we hope the below is a useful summary for the purposes of this paper.

³¹ See [here](#).

³² See [here](#).

No.	Case Ref	Relevant Background	Steps Taken	General Takeaway	Specific Takeaway re Complicated Cases
		Tax for the death grant was ultimately incurred because the widow was not contacted.	a payment, in order to confirm whether the member had died. The widow did not respond. On the basis of data protection law, TPS did not seek out the widow separately.	<i>which has caused an Applicant loss.</i> There had been no maladministration here because the scheme had acted reasonably and in accordance with law. In particular, this case suggests that repeated letters to the member's home address (particularly where recently confirmed as the member's address) may in some cases be sufficient enquiry.	sufficient because there is a heightened risk of the member's address being outdated and/or beneficiaries living with the member to have since moved out. There is also an enhanced data protection risk if it is more likely that non-relatives now live at the property.
3)	CAS-72134-V5K7 & CAS-72135-Q7V1 (joint case) ³³	The trustees paid a small lump sum to the member's cohabiting partner, with no payment to the legal spouse, adult children or a disabled child.	This occurred following the fund failing to properly engage with the legal spouse, adult children or a disabled child's circumstances. This was despite there being a discrepancy between the death certificate (which stated the legal spouse) and the cohabiting partner's data gathering form.	The size of the benefit (here, £1,557.94) does not excuse a failure to make " <i>a properly informed decision</i> ". TPO determined that the decision-making, at points, was " <i>flawed</i> ", in particular noting that there was information pointing to missing beneficiaries or inconsistent information.	For age 75 change cases, it may be that the death certificate can provide a useful starting point in terms of the legal spouse. AAs should be careful to consider all documentation it holds to understand whether they hold any information already which points towards appropriate beneficiaries.
4)	CAS-84909-V2W7 ³⁴	A son obtained payment of the whole fund, and another child later alleged the claim had been fraudulent and that other children had been ignored.	-	TPO states that: " <i>It is not necessary, when exercising such a discretion, to exhaustively identify every possible beneficiary, particularly where the class is wide. However, the discretion cannot be properly exercised if the range of beneficiaries has not been properly considered.</i> " And further, where a benefit is low value, that it may be reasonable to " <i>take a proportionate approach in gathering information about potential beneficiaries once</i> "	This is helpful reassurance from TPO for complicated cases, in terms of: (a) the priority being to ensure that they identify the range of beneficiaries, and (b) being able to " <i>take a proportionate approach</i> " to confirming the beneficiaries, once they have " <i>identified the main potential beneficiaries</i> ".

³³ See [here](#).

³⁴ See [here](#).

No.	Case Ref	Relevant Background	Steps Taken	General Takeaway	Specific Takeaway re Complicated Cases
				<i>it has identified the main potential beneficiaries</i>	

Difficulty receiving a response from an appropriate beneficiary

- 4.3 As per **section 6 of schedule 2** above, the MHCLG guidance explicitly states that no further action is required where three contact attempts have been made to a survivor regarding payment of the survivor benefits.
- 4.4 This statement is not included in the section about death grants for the age 75 change, although the “process” stated in the guidance refers also to the expectation for three attempts to be made.
- 4.5 Whilst not completely clear, we consider that, generally, it will be reasonable for an AA to make three contact attempts with a beneficiary before “closing” enquiries with that beneficiary. In some instances (such as where the death grant is particularly high or the AA has reason to believe a further attempt(s) is likely to result in a response), further contact attempts may be reasonable.
- 4.6 Once enquiries have been “closed” with that beneficiary, the AA should then consider other potential beneficiaries and seek to make contact with them. If contact is made with a “new” potential beneficiary, the AA may wish to consider asking for contact details of the “closed” beneficiary. If the “new” beneficiary provides contact details for the “closed” beneficiary, the AA may then wish to consider, with reference to all of the circumstances, whether payment should be paid to the “closed” beneficiary and/or the “new” beneficiary.

