

Ombudsman's Determination

Applicant	Ms E
Scheme	Airways Pension Scheme (the Scheme)
Respondent	The Trustee of the Airways Pensions Scheme (the Trustee)

Outcome

1. I do not uphold Ms E's complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms E's complaint is about the payment of death benefits under the Scheme in respect of her late brother, Mr E, who passed away in October 2015. She does not agree with the Trustee's decision to pay all of the death benefits to Mr N, who was a friend and work colleague of Mr E.

Background information, including submissions from the parties

4. Ms E says that the expression of wish form (**the Notice of Wish**) completed by Mr E on 16 June 2015, nominating Mr N for 100% of the death benefits, was not a true reflection of his actual wishes.
5. During the period between October 2015 and April 2016, the Trustee received representations from Mr E's family and friends, including Ms E, about his personal circumstances, family relationships and friendships. On 27 April 2016, the Trustee held a meeting to consider the evidence before them and decided to award 100% of the lump sum death benefits to Mr N, in line with the Notice of Wish completed by Mr E a few months before he passed away.
6. When the Trustee's decision was communicated to Ms E, she disagreed with the outcome and raised a formal complaint. She provided her comments as to why, in her opinion, the Notice of Wish did not reflect her brother's intentions. In summary, she said:-

- It is not clear if the Notice of Wish includes the Additional Voluntary Contribution (**AVC**) funds. There is no evidence to suggest that Mr E was aware the death benefits would include his AVCs.
 - She queried the manner in which the Notice of Wish was completed and whether there was any undue influence by his work colleagues. She wanted to know if the Notice of Wish was initiated by Mr E, Human Resources or by one of his colleagues.
 - She queried whether medical evidence had been obtained to determine if Mr E was capable of signing the Notice of Wish, given that he was on strong medication and had undiagnosed Asperger's Syndrome.
 - The evidence obtained from Mr E's line manager is not credible because he had an irrational fear that he must not do anything to upset his line manager. Mr E's work colleagues seemed to think that he was estranged from his family, but this was not the case. It is difficult to comprehend that he would leave such a large sum of money to a friend, whilst his niece was critically ill in the same month.
 - Mr E was in awe of Mr N's devotion to his faith and his generosity to charity. Mr E also wished to give some money to charity. Therefore, it is not clear if he intended some of the death benefits to go to charity or all of it to Mr N.
7. On 1 June 2016, the Trustee held another meeting to consider the additional representations made by Ms E, alongside all of the previous evidence. The Trustee concluded that its previous decision remained appropriate and the death benefits should be paid to Mr N. On 3 June 2016, Ms E and Mr N were both notified of the Trustee's decision.
8. The Trustee did not uphold Ms E's complaint. In summary, the Trustee's response to her complaint included the following points:-
- The Trustee is obliged to administer the Scheme in accordance with the Trust Deed and Rules (**the Rules**). In accordance with Rule 19 and Clause 30(f), the lump sum death benefit includes AVC funds. This information was available to members in the Scheme handbook and the AVC plan leaflet. The Notice of Wish is clearly described as being relevant to the lump sum death benefit.
 - Mr E made a clear nomination in relation to his preferred beneficiary of any lump sum death benefit. The completion of this nomination meant that Mr N was within the class of beneficiaries stated in Rule 22. A Notