



Neutral Citation Number: [2024] EWHC 2739 (Ch)

Appeal Ref. CH-2024-000083

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

**On appeal from a determination of the Pensions Ombudsman dated 23 February 2024
(Ref. CAS-92836-R6B0)**

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 31 October 2024

Before:

HIS HONOUR JUDGE KEYSER KC
sitting as a Judge of the High Court

Between:

ROY ANTHONY THOMAS
- and -
SOUTHWARK COUNCIL

Appellant

Respondent

Simone Bowman (instructed under **Direct Access**) for the **Appellant**
The Respondent did not appear and was not represented.

Hearing dates: 24 October 2024

Approved Judgment

This judgment was handed down remotely at 10 a.m. on 31 October 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

Judge Keyser KC :

Introduction

1. Ms Claudette Coke worked for Southwark Council (“the respondent”) and was an active member of the Local Government Pension Scheme (“LGPS”). When she died in March 2021, Mr Roy Thomas (“the appellant”) applied to the respondent, which administers the Southwark Pension Fund, for a cohabiting partner’s pension and a lump-sum death grant under the LGPS. The respondent refused that application and did not award him either benefit. The appellant complained to the Pensions Ombudsman, whose determination dated 24 February 2024 (“the Determination”) concluded that the appellant had suffered no financial loss as a consequence of the respondent’s dealing with his application but that he should be paid £500 in recognition of the distress and inconvenience he had suffered by reason of the respondent’s failure to tell him promptly of its decision regarding the lump-sum death grant.
2. By an appellant’s notice filed on 21 March 2024 the appellant seeks to appeal against the Determination. By order dated 22 May 2024 Michael Green J gave permission to appeal in respect of the Determination’s conclusion as to the cohabiting partner’s pension, though not as regards the lump-sum death grant. I heard the appeal on 24 October 2024. The appellant, a litigant in person, was represented at the appeal by Ms Simone Bowman, who was instructed at a very late stage under direct access and for whose assistance I am grateful. The respondent did not appear on the appeal; it said that it had “no further information to adduce beyond the determination of the Pension Ombudsman”.
3. This is my judgment on the appeal. It is structured as follows.
 - First (paragraphs 4 and 5), I shall identify the provisions dealing with the functions of the Pensions Ombudsman and with appeals from him to this court.
 - Second (paragraphs 6 to 8), I shall set out the relevant provisions in the regulations that applied to the appellant’s application for a cohabiting partner’s pension. These provide the context in which to consider the facts of the case.
 - Third (paragraphs 9 to 27), I shall set out the facts that led to the appellant’s complaint to the Pensions Ombudsman. The facts are largely taken from the Determination, though Ms Bowman was able to provide me with copies of some of the correspondence and documentation referred to.
 - Fourth (paragraphs 28 to 31), I shall summarise or recite the passages in the Determination that are directly relevant to the issue on the appeal.
 - Fifth (paragraphs 32 to 39), I shall discuss the issue that arises for my consideration and state my conclusion on it.
 - The result is stated in paragraphs 40 and 41.

The Pensions Ombudsman: Functions and Appeals

4. Provision for the office and functions of the Pensions Ombudsman is made in Part X (sections 145 to 152) of the Pension Schemes Act 1993, as amended. Section 146 provides in relevant part:

“(1) The Pensions Ombudsman may investigate and determine the following matters—

(a) a complaint made to him by or on behalf of an actual or potential beneficiary of an occupational or personal pension scheme who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of a person responsible for the management of the scheme, ...”

Section 151, which deals with determinations and appeals, provides in relevant part:

“(1) Where the Pensions Ombudsman has conducted an investigation under this Part he shall send a written statement of his determination of the complaint or dispute in question—

(a) to the person by whom, or on whose behalf, the complaint or reference was made, and

(b) to any person (if different) responsible for the management of the scheme to which the complaint or reference relates,

and any such statement shall contain the reasons for his determination.

(2) Where the Pensions Ombudsman makes a determination under this Part ..., he may direct any person responsible for the management of the scheme to which the complaint or reference relates to take, or refrain from taking, such steps as he may specify in the statement referred to in subsection (1) or otherwise in writing.

(3) Subject to subsection (4), the determination by the Pensions Ombudsman of a complaint or dispute, and any direction given by him under subsection (2), shall be final and binding on—

(a) the person by whom, or on whose behalf, the complaint or reference was made,

(b) any person (if different) responsible for the management of the scheme to which the complaint or reference relates, and

(c) any person claiming under a person falling within paragraph (a) or (b).