Where it has not been possible to trace or receive a response from any appropriate beneficiary

- 4.7 Where either all reasonable tracing options have been exhausted in respect of all potential beneficiaries, and/or any traced beneficiary has not been able to be contacted successfully, the question will likely become “what now?”.
- 4.8 In this instance, we recommend that the monies are held in the Fund. We consider this approach, in most circumstances, to be:
- (a) Reasonable from the perspective of the Pensions Ombudsman,
 - (b) The most prudent approach from the Fund’s perspective, i.e. in case someone claims the monies in the future (because holding the monies would avoid a potential complaint), and
 - (c) The most sound approach from a legal perspective, too.
- 4.9 Whilst an argument could be made in favour of asserting that the monies are “bona vacantia”, this concept³⁵ cannot (according to Gov.uk guidance³⁶) be applied where *“there are known or likely to be entitled relatives who survived the deceased even if these have subsequently died, cannot be traced or do not wish to deal with the estate”*. Therefore, unless the AA believes that all potential beneficiaries of the member have died, “bona vacantia” is unlikely to be applicable.

Possibility of suspending payment until another beneficiary can be traced

- 4.10 In the event that a defensible beneficiary can be located (e.g. a sister that the member hadn’t had frequent contact with for a period before death) but the AA has already selected a beneficiary which they consider to be appropriate but just cannot trace them (e.g. a child of the member that the member was close to) (the **“initially selected beneficiary”**), we note that an AA could be minded to suspend payment of the death grant (or at least some of it) in the hope that the initially selected beneficiary is traced and contacted.

³⁵ Which translates as “ownerless goods”.

³⁶ See [here](#).

- 4.11 Similar facts arose in a Pensions Ombudsman case – the Mr S case study³⁷. Here, the trustees determined to pay 50% of the death grant to Ms D (she was listed as his nominee), and then to hold the remaining 50% while it waited to see if any of Mr S' family members made a claim for the remaining amount.
- 4.12 The Pensions Ombudsman determined that *"It would only be reasonable for the Trustee to hold back some of the death benefits if it was actively trying to locate Mr S' daughter, but there was no evidence of this. The Adjudicator concluded that it was unreasonable to make a decision that only 50% of the death benefits should be paid in case another beneficiary came forward."*
- 4.13 Therefore, whilst holding back some of the death grant may be appropriate in some circumstances (as outlined above), the AA should ensure that it is actively tracing the initially selected beneficiaries during that time – the AA should not wait in case another person makes a claim.

Where an appropriate recipient (e.g. nominee) has died since the member's death

- 4.14 As per paragraph 2.4 above, our view is that eligibility should be considered at the date of the member's death. Therefore, if a person was an appropriate recipient at the date of the member's death, then they should still now be fully considered. If the person has since died, then payment to that person's estate and/or PRs should be explored.
- 4.15 In essence, the AA should consider entitlement as if the appropriate recipient (e.g. nominee) were alive and explore payment to the deceased's estate/PRs as appropriate.

Where there is more than one nominee, but one of them has died since the member's death

- 4.16 As per paragraph 2.4 above, our view is that eligibility should be considered at the date of the member's death.
- 4.17 Therefore, where there is more than one nominee, and one nominee died after the member, we consider that the AA should not be dissuaded from seeking payment to the deceased nominee's estate simply because that person has since passed.
- 4.18 In essence, the AA should consider entitlement as if the deceased nominee were alive and explore payment to the deceased's estate/PRs as appropriate. Please refer to our comments below (paragraph 6.17(a) below) regarding the ability for the AA to be proportionate in their exploration of payment to the estate/PRs in some circumstances.

Appropriate beneficiary is unable to receive the grant (e.g. due to incapacity)

- 4.19 We note that regulations 40, 43, and 46 of the 2013 Regulations and Earlier Regulations refer to paying "to or for the benefit of the" appropriate beneficiary. In our view, this permits AAs to pay to, e.g. the carer of the proposed beneficiary on the condition that it is applied for the benefit of the beneficiary.

