

Pensions

making...death benefits...easier

A "making it easier" guide to pensions law for trustees and employers

Introduction

The death benefits for a member's family or dependants obviously vary according to the rules of the scheme. The benefits will differ depending on whether the member died in pensionable service, as a deferred member or as a pensioner.

Sometimes who gets what is automatic - but the trustees may have a discretion to decide who receives any lump sum payment. This is because lump sum death benefits paid in this way are not part of the member's estate for inheritance tax purposes. In most schemes, members will have signed a death benefit nomination (or expression of wishes) form. The trustees do not need to follow its instructions – but do need to take them into account.

10 steps to paying death benefits

1. The trustees should **establish a process** for dealing with death benefit cases. This could include:
 - **Ensuring** that the employer or scheme administrators inform the trustees as soon as possible after a member dies.
 - **Preparing**, within a month of the death, a report showing what benefits are payable and who the potential recipients may be.
 - **Considering** the report at the next trustee meeting. They may agree to payment of the benefits, or decide that further investigations are necessary.
2. It is usually a good idea for the trustees to see a copy of the **member's will**. A member may have decided he has made provision for his wife in his will and that he can therefore name someone else in his expression of wishes form.
3. Trustees need to **investigate the member's circumstances** – his domestic, personal and financial situation. They could ask the member's immediate colleagues or those named in the expression of wishes form for information.
4. It may sound obvious, but Trustees need to **be sensitive** when writing to potential beneficiaries. The Pensions Ombudsman has forced trustees to apologise for writing to a widow in a 'casual, indifferent and unfeeling' way.
5. Trustees should think carefully before **delegating decisions**. There must be a power to do so in the scheme rules. Trustees will probably wish to retain control of all but the very straight-forward cases. They should probably review delegated decisions at trustee meetings.

Pensions law can be tricky... but it doesn't have to be. These 'making it easier' guides explain key issues in simple terms, giving practical help to trustees and employers.

The series is growing; additional copies can be downloaded from www.pinsentmasons.com/pensions.

Current topics include:

- Using advisers
- Scheme changes
- Becoming a trustee

Comments and ideas for further topics are welcome...

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6. HM Revenue & Customs permits **pension** death benefits to be paid only to a **restricted category** of people. There are no similar restrictions in respect of **lump sum** death benefits (but there may be under the scheme rules). Lump sums must be paid within two years of the time the trustees learnt of the member's death. Otherwise, the payment will be an unauthorised payment.
7. Pensions are usually payable for life, but **pensions paid to a child** will usually need to stop by the time the child reaches age 23. Trustees should put arrangements in place to ensure pensions stop at the right time.
8. It may be possible to pay a child's benefit into a **separate trust**, or to someone on the child's behalf.
9. Trustees should seek advice on the options where a deceased member has **exceeded the lifetime allowance**.
10. Trustees need to **give reasons for their decisions**. These should be carefully worded so as not to infringe the right to privacy of potential beneficiaries.

Further reading

"How to avoid the **Pensions Ombudsman**" contains some useful pointers:

<http://www.pensions-ombudsman.org.uk/publications/docs/HowToAvoidThePO.pdf>.

The **DWP** publishes:

http://www.direct.gov.uk/en/Pensionsandretirementplanning/EndOfLife/BenefitsAndMoneyAfterADeath/DG_10027879

The Pensions Advisory Service (**TPAS**) publishes:

http://www.pensionsadvisoryservice.org.uk/occupational_pensions/death_benefits

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Should you have any questions please contact your usual Pinsent Masons adviser who will be able to assist you further.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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