(4) An appeal on a point of law shall lie to the High Court ... from a determination or direction of the Pensions Ombudsman at the instance of any person falling within paragraphs (a) to (c) of subsection (3).

(5) Any determination or direction of the Pensions Ombudsman shall be enforceable—

(a) in England and Wales, in the county court as if it were a judgment or order of that court, ...”

5. Rule 52.29 of the Civil Procedure Rules 1998 provides, so far as material:

“52.29 Where an appeal lies to the High Court—

(a) under section 151(4) of the Pension Schemes Act 1993 from a determination or direction of the Pensions Ombudsman ...

the permission of the High Court is required for such an appeal to be brought.”

Paragraph 5.1 of Practice Direction 52D provides that appeals under section 151 of the Pension Schemes Act 1993 are to be heard in the Chancery Division.

The Local Government Pension Scheme Regulations 2013

6. The provisions dealing with entitlement to a cohabiting partner’s pension are contained in the Local Government Pension Scheme Regulations 2013 (“the LGPS Regulations”). Regulation 41(1) provides:

“(1) If an active member dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member’s death.”

7. The interpretation provisions in Schedule 1 to the LGPS Regulations contain the following relevant definition:

“‘cohabiting partner’ means a person whom [sic] the appropriate administering authority is satisfied fulfils the following conditions—

(a) the person (P) has fulfilled the condition in paragraph (b) for a continuous period of at least 2 years on the date the member (M) died, and

(b) the condition is that—

- (i) M is able to marry, or form a civil partnership with P,
 - (ii) M and P are living together as if they were husband and wife or as if they were civil partners,
 - (iii) neither M nor P is living with a third person as if they were husband and wife or as if they were civil partners, and
 - (iv) either P is financially dependent on M, or M and P are financially interdependent”.
8. As I shall explain, this appeal turns on consideration of limb (iv) of the condition in paragraph (b), namely the issue of financial dependence or interdependence.

The Facts of this Case

9. The appellant and Ms Coke were married on 8 August 2008. The marriage was dissolved on 6 January 2012. Ms Coke died on 11 March 2021. She was survived by four adult children from previous relationships and two adopted children who were still minors. Her children were the beneficiaries of her will dated 10 October 2020. The eldest son was appointed as the executor and trustee of the will and also as the guardian of the two minor children.
10. The executor provided information to the respondent in connection with the benefits available on account of Ms Coke’s membership of the LGPS. On 13 April 2021 the respondent confirmed to him that it would shortly be making payment of the two dependants’ pensions “to the children” (that is, the two minors), but that otherwise it was making enquiries of “the other potential beneficiaries”. Those enquiries arose from the fact that on 4 November 2017 Ms Coke had completed a “Death Grant—Expression of Wish Form” (“the Nomination Form”), in which she had nominated the appellant to receive any lump-sum death grant from the LGPS in the event of her death and had stated that he was her “husband” and that they lived together at the same address in London. The Nomination Form made it clear that the scheme administrators were not bound to comply with the member’s wishes but had absolute discretion in deciding who should receive the payment.
11. By email on 26 April 2021 the respondent asked the appellant to provide details of his relationship with Ms Coke and the names and contact details of any other potential beneficiaries of the benefits available from the LGPS following her death. In his response on 27 April 2021, the appellant stated that he was Ms Coke’s husband and that they had lived together at the address given in the Nomination Form. He identified the other potential beneficiaries as the four adult children.
12. On 11 May 2021 the appellant completed a form headed “Claim for Payment of Death Grant” (“the Claim Form”), in which he stated that Ms Coke was his “wife”, that he was her “partner”, that his home address was his mother’s house, into which he had

moved shortly after Ms Coke's death, and that he did not know of any other person who might be entitled to make a claim for the lump-sum death grant.