5 CONSIDERATIONS WHEN DEALING WITH SPECIFIC TYPES OF COMPLICATED CASE ARISING FROM THE EQUALISATION CHANGE

- 5.1 We consider that the same principles and TPO decisions are applicable here too, although it is likely that the application of these principles differs slightly. Please therefore refer to section 4 immediately above, noting some distinctions, in particular:
- (a) Tracing – It will be the survivor that is the proper recipient. The main tracing activity will therefore be to find the survivor, rather than identifying the "range of potential beneficiaries" as is the case with age 75 change cases.
 - (b) Dealing with a beneficiary that is incapacitated – Under regulation 83 of the 2013 Regulations, *"If it appears to an [AA] that a person 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"*, then the AA may pay the benefits to someone else *"for the benefit of the person entitled"* or to *"any beneficiaries of the person entitled"*³⁸. In our view, regulation 83 of the 2013 Regulations applies to survivor benefits (and not death

³⁷ See [here](#).

³⁸ We also note that regulation 52A of the Local Government Pension Scheme (Administration) Regulations 2008 includes a similar provision. We are not aware of other regulations including a similar provision. Please note that this provision therefore applies only to the extent it applies in the respective member case, e.g. with reference to when they left active membership.

grants) given the language used in the regulation³⁹ (although this position is not completely clear-cut). In essence, therefore, preexisting law should be applied in these cases to the extent that the relevant regulations applying to the member provide for this mechanism.

- (c) Attempts to contact the survivor – As above, letters to the member's last known address are sometimes a proportionate and sufficient attempt to contact the beneficiary. This will particularly be the case for survivor benefits given the likelihood that the member was living with the survivor (subject to knowledge otherwise, we generally consider that this will be reasonable to assume). However, we note that given the passage of time, the strength of this assumption may be significantly reduced subject to tracing/enquiries suggesting that the survivor has remained at the same address.
- (d) Where the survivor has died since the member's death – As per paragraph 2.4 above, our view is that eligibility should be considered at the date of the member's death. Therefore, the question is "who was the survivor at the date of the member's death?". If the person has since died, then the AA should use all reasonable efforts and options available to it to make payment to that person's estate and/or PRs⁴⁰.

6 CONSIDERATIONS WHEN THE APPROPRIATE RECIPIENT HAS PASSED AND THERE ARE COMPLICATIONS WITH PAYMENT TO THEIR PR/ESTATE

6.1 As above in paragraphs 2.12 and 3.4, a further complication may arise if the appropriate recipient of benefits arising from the age 75 change or the equalisation change (being the appropriate beneficiary and the survivor, respectively) has died since the member's death and now either:

- (a) their PR is difficult to trace, refusing to receive the death grant, is no longer alive, or unable to act (e.g. due to incapacity), or
- (b) their estate has since been fully administered / 'closed'.

Difficulty tracing the PR or estate

6.2 Please refer to the table at paragraph 4.2 above. We consider that these principles apply equally to tracing the PR and estate. One option available is Gov.uk's "Probate records for documents and wills" search function⁴¹.

Traced the purported PR, but not received the grant of probate / letter of administration – general approach

- 6.3 We have not considered the underlying law on this area, but we understand that a pension scheme will generally require either a grant of probate or letter of administration before paying pension benefits to someone in their purported capacity as the PR. We note that in a TPO case (PO-3753⁴²), the AA awaited receipt of the letter of administration from the purported PR, which was an approach that TPO raised no objections to⁴³.
- 6.4 Where there is no such document received, but someone is purporting to be the PR, we recommend that (subject to consideration of the precise circumstances of the case) the AA should generally be minded to withhold payment until receipt of such documents.
- 6.5 However, the AA should, rather than being inactive whilst awaiting the documents, consider taking active steps. The appropriate steps will depend on whether the payment is in respect of either the:
 - (a) Age 75 change (and therefore of a discretionary death benefit) – in this case, the AA should take active steps to ascertain whether there are any other potential beneficiaries, or a more suitable one than the PR. This principle can, in our view, be taken from the Mr S case study⁴⁴, whereby the scheme acted unreasonably in withholding payment of 50% of the pension and failing to take active tracing steps in the meantime. Or,

³⁹ In particular, the regulation refers to the person being "entitled" to the benefit. Whereas for the death grant (relating to the age 75 change), there is only a discretionary right to the benefit

⁴⁰ For completeness, we emphasise here that we recommend a higher expectation on the AA to seek to pay to the survivor's estate/PR, than in the context of the age 75 change. This is because the survivor, here, has a statutory right to this benefit, opposed to the discretionary benefit which is held in respect of the age 75 change death grants.

