

# Difficult decisions

## ► Pensions Age asks for your examples of challenging death benefits cases

A case that I am familiar with involved a man in his mid-thirties passing away after having filled his EoW, nominating the two children as potential beneficiaries. However, the grandfather then produced paternity proof in relation to a further child from a secret relationship his son had. Given the trustees were required to consider all potential beneficiaries, the third child became a beneficiary under the trust set up for his children.

Another involved an elderly lady who married a much younger Portuguese man. She died and, in considering who to pay the lump sum to, the trustees were presented with a newspaper report suggesting he had murdered his last wife. This was interesting and the trustees may have felt uncomfortable about the risk that someone should profit from crime, however there was no proof that the newspaper report was accurate so was not strictly a relevant factor.

**ARC Pensions Law partner Kate Payne**

One case involved a 48 year old man, who had a terminal illness with months to live.

He had two children – a 19 year old daughter with his ex-wife, and a seven year old son with his partner.

He was paying maintenance to his ex-wife.

Following his death, his pension scheme would only pay a dependants' pension to his son until he completed his education up to age 23. Children's dependents pension can only be paid

while the child is in education and in any event not beyond age 23.

As his daughter was working she would receive nothing; neither the ex-spouse nor partner would receive a pension as they did not meet the definition of dependency in the scheme rules.

On our advice he requested both an ill health early retirement settlement and a CETV. The latter was three times higher than the former. The CETV was transferred to a personal pension with his children, partner and ex-spouse all nominated as beneficiaries.

Although the pension plan would be subject to IHT his beneficiaries had a six figure sum to share compared to the very small dependents pension only paid to his son had he stayed in the scheme until death.

**LEBC director of public policy Kay Ingram**

I've worked in DB admin for almost 30 years, so I've dealt with a fair few deaths but two particularly complex cases spring to mind.

The first case came up as part of a GMP reconciliation – the member had died some years previously and the surviving spouse had also subsequently passed away. It turned out that a substantial transfer-in had been overlooked when the member retired, which meant that pension underpayments were due.

The underpayments were split into three elements: arrears owed to the member, arrears owed to the spouse and also, as the member died within five years of retirement, there was a

five-year guarantee to take into account.

Furthermore, the taxation rules for taxation on death benefits changed on 6 April 2016, which meant that each element was treated differently.

The case went on for some months whilst I liaised with the trustees, employer payroll, technical team and the member's daughter – ultimately, the total underpayment was in the region of £60,000 (which included interest). That was an additional cost on top of the fee for carrying out the GMP reconciliation.

The second case involved a scheme member who died with a surviving spouse from whom she had been separated from a number of years.

As they were still legally married (the divorce had never been finalised), there was a widower's pension due under the scheme rules. After speaking with the member's daughters on a number of occasions, it turns out that their mother had been in an abusive relationship and understandably, the family didn't want their estranged father to receive any benefits from the scheme.

The family requested that the spouse's entitlement was blocked but obviously, scheme trustees are unable to do this. The spouse did also contact me to pursue his pension and he eventually received a trivial commutation payment of around £16,000. Another difficult case that went on for a couple of months.

 @NJM71 Nic Millar