13. Ms Coke's children informed the respondent that she and the appellant had been divorced, and on 12 May 2021 they provided to the respondent a copy of the decree absolute.
14. In June 2021 the respondent, in the exercise of its discretion, paid the lump-sum death grant, in the sum of £157,707, to Ms Coke's two eldest children (referred to in the Determination as Mr D and Ms D).
15. By email on 24 June 2021 the respondent informed the appellant that it had decided that he did not qualify for a spouse's pension from the LGPS because he had been divorced from Ms Coke in 2012 and they had not been "legally married" at the time of her death. It said that it would be happy to investigate further if he could provide evidence of cohabiting partnership status. A source of later grievance, reflected in the modest monetary award in the Determination, was that the respondent omitted to inform the appellant either that Ms Coke had nominated him for the lump-sum death grant in the Nomination Form or that the respondent had decided not to award him that grant.
16. The appellant replied on the same day. He said that he and Ms Coke had reconciled in 2013, that they had been living together at the address shown on the Nomination Form, that they had been intending to remarry once Ms Coke's health improved, and that he had been caring for her during her final illness. He also said that they had had a business together, as could be confirmed at Companies House.
17. On 25 June 2021 the respondent provided to the appellant an explanation of what was meant by "cohabiting partner" for the purposes of the LGPS (see paragraph 7 above) and told him that, if he could provide council tax bills or joint bank account statements or utility bills showing both his name and that of Ms Coke, both in respect of a period more than two years previously and in respect of the last few months of Ms Coke's life, that should suffice to prove cohabitation. The appellant replied that Ms Coke paid all the household bills and that he gave her a contribution and contributed to food and to maintenance of the property; the only things showing his name at the address were the business rates and any orders he placed with Amazon.
18. By a letter dated 16 August 2021, of which Ms Bowman gave me a copy, the respondent informed the appellant that it could not award him a cohabiting partner's pension because he did not satisfy the relevant criteria—in particular, that he had "failed to adequately provide evidence that proves financial interconnectivity or that you were both free to marry." The letter said that the respondent also required further information about "the company you both shared", but that it would be willing to reconsider its decision in the light of any additional supporting documents.
19. In the light of reliance on the criterion concerning financial dependency, it is of interest to see what the body of the letter—which, of course, was addressed to the appellant—said on the matter:

“... we do not feel that you have wholly satisfied the criteria which I list below:

...

- either your cohabiting partner is, and has been, financially dependent on you or you are, and have been, financially interdependent on each other.”

Your partner is financially dependent on you if you have the highest income. Financially interdependent mean that you rely on your joint finances to support your standard of living. It doesn't mean that you need to be contributing equally. For example, if your partner's income is a lot more than yours, he or she may pay the mortgage and most of the bills, and you may pay for the weekly shopping.

On your death, a survivor's pension would be paid to your cohabiting partner if:

- all of the above criteria apply at the date of your death, and
- your cohabiting partner satisfies your pension fund that the above conditions had been met for a continuous period of at least 2 years immediately prior to your death”.

It is apparent that this part of the letter was written in terms appropriate to be addressed to the member of the LGPS (here, Ms Coke), not to the person seeking the cohabiting partner's pension (the appellant). Thus, as addressed to the appellant, the first part of the foregoing quotation appeared to mean that he had to show that Ms Coke had been financially dependent on him, which is precisely the wrong way around. This might be shrugged off as a mere infelicity brought about by a copy-and-paste approach to writing the letter, but the reversal of the criterion reappears in the respondent's case later.

20. The appellant consulted a solicitor, who wrote to the respondent on 28 October 2021. The letter accepted that the shared business did not prove cohabitation but said that there was other evidence of cohabitation, such as correspondence addressed to the appellant at Ms Coke's home and some additional documents that were provided for the respondent's consideration: a tenancy agreement in respect of the business premises in 2016, showing the same address for the appellant and for Ms Coke; a letter from the landlord in October 2021 referring to the appellant as Ms Coke's husband; various business rates letters in the period October 2019 to May 2021 sent to the appellant and Ms Coke at the same address; and two letters from HMRC in September 2020, relating to the period June 2018 to May 2019, again sent to Ms Coke's home address. The letter said:

“It is our contention that from the correspondences and/or documents now submitted, it is more than likely that our client was in a cohabiting relationship with his late partner. It is particularly questionable as to why business related items and correspondences would be sent to the home address of a party to the business without more as is the case here. We further submit

that the only reason the documents herein could have been addressed to our client and his late partner jointly at the address they shared is because they were a couple and indeed lived together until the late partner's death.”

It is unfortunate that the letter addressed the fact of simple cohabitation (that is, living together after the manner of a married couple), which the respondent had accepted, rather than the question of financial dependence, as to which it was not satisfied. In time, though not immediately, the respondent took the view that the words “it is more than likely that our client was in a cohabiting relationship with his late partner” indicated doubt as to whether the relationship was indeed of that nature. Although the respondent's change of view on the point is not of direct relevance to this appeal, it has clearly caused considerable upset to the appellant and may, perhaps, have coloured its view of the question of financial dependence.