⁴¹ See [here](#).

⁴² See [here](#).

⁴³ For completeness, we note that ultimately, the AA breached their obligations here due to not acting quickly enough on the letter of administration once they had received it.

⁴⁴ See [here](#).

- (b) Equalisation change (and therefore of a statutory entitlement held by the survivor) – in this case, the AA should take active (and proportionate) steps to engage with the PR to obtain the necessary documentation in order to make payment.

Traced the purported PR, but not received the grant of probate / letter of administration – level of enquiries that are required to obtain the documentation

- 6.6 In order to mitigate the risk of maladministration, the AA should ensure that it takes “*appropriate action to obtain the required documentation*”.
- 6.7 For example, in a TPO case (CAS-55335-N3F2⁴⁵), it was deemed that, even though the estate had also failed to cooperate with the pension scheme actively, the scheme and employer’s “*collective failure to take the appropriate action to obtain the required documents*”⁴⁶... amounts to maladministration”. In terms of this case, we note as follows by way of further information:
- (a) The AA had not confirmed that the document was required,
- (b) Whilst the AA had made several attempts to contact the widow, once it was clear that the widow was not wishing to respond, the AA should have departed from normal procedure (TPO state that: “*where the normal process is not working and there are other contacts who clearly had access to the required documentation it was incumbent on the Employer [to contact one of those people]...*”),
- (c) The AA had ignored approaches from other family members to confirm the member’s death, and
- (d) After several attempts, the AA “*gave up trying*” to contact the widow.
- 6.8 Whilst there is no suggestion that this TPO case sets the threshold for maladministration, it does show that maladministration will often occur as a result of several decisions which are below TPO’s expectations. If struggling to obtain documentation, AAs should consider whether other people could be contacted to request the information from and consider departing from “*normal process*” if that may provide a better outcome.

Traced the purported PR, but not received the grant of probate / letter of administration – benefit is a relatively low value

- 6.9 Under regulation 82 of the 2013 Regulations:
- (a) **Regulation 82(1)** – “*if, when a person dies, the total amount due to that person’s personal representatives under the Scheme (including anything due at that person’s death) does not exceed [£5,000⁴⁷]...*”, then...
- (b) **Regulation 82(2)** – “[the AA] may pay the whole or part of the amount due from its pension fund... without the production of probate or letters of administration..., to (a) [a PR], or (b) any person or persons appearing to the authority to be beneficially entitled to the estate...”.
- (c) **Regulation 82(3)** – confirms that the “*payment discharges that authority from accounting for the amount paid*”.
- 6.10 We consider that regulation 82 applies to payments arising from the age 75 change and the equalisation change.
- 6.11 We also note that some such cases may have fallen within the scope of regulation 82 at the date of the member’s death, but arguably may not now due to interest having accrued since (and taking the sum payable beyond £5,000). In our view, regulation 82(1) is not completely clear cut on this point – i.e. as to whether interest accrued on the sum should be factored in when determining whether it applies to the case. On balance, we consider that the better (and more prudent in this case) reading of the regulation is that interest accrued is included for the purposes of calculating the sum given that regulation 82 refers to the “*total amount due*”.

⁴⁵ See [here](#).

⁴⁶ NB that in this case, the required documentation was in the form of a death certificate, but we consider that the principles apply also where the required documents are grants of probate / letters of administration.

⁴⁷ This is the number currently provided under the Administration of Estates (Small Payments) Act 1965 (see [here](#), and sections 1 and 6 in particular). It is subject to change.

