

SSAS Guidance for Trustees on how to decide Benefits on Death

Barnett Waddingham is asked from time to time how the Trustees of a pension scheme ought to go about making the decisions on who is to receive death benefits from a deceased member's residual fund. Below are some broad principles to guide Trustees on the appropriate process.

There are a wide variety of personal circumstances and whilst the principles apply in every case, the amount of time Trustees need to spend on the application of the principles will vary from individual to individual.

Assuming the client uses a standard Barnett Waddingham trust deed and rules, then the Trustees have full discretion as to whom to distribute death benefits under the Scheme. However, trustees must follow due process and procedure to show they have adhered to their trustees' duties in arriving at their decision. This means the Trustees must be able to comfortably prove that the decision they arrive at regarding the distribution is a decision which a reasonable trustee could have reached. Following due procedure will make any challenge by a potential beneficiary less likely to be successful, provided it can be proven the Trustees have acted appropriately.

If there is a risk that someone will challenge the Trustees on their decision, it will be important for the Trustees to be able to justify as "reasonable" the decision they have reached and also demonstrate the process they followed.

In the Barnett Waddingham standard trust deed, applicable provisions are contained in Rules 6 and 7 on Pension and Lump Sum Death Benefits respectively. These give the Trustees a wide discretion to whom to pay or apply the benefits and how to go about it, provided the persons being considered are Eligible Recipients. The term Eligible Recipients is widely defined, and this appears in Rule 2 of the standard deed.

Trustee duties when distributing death benefits

Trustees have a number of duties to comply with, and factors to consider, when distributing death benefits. Trustees must

- Take into account all relevant factors, and ignore irrelevant or improper factors. Irrelevant factors can include personal biases and unfounded allegations.
- Carry out reasonable enquiries of the deceased member's circumstances, including the scope of potential beneficiaries (for example, do the Trustees know about all the dependents?). Trustees should ask themselves, and their advisers, appropriate questions.
- Ensure correct interpretation of and compliance with relevant provisions of the Trust Deed.
- Act impartially between the beneficiaries. We sometimes express this as not favouring one over another.
- Take professional advice on all matters in which the Trustees are not experts.
- Consider and discuss the above in arriving at a decision.
- Arrive at a decision that is neither perverse nor arbitrary.
- Fully document the process and the final decision.

It is important to remember that if Barnett Waddingham acts as a trustee of the Scheme, we should accordingly be involved in formal decision making. Further, appropriate and proper notice of Trustee meetings should be given, with minutes (or meeting notes) taken.

Reasonable enquiries

Trustees must make reasonable enquiries and undergo comprehensive fact-finding into the potential list of beneficiaries when considering the distribution of death benefits. Reasonable enquiries could include making enquiries of colleagues, conducting probate searches, and in extreme cases even considering the use of tracing agencies or genealogists if it is not possible to easily establish a final list of potential beneficiaries.

Sufficient information relating to beneficiaries should be taken into account such as the financial status of beneficiaries, their age, personal needs and any financial dependency on the deceased member either during their lifetime or at the date of death.

Expression of Wishes

The deceased member's Expression of Wishes form should be considered, but it is not ultimately binding on the Trustees. It is important to take into account the date of the Expression of Wishes form and checking whether circumstances have changed significantly since it was signed. The Trustees need to gather enough information to feel confident that their chosen distribution is reasonable after considering all relevant information. Information relating to the relationship between the member and recipient can be important, as well as any financial ties or dependencies either of them had.

Record keeping

It is essential that Trustees keep a record of their decision and give reasons for distributing the death benefits to certain beneficiaries. We do this in the Trustees' Resolution prepared as part of the work. This helps to prove trustees have followed correct process, demonstrates that they have considered all relevant factors, and gathered adequate information, in order to make an informed decision. A record of seeking and considering legal advice also helps in defending a decision made by the Trustees in the future.