21. On 21 December 2021 the respondent replied to the solicitor. The letter, which I have not seen, said that being business partners was not a criterion of cohabitation. It accepted that the appellant and Ms Coke had lived at the same address, and it accepted that three of the four criteria for cohabitation were satisfied, but it said that the fourth criterion (financial dependence/interdependence) had not been shown to be satisfied; and it said that, in order to show financial interdependence on a personal level, the appellant would have to provide evidence that was not business-related. Accordingly the respondent confirmed its decision not to award the appellant a cohabiting partner's pension.
22. On 6 January 2022 the appellant, through his solicitor, raised a complaint under the LGPS Internal Dispute Resolution Procedure (“IDRP”). The complaint contended that the appellant had run the business and that Ms Coke, who was a party to the lease of the business property, had been a “silent business partner who funded the business with her salary from her full-time employment”. It said that it was clear from the commercial lease for the business property that there was an element of financial interdependence between the appellant and Ms Coke.
23. The respondent's Stage One IDRP response on 16 February 2022 suggested for the first time that the terms of the correspondence received from the appellant's solicitor cast doubt on whether there had been a relationship of cohabitation at all. However, the response focused on the question of financial dependence or interdependence, which it said had not been established. It said that the appellant's contention that Ms Coke was a silent business partner who funded the business with her salary from her full-time employment implied that she was nothing more than a passive financial investor with little or no say in the day-to-day running of the business; and that, while the appellant might have been financially dependent on Ms Coke's business investment, this did not mean there was any financial interdependency between them. The response continued:

“We have previously stated which evidence would allow us to review our decision and these are:

- Council Tax bill with both parties named at the address shown on the Death Grant Nomination Form;
- Shared personal bank account;

- Shared mortgage agreement at the address shown on the Death Grant Nomination Form;
- Shared tenancy agreement for a private property;
- Or similar documents for a domestic property to that effect.

Please provide evidence of a domestic/personal capacity (not business) showing your client and Ms C had entered into a contractual commitment for financial responsibility or jointly owned significant assets such as a property, bank accounts, car etc and had a joint liability for debts such as a mortgage or credit cards etc...”

24. In August 2022 the respondent decided that it would not uphold the appellant’s complaint at Stage Two of the IDRPs, because he had not provided any further evidence of financial interdependency.
25. The appellant referred his complaint regarding the cohabiting partner’s pension to the Pensions Ombudsman. It was after he had done so that he learned from the respondent that Ms Coke had named him on the Nomination Form. With that knowledge, he applied to extend his complaint to the decision not to award him the lump-sum death grant. The respondent waived the requirement that the complaint in that regard should first have proceeded through the IDRPs. As the Determination relating to the lump-sum death grant does not arise for consideration on this appeal, I need only say that the Pensions Ombudsman found that the decision not to award it to the appellant was a proper one but that the respondent’s failure to notify him of its decision in good time constituted maladministration, justifying a modest award for distress and inconvenience.
26. In December 2023 the respondent reviewed its decision not to award the appellant a cohabiting partner’s pension, in the light both of the evidence provided by the appellant and of a witness statement provided by Mr D and Ms D. The respondent confirmed its original decision not to award the pension. It gave two reasons for this decision. First, in a change of its previous position, it said that the evidence suggested that the relationship between the appellant and Ms Coke had been “more casual” rather than a fully committed relationship in which they lived after the manner of a husband and wife. Second, it confirmed its previous view that there was insufficient evidence that the appellant was financially dependent on Ms Coke or that they were financially interdependent. Among the matters mentioned as being particularly relevant to this second reason were that there were no bank accounts in joint names; that holding a joint Costco account did not establish financial dependency; that there was no evidence that the appellant and Ms Coke had “lived in a shared household with shared household spending”, or that they had “significant assets in joint names such as a property” or “any joint debt such as a mortgage, loan or credit card”; that its check had not found any “credit references” associating the appellant with Ms Coke’s property; and that there was no evidence of “regular payments between both parties on bank statements” or of “large expenses being shared of a personal nature” in the two years before Ms Coke’s death.

27. As the respondent's review had not resulted in a change to its conclusion regarding the cohabiting partner's pension, the Pensions Ombudsman had to provide his Determination. In summary, he decided that the respondent had been wrong to rely on its first reason (that the appellant and Ms Coke had not lived as a married couple) but that the respondent had been entitled to rely on its second reason (that there was no financial dependency or interdependency). The basic question on this appeal is whether his decision regarding the second reason rested on an error of law.