- 6.12 Please note that, even where the sum payable is below £5,000, the AA should not make payment to someone on the basis of minimal evidence as to their standing. For example, in a TPO case (PO-23187⁴⁸), the pension scheme made payment to someone *“based on the fact that [that person was] named as the death informant on a document received from the Registrar and the death certificate, and as [that person] provided [their] details in response to its request for information on who the residue of pension should be paid to”*. In TPO’s view, this approach did not have sufficient *“checks and balances”* and put at risk ensuring *“paying the monies to the correct person”*.
- 6.13 In terms of satisfying themselves that the person *‘appears to be beneficially entitled to the estate’*, we recommend that AAs adopt their usual processes on this. One point will be satisfying themselves of the person’s identity and relationship to the member, which we recommend is done by obtaining two separate documents which together prove the person’s identity and address. We suggest referring to government guidance on documents that are appropriate to rely on for this matter⁴⁹.
- 6.14 We also note that an AA may wish to consider relying on its wider powers to make a payment without holding the necessary documentation⁵⁰ (although, as usual, we would recommend that the AA takes reasonable and proportionate active steps to obtain documentation). An AA may wish to do this where the sum is relatively low but (marginally) above the current £5,000 threshold. However, this would not be covered by regulation 82 and therefore would not benefit from the discharge under regulation 82(3).

Estate has been fully administered / ‘closed’

- 6.15 We are not aware of any legal authority on this area (e.g. under statute, regulations, or TPO cases), and so note the following principles as a rough guide for AAs:
- (a) An estate may be reopened. The AA should engage with the PR or family (if the PR is not contactable) to ascertain whether this might be possible.
 - (b) As per the Mr S case study (see paragraph 4.11 above), the AA should, rather than being inactive whilst awaiting confirmation on this, consider taking active steps to reopen the estate (e.g. contacting other family members or any other PRs (if more than one)).
 - (c) Regulation 82(2)(b) may assist with providing a solution. Namely, if the sum is below the requisite number (currently £5,000), then the AA may consider paying to the PR or to *“any person or persons appearing to the authority to be beneficially entitled to the estate”* (e.g. someone that was paid to from the estate whilst it was ‘open’).
- 6.16 Please see paragraphs 6.9 to 6.12 above for further information on regulation 82, in particular paragraphs 6.11 and 6.12 in respect of steps expected to ascertain whether someone falls within the scope of the regulation.

Where payment to the estate/PR is proving difficult

- 6.17 In such cases, we note that two options available to the AA are:
- (a) **Move onto considering payment to another potential beneficiary (in the case of a death grant).**
- We note that the proposed recipient holds no absolute right to the benefit (i.e. the AA would have been exercising a discretion to pay to the recipient). Therefore, whilst we recommend exploring payment to the estate/PRs as a first step, we recommend this exploration is done in a proportionate way with reference to all of the circumstances (for example, where the proposed recipient died several years ago, it may be reasonable to incur less time and expense on tracing given the higher likelihood that the estate will have been fully administered or that the PRs of the estate will have also since died).
- If paying to the estate/PRs is not reasonably practicable, the AA may reasonably decide to then consider other appropriate recipients.
- We note that the legal risk would be reduced by completing more tracing/contact attempts in respect of the proposed recipient’s estate/PRs. However, given the backdated nature of the age 75 change,

⁴⁸ See [here](#).

⁴⁹ Accessible [here](#).

⁵⁰ By “wider powers”, we mean the AA’s underlying power to make benefit payments. We are not referring to any specific legislative provision. Rather, we are recognising that an AA may, having assessed all of the circumstances, decide it is appropriate to exercise its payment power even where the supporting documentation is imperfect (i.e. to take a “risk-based decision”).

we consider it broadly reasonable to adopt a more proportionate approach to tracing/contact here, where the circumstances suggest that tracing/contact attempts are likely to fail.

(b) **Considering payment to a relative (rather than the estate/PR) of the potential beneficiary.**

We have also been instructed to opine on whether the AA should consider payment to the relatives (rather than the estate/PRs) of the deceased appropriate recipient.

In our view, the more prudent approach would be to explore payment only to the estate/PRs. Legally, the estate/PRs should be the arbiters of who the deceased beneficiary's residuary estate (which the death grant would generally fall within) should be paid to, rather than the AA. Practically, too, there may be issues with the AA seeking to make payments of what is effectively the beneficiary's death estate, whilst not being themselves the PRs.

Therefore, payment directly to the relative of a deceased recipient should only be considered as a last resort, and AAs should note that at least some legal risk is incurred if doing so.

SCHEDULE 5

STEP-BY-STEP GUIDES TO THE DECISION-MAKING PROCESS FOR PAYING BENEFITS ARISING FROM THE AGE 75 CHANGE AND THE EQUALISATION CHANGE

1 STEP-BY-STEP GUIDE: AGE 75 CHANGE

- 1.1 Each step below will need to be considered on the facts of the particular case, including whether it applies at all and, if so, how it should be carried out. We have focused on the key areas covered by this note, being (a) Identification of beneficiaries of deaths in scope, and (b) Establishment of contact with beneficiaries/PRs.
- 1.2 AAs should refer to the MHCLG guidance (see section 3 of **schedule 2** above for a summary) to see MHCLG's expectations in terms of when the various steps for the age 75 change should be completed.

No.	Overarching Step	Sub-steps	Comments
Ascertaining the range of potential beneficiaries <i>Key note: TPO expects that this step should be carried out fully, regardless of the value of the death grant or other circumstances at play.</i>			
1)	Determine the relevant date for assessing eligibility	n/a	- Eligibility should be assessed as at the date of the member’s death, not at any later date. - Where a person who was an appropriate recipient at the date of the member’s death has since died, that person should still be fully considered as if living, and payment to their estate/personal representatives should be explored.
2)	Examine membership data	Examine membership data to identify possible beneficiaries, and locate any expression of wish form to ascertain whether the nominated person(s) is/are still alive; an expression of wish form is important, though not decisive, evidence.	- This step should be carried out in all cases and should not be reduced in scope simply because the benefit is of low value. - Where the case is complicated (as will often be so, given the historic nature of age 75 change cases), a higher level of enquiry may be appropriate. - That being said, TPO has also stated that this exercise does not need to “<i>exhaustively identify every possible beneficiary, particularly where the class is wide.</i>”
3)	Tracing companies	Where membership data is insufficient, engage tracing companies to attempt to identify beneficiaries/personal representatives, and use standard member communications (for example newsletters and notices on the fund website) to raise awareness of potential death grants.	
Ascertaining which potential beneficiary(ies) to pay <i>Key note: For this step, it is more likely to be reasonable to take a proportionate approach to gathering further information about them (e.g. with reference to the value of the death grant and other factors).</i>			
4)	Establish contact with the identified	Make multiple attempts to make contact, using both digital and physical methods, with a	For historic cases, be aware that letters to the member’s last known address carry a heightened risk of being ineffective, given the