The Determination

28. Paragraphs 60 to 85 of the Determination set out the contentions made by the appellant. The points relevant to the issue of financial dependency and interdependency are as follows. The appellant cohabited with Ms Coke at the home that she already owned before they got married. They did not have a shared bank account; she paid the bills from her account, and he transferred money to her from his earnings, out of his personal current account, by way of contribution. Without his contribution, she would have been unable from her salary to cover the costs of the rent on the business premises, the mortgage on her house, the household expenses and the running of the car. The appellant worked as an agency worker for Thames Water. When that work was ended by the Covid pandemic (that is, after March 2020), and as he was not entitled to furlough payments, he and Ms Coke decided that instead of looking for another job he should concentrate on the business and they would rely on her salary and on the rental income (£1,200 p.m.) from "his flat". (The tenancy agreement under which the flat was let showed him and Ms Coke as the joint landlords.) He supplemented the income by doing occasional jobs on a self-employed basis. The entries shown on the appellant's bank statements for payments to and from Ms Coke were too small to be business-related; anyway, the transactions were made when the business was not yet operational and the business property was still being refurbished. A joint Costco account opened by the appellant and Ms Coke in January 2020 was not used for business purposes.
29. The Determination and the documents mentioned in it frequently refer to "the business" but without explaining what it was. A search at Companies House shows that the business in question was Yeh Mon Juice & Food Ltd, which was incorporated on 1 May 2014, with the appellant as the sole director and shareholder and Ms Coke as the company secretary. The nature of the business was stated to be "event catering activities". The micro-entity accounts filed for the years until 31 May 2019 show no liabilities at all and no assets other than called-up share capital not paid, with the sole exception that the accounts for the year to 31 May 2017 show an additional asset at £15,000, which the accounts for the following year describe as "Prepayments and accrued income". (That figure is otherwise unexplained and is not carried over to years after 2017.) The company's last accounts, for the year to 31 May 2019, which were approved by the appellant as director on 26 February 2020, stated: "The Company has not been trading as it is developing its brand and premises." The company was struck off on 22 December 2023 and dissolved on 2 January 2024.
30. Paragraphs 86 to 99 of the Determination set out the respondent's position. The passages that concerned financial dependency/interdependency were the following. (The appellant was referred to as Mr S.)

“91. Ms C used part of her salary to fund the business. This showed that Mr S was financially dependent on her. However, there was no evidence to demonstrate that she was financially dependent on him.

92. According to Companies House, the business has now been dissolved. This also indicated that financial dependency was only on Mr S’s side.

93. The joint Costco account was most probably used by Mr S and Ms C for business and not personal purposes.

94. The transactions shown on Mr S’s personal current account statements for payments to and from Ms C were also most likely business related.

95. Mr S’s flat was not a jointly owned significant asset with Ms C. So, while her name was recorded as a joint landlord on the tenancy agreement, this did not meet the criteria for financial dependency, especially when there was no evidence of any monthly rental income from Mr S’s flat being paid into Ms C’s bank account.

96. Some of the evidence provided by Mr S was significantly out of date and did not meet ‘the two year criteria’.

...

99. [The respondent] also said that: ‘... Taking a balanced view, it is still our view that insufficient evidence exists of co-habitation or financial dependency/interdependency as defined under the LGPS Regulations, other than a number of business arrangements that clearly existed between Mr S and Ms C.’”

31. The Pension Ombudsman’s conclusions regarding the cohabiting partner’s pension are set out in the following paragraphs of the Determination.

“127. The procedural requirements for unmarried cohabitants claiming survivor benefits in the LGPS Regulations were designed to ensure that the existence of a genuine cohabiting relationship could be established in an objective manner.

128. So for a cohabiting partnership to be valid, Mr S needed to provide the Council with evidence at Ms C’s date of death of long-standing cohabitation and financial interdependence, that is:

128.1 Cohabitation had been continuous for at least two years prior to Ms C’s date of death.

128.2 Both he and Ms C were, and had been, free to marry each other or enter into a civil partnership with each other.

128.3 Both he and Ms C had been living together as if they were husband and wife or civil partners.

128.4 Neither he nor Ms C had been living with someone else as if husband or wife or civil partners.

128.5 Either he was financially dependent on Ms C or he and Ms C were financially interdependent upon each other.

129. I consider that the evidential hurdle which Mr S had to face was legitimate and proportionate, and allowed the Council to test whether Mr S met the requirements of the LGPS Regulations.

130. In June 2021, the Council asked Mr S for confirmation that he had lived in a shared household with shared household spending. It said that if he could provide a Council tax bill, joint bank account statements or utility bills showing both his and Ms C's names from over two years ago and within the last few months prior to Ms C's death, this should be adequate to prove cohabitation.