	beneficiaries/ PRs	minimum of three attempts over a twelve-month period. Consider whether documentation already held by the AA (for example a death certificate) points towards appropriate beneficiaries.	possibility that the address is now outdated or that beneficiaries living with the member have since moved.
5)	Where the beneficiary/ PR is not responding	It will generally be reasonable to make three contact attempts before closing enquiries with a particular beneficiary, save that further attempts may be reasonable where the death grant is of particularly high value or the AA has reason to believe a further attempt is likely to elicit a response.	That being said, do not simply “give up” on paying the benefit. Instead, turn attentions to other potential recipients or people that could help to make contact with the beneficiary/PR.
6)	Where a beneficiary is unable to receive the grant due to incapacity	We note that regulations 40, 43, and 46 of the 2013 Regulations and Earlier Regulations refer to paying “to or for the benefit of the” appropriate beneficiary. In our view, this permits AAs to pay to, e.g. the carer of the proposed beneficiary on the condition that it is applied for the benefit of the beneficiary.	- It may be appropriate to obtain medical input to confirm this incapacitation. - The AA should also gather evidence that the proposed recipient is the appropriate recipient.
7)	Contact attempts to the home address of the member	One route to making contact with beneficiaries may be to send correspondence (filtered appropriately for data protection concerns) to the member’s last known address.	We note this step may be less appealing (in terms of data protection risk and chances of success) where the death is particularly historic.
8)	Where recipients cannot be traced or refuse to deal with the monies	Hold the monies within the Fund; we consider this to be the most reasonable, prudent and legally sound approach in most circumstances.	We do not recommend AAs to treat the monies as “bona vacantia” unless the AA believes that all potential beneficiaries of the member have died (i.e. it should not be applied if recipients simply cannot be traced, or do not wish to deal with the estate).
9)	Consider whether to make a partial payment while continuing to trace the initially selected beneficiary.	- Where a defensible beneficiary can be located but the AA has already selected a beneficiary which they consider to be appropriate but just cannot trace them, the AA could be minded to pay part of the death grant and suspend payment of the remainder pending further tracing. - This approach is only advisable where the AA is actively continuing to trace the initially selected beneficiary during the suspension; it is not reasonable simply to withhold payment indefinitely in case another person makes a claim.	TPO expects that the AA continues to take action. The AA should not simply pay part of the benefit and wait for others to come forward.

Exploring payment to a PR or estate

Key note: This could be to either the member's PR/estate, or to the appropriate recipient's PR/estate.

Regarding the latter, as per row 1 above, we consider that the appropriate interpretation of the law is that eligibility should be assessed at the member's death. Therefore, a recipient could be entitled to the death benefit even if they have now passed (in which case, payment to the recipient's PR or estate should be explored).

10)	Tracing the PR/estate	Apply the same tracing principles as set out above to trace the PR or estate.	n/a
11)	Obtaining evidence of authority	- Where a person has been traced who purports to be the personal representative but no grant of probate or letter of administration has been received, the AA should generally be minded to withhold payment until such documentation is received. - The AA should take appropriate action to obtain the required documentation, including considering whether other contacts with access to the documentation could be approached, and considering departing from its normal process where that process is not working.	While awaiting documentation, the AA should not remain inactive; it should take active steps to ascertain whether there are other potential beneficiaries, or a more suitable recipient than the purported personal representative.
12)	Where the death grant is a small sum	- Consider applying regulation 82 of the 2013 Regulations – see the next column for further information. - Take appropriate steps to ascertain whether the person does indeed fall within the scope of regulation 82 (which does not provide a carte blanche ability to pay to anyone – checks and balances must be in place). - Please refer to paragraphs 6.12 and 6.13 of schedule 4 for our advice on the appropriate steps to take here.	- Under regulation 82 of the 2013 Regulations, where the total amount due to the PRs does not exceed the relevant threshold (currently £5,000, subject to change), the AA may pay the whole or part of the amount due without production of probate or letters of administration, to the PR or to a person appearing to the AA to be beneficially entitled to the estate. - Please note that it is not entirely clear whether interest accrued on the death grant should be included in the calculation of the sum⁵¹. On balance, we consider that the better (and more prudent in this case) reading of the regulation is that interest accrued is included for the purposes of calculating the sum given that regulation 82 refers to the “total amount due”.
13)	Where the estate has been fully administered / ‘closed’	Engage with the PR or family members (if the PR is not contactable) to ascertain whether the estate might be reopened, taking active steps rather than remaining passive.	We consider that regulation 82 of the 2013 Regulations can be applied to make payment to the PR or someone “<i>appearing to the authority to be beneficially entitled to the estate</i>” (e.g. someone that was paid to from the estate whilst it was ‘open’) where the sum does not exceed the relevant threshold (currently £5,000, subject to change).