131. Regrettably, as a consequence of the way in which Mr S and Ms C shared their financial commitments, Mr S was unable to demonstrate to the Council that he met all of the requirements at the time of Ms C's death. The Council consequently informed him in August 2021 that he was not entitled to a cohabiting partner's pension from the LGPS. However, it said that it was willing to review his application on receipt of additional evidence (and, in my view, recognising the burden that fell on Mr S to obtain evidence at what must have been a very difficult time for him, the Council is to be commended for its willingness to consider further evidence and its openness to reviewing the position).

132. When Mr S subsequently provided additional evidence of his relationship and financial affairs with Ms C through his solicitor, the Council reviewed its decision in December 2021. After considering the new information together with the original evidence, the Council informed Mr S that he now met three (rather than two) of the four requirements for a cohabiting partner's pension to be paid under the LGPS Regulations. However, for Mr S to show financial interdependence on a personal level, it said that he would need to supply evidence that was not business related.

133. Mr S was unhappy with the Council's decision. However, his complaint was not upheld at both stages of the IDR by the Council because he did not provide any new evidence of financial interdependency.

134. During the course of TPO's investigation, Mr S submitted further evidence which he believed demonstrated his financial interconnectivity with Ms C. In particular, he provided: (a) statements for his personal current account showing several payments to and from Ms C made during the two years prior to her death; (b) a joint Costco account opened in January 2020; and (c) a tenancy agreement for his flat showing that he and Ms C were joint landlords and their home address was the address shown on the Death Grant Nomination Form.

135. Mr S could be financially dependent on Ms C if she had the highest income and his own income was insufficient for him to maintain the same standard or similar standard of living as when he and Ms C lived together. Financially interdependent could mean that Mr S and Ms C relied on their joint finances to support their standard of living.

136. However, essentially for the same reasons given above by the Council, I agree that despite this additional information submitted by Mr S, there was still inadequate evidence to demonstrate clear financial dependency or financial interdependency between him and Ms C.

137. Cohabitation or living together confers no legal status alone for the purposes of payment of the cohabiting partner's pension. More generally, the rights of cohabiting couples are restricted and are limited when it comes to financial claims. These limitations still stand even when they have children or have lived together for many years. However, cohabiting couples could draw up a cohabitation agreement setting out their plans relating to financial outgoings and any property while living together as well as what should happen if one of them fell ill, died or the relationship ended.

138. Regrettably, I have seen no evidence that Mr S had formalised aspects of his status with Ms C, for example by entering into such a contract outlining the rights and obligations of each partner towards each other. If he had done so, then there would be clear evidence and there would not now be a dispute over his cohabiting partner status.

139. Under regulation 41 of the LGPS Regulations, Mr S would be entitled to a pension from the LGPS following Ms C's death if the Council decided that he qualified as an eligible cohabiting partner.

140. In this case I have considered whether: (a) the applicable scheme rules or regulations have been correctly interpreted; (b) appropriate evidence had been obtained and considered; and (c) if the Council's decision was supported by the available relevant evidence.

141. If I found that the decision-making process was flawed, or that the decision reached by the Council was not supported by the evidence, in most circumstances I would remit the decision to the Council to reconsider. However, in this case I am satisfied that a proper process has been followed and that the evidence gathered is sufficient to support the decision reached.

142. When the Council reviewed its decision in December 2023, it concluded that Mr S had a ‘casual’ relationship with Ms C based chiefly on a witness statement it had obtained from Mr D and Ms D. So, in the Council’s view, Mr S no longer met the criterion that he and Ms C had been living together as if they were husband and wife although this made no difference to the overall outcome, as financial interdependency, one of the other key hurdles in the LGPS Regulations, had still not been evidenced.

143. Mr D and Ms D did not live at the address shown on the Death Grant Nomination Form and did not provide any evidence to substantiate their statement. In my view, on that statement alone, it would be unreasonable to depart from the Council’s initial view that Mr S and Ms C were living together as a married couple. However, as I set out above, that does not mean that the overall decision is wrong, as financial interdependency (or dependency) had not been established.

144. Therefore, I am satisfied that the Council gave proper consideration to Mr S’s application on each previous occasion by assessing all the relevant evidence available at the time and that it acted in accordance with the LGPS Regulations and the principles outlined in paragraph 140 above. So, I find that the Council’s decision not to award Mr S a cohabiting partner’s pension from the LGPS was supported by the available evidence and within the bounds of reasonableness.

145. Although I fully sympathise with Mr S’s circumstances, I do not find that the evidence supports a finding of maladministration by the Council in how it reached its decision.