Paper trail – throughout and particularly at the point of making the decision

14)	Ensure that you are keeping a paper trail of decisions	Keep a formal record of why decisions were made, in particular the factors taken into account.	- The requirement from TPO is that, substantively, the decision made must not be “<i>perverse</i>”. - Whereas there are, broadly speaking, stronger requirements in respect of ensuring that the
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⁵¹ Please see paragraph 6.11 of **schedule 4** above for further detail.

	made and rationale for them	• Also keep a record of contact attempts made by the AA, and who these were made to. As above, keep a record of the rationale behind deciding that no further contact attempts should be made to a person and whether any replacement person will be contacted now instead. • Remember that the initial exercise to identify the range of potential beneficiaries must be complete, but that TPO has permitted proportionate exercises in respect of then deciding who in particular to pay the benefit to.	decision was procedurally reasonable. In particular, the AA must consider all relevant and disregard any irrelevant factors.
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2 STEP-BY-STEP GUIDE: EQUALISATION CHANGE

- 2.1 Each step below will need to be considered on the facts of the particular case, including whether it applies at all and, if so, how it should be carried out. We have focused on the key areas covered by this note, being (a) Identification of survivors of deaths in scope, and (b) Establishment of contact with survivors.
- 2.2 The step-by-step guide above regarding the age 75 change should be, on the whole, applicable to cases arising from the equalisation change, with the following distinctions to note:
- Identifying the survivor – The same principles apply as above, although of course the practical steps required and results desired will be different, given there will typically be a single survivor to be discovered (rather than a range of potential beneficiaries).
 - Dealing with a beneficiary that is incapacitated – Under regulation 83 of the 2013 Regulations, “If it appears to an [AA] that a person 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”, then the AA may pay the benefits to someone else “for the benefit of the person entitled” or to “any beneficiaries of the person entitled”⁵². In our view, regulation 83 of the 2013 Regulations applies to survivor benefits (and not death grants) given the language used in the regulation⁵³ (although this position is not completely clear-cut). In essence, therefore, preexisting law should be applied in these cases to the extent that the relevant regulations applying to the member provide for this mechanism.
 - Survivor has a right to the benefit – Unlike in the context of death benefits (where the beneficiary’s right to the benefit is subject to the exercise of a discretion by the AA), the survivor, here, has a right to the benefit. The principles noted above should be applied accordingly.
 - Explicit prohibition on non-action – For the equalisation change, MHCLG explicitly state that there “*should be no prioritisation or non-action with regards to individual cases by administering authorities, on the basis of any protected characteristic or the amount to be paid.*”
 - Establishing contact – MHCLG note that this step “*is not necessary where an existing survivor benefit is being increased as the administering authority will already be in contact with the survivor.*”
 - Contact attempts – the MHCLG guidance is explicit that “*where a survivor has not responded to the minimum 3 attempts made by an administering authority to establish contact with them... the*

⁵² We also note that regulation 52A of the Local Government Pension Scheme (Administration) Regulations 2008 includes a similar provision. We are not aware of other regulations including a similar provision. Please note that this provision therefore applies only to the extent it applies in the respective member case, e.g. with reference to when they left active membership.

⁵³ In particular, the regulation refers to the person being “entitled” to the benefit. Whereas for the death grant (relating to the age 75 change), there is only a discretionary right to the benefit.

expectation is that the [AA] will not take any further action", subject to a change in circumstances. For the avoidance of doubt, this position is not stated in respect of the age 75 change⁵⁴.

- (g) Timings – AAs should refer to the MHCLG guidance (section 5 of **schedule 2** above for a summary) to see MHCLG's expectations in terms of when the various steps for the equalisation change should be completed (these differ from the expected timings for the age 75 change).

2.3 To emphasise, the other principles and steps within the age 75 step-by-step guide apply equally here; in particular, our advice that AAs should ensure to keep a paper trail of decisions made and rationale for them.

⁵⁴ Please see section 6 of **schedule 2** for further detail. But in essence, we consider this distinction most likely to be due to the expectation that the AA will, rather than "give up" following three contact attempts in an age 75 change case, move onto attempting to contact another beneficiary (potentially with the aim of contacting the original beneficiary that could not be contacted).