146. I do not uphold the second part of Mr S’s complaint.”

This Appeal

32. The appellant’s grounds of appeal focus mainly on two things: (1) the respondent’s decision not to award him a lump-sum death grant; and (2) the appellant’s efforts to establish that he and Ms Coke had been living together as a married couple. Permission to appeal was not given on the former point. And, as Michael Green J noted when granting permission to appeal in respect of the cohabiting partner’s pension, the Pension Ombudsman did not uphold the respondent’s later view that the appellant and Ms Coke

had only a casual relationship that did not amount to living together as a married couple; therefore the question of simple cohabitation does not arise for consideration on this appeal.

33. However, paragraph 1 of the grounds of appeal included the following observation: “The defendant [that is, the respondent] stated that out of 4 criteria I, the plaintiff, meet 3 out of 4 but couldn’t prove number 4, even though I provided documentation showing financial dependency on both parties.” Michael Green J identified the point as follows:

“[T]he Determination relied on the respondent’s findings as to financial dependence by the appellant on Ms C, or as to financial interdependence. However, as recorded at paragraph 91 of the Determination, the respondent seemed to accept that the appellant was financially dependent on Ms C. That is the only criteria for the pension and it does not have to be shown that Ms C was financially dependent on the appellant. Alternatively there could be financial interdependence. The rejection of most of the appellant’s evidence in this respect seems to be down to the assumption that it was related to their joint business and therefore not personal financial dependency. I think it is arguable that this was an error of law, in that their financial interdependence should be judged by reference to which of them were paying the business expenses and the other personal expenses as a whole. In the circumstances, the appellant should be able to argue that the respondent and TPO were wrong to ignore the evidence as to financial dependence or interdependence and that the issue should be looked at afresh.”

34. Turning to the legal test for a “cohabiting partner”, I make the following short observations.

- 1) The condition in paragraph (b)(iv) of the definition in the LGPS Regulations (see paragraph 7 above) presents alternatives, which in this case are: (1) that the appellant was financially dependent on Ms Coke; (2) that the appellant and Ms Coke were financially interdependent. If the appellant could show that he was financially dependent on Ms Coke, it was not necessary for him also to show that she was financially dependent on him.
- 2) The condition in paragraph (a) of the definition requires that the conditions in paragraph (b) shall have been satisfied for a continuous period of at least two years immediately preceding the death of the member. That is, it is not sufficient that the conditions were once satisfied for a continuous period of at least two years but were no longer satisfied by the time the member died. The purpose of regulation 41(1), so far as concerns cohabiting partners, is clearly to make provision for those who, though not in legally recognised relationships with deceased members, were nevertheless in stable and established relationships with such members and have been adversely affected financially by their deaths.

35. The respondent’s position before the Pensions Ombudsman, as recorded in paragraphs 91 to 99 of the Determination, is not easy to follow. As the respondent has been content

on this appeal to rely on the contents of the Determination, I must assume that it fairly reflects the position that it advanced. In paragraphs 91 and 92 of the Determination, the respondent appears to accept that the appellant was dependent on Ms Coke and objects, irrelevantly, that she was not dependent on him. (The respondent's apparent belief that financial dependency *by* Ms Coke had to be shown may very well originate in the unfortunate letter of 16 August 2021.) In paragraphs 93 and 94, the respondent seems, possibly, to be discounting dependency that was business-related: it may be that the respondent considered that business matters did not indicate *interdependency*; but it may also be that the respondent had in mind the belief that there was actually no cohabitation at all. In paragraph 96 there is an unspecific reference to matters failing to establish a relationship within the relevant two-year period. Paragraph 99 expresses a clear conclusion that the appellant had not established the existence of dependency or interdependency, but I am unclear whether this was because (a) the respondent did not actually accept, despite paragraph 91, that the appellant was dependent—perhaps because it thought that a business-related dependency was irrelevant (see paragraph 21 above)—, or (b) the respondent accepted that the appellant was dependent but not within the relevant two-year period, or (c) the respondent thought that it was necessary for the appellant to show, and that he had not shown, that Ms Coke was also dependent on him.

36. The appeal is, of course, from the Pensions Ombudsman's Determination. Although paragraph 128 begins by apparently requiring proof of "interdependence", the correct position is clearly stated in paragraph 128.5; see also paragraph 135. It thus appears that the Pensions Ombudsman understood the correct test. However, he was dealing with a complaint that the appellant had suffered injustice as a result of maladministration by the respondent. Accordingly, at paragraph 140 of the Determination, the Pensions Ombudsman stated: "In this case I have considered whether: (a) the applicable scheme rules or regulations have been correctly interpreted; (b) appropriate evidence had been obtained and considered; and (c) if the Council's decision was supported by the available relevant evidence." His conclusion at paragraph 144 was: "I am satisfied that the Council gave proper consideration to Mr S's application on each previous occasion by assessing all the relevant evidence available at the time and that it acted in accordance with the LGPS Regulations and the principles outlined in paragraph 140 above. So, I find that the Council's decision not to award Mr S a cohabiting partner's pension from the LGPS was supported by the available evidence and within the bounds of reasonableness." The problem with this analysis is at least threefold. First, the respondent actually accepted that the appellant was financially dependent on Ms Coke: see paragraph 91 of the Determination. Second, the respondent appears to have approached the matter on the basis that it was necessary for the appellant to show that Ms Coke was financially dependent on him; which was an error of law: see paragraphs 91, 92 and 95 of the Determination. Third, the respondent's decision had been based on two reasons, one of which was that there was no simple cohabitation (that is, living together as husband and wife). The Pensions Ombudsman rejected that reason and found that the respondent ought not to have relied on it. But he appears to have viewed the two reasons—no cohabitation and no dependence—as entirely separate and unrelated. While that may be so analytically, I find it implausible that a belief that two people are not in fact living together as husband and wife but have merely an informal business relationship will have no bearing on one's interpretation of the evidence adduced to show financial dependence or interdependence. Indeed, it seems to me to be probable that the respondent's apparent

discounting of matters relating to the business was closely connected to its belief that there was merely a business, and not a personal, relationship between the appellant and Ms Coke.

37. In these circumstances, the respondent's decision rested on two reasons, one of which was rejected by the Pensions Ombudsman and the other of which involved both a fairly stark failure to interpret the applicable regulations correctly and an incoherent position as summarised at paragraph 91 of the Determination. This being so, I do not consider that the Pensions Ombudsman's findings that the decision-making process was not flawed and that the respondent had acted in accordance with the 2013 Regulations, or his apparent acceptance of the soundness of the respondent's reasoning (paragraphs 136 and 144 of the Determination), can stand. In my judgment, there was clear maladministration by the respondent and the Pensions Ombudsman's contrary conclusion was wrong in law.
38. I am also of the view that the appellant has suffered injustice in connection with the maladministration, because he has not received a decision that rests on a sufficiently rigorous approach to the issue of simple cohabitation (as the Pensions Ombudsman found) or on a correct application of the 2013 Regulations. As the decision-making process was flawed, and as I do not regard it as by any means obvious that the decision would have been the same if the process had been carried out properly, the correct course in my judgment is to remit the matter to the respondent for reconsideration and for a fresh decision (see paragraph 141 of the Determination).
39. These conclusions do not imply that the respondent's reconsideration of the matter ought to result in any particular outcome. But I offer a very few brief observations, limited to the condition in paragraph (b)(iv) of the definition of "cohabiting partner", in the hope that they might be found helpful to one or other party.
 - 1) The respondent must apply the correct test. The appellant has to show that *either* he was financially dependent on Ms Coke *or* they were financially interdependent. He does not have to show that Ms Coke was financially dependent on him.
 - 2) I am not sure that the appellant has presented his evidence on this matter to the respondent in the best manner, although the respondent has given him opportunity to do so. While the respondent's patience so far is to be acknowledged, it might perhaps give him some further opportunity to address the issues more satisfactorily.
 - 3) A point of potential importance for considering the appellant's dependence on Ms Coke (or, indeed, mutual interdependence) is that, as appears, they were living together at her home. She was therefore providing him with accommodation, which freed up his own flat to produce rental income. On the face of it, this might appear to support a contention that he was financially dependent on her. It is not clear that attention has been paid to this point. (Incidentally, the fact that the flat owned by the appellant was not being occupied by him but was being let out to a third party under a tenancy that named both the appellant and Ms Coke as the landlords was surely significant evidence supporting his contention that he and Ms Coke were cohabiting.)

- 4) The position regarding the business needs to be considered with some care and caution; it is not obvious that it has much to do with the matter, either way. The respondent attributed some transactions (for example, on the Costco account) to business-related matters, but it doubtful whether the company ever traded and it certainly did not do so for a two-year period ending with Ms Coke's death. The company had premises (described to me as an empty shop), for which rent and rates were being paid. I do not know whether the tenancy was in the company's name or in the names of the appellant and Ms Coke, and I am not in a position to say whether any contributions made by Ms Coke to these business expenses constituted or gave rise to any dependency on the part of the appellant personally.

Conclusion

40. The appeal is allowed.
41. The appellant's application for the cohabiting partner's pension is remitted to the respondent for reconsideration and a fresh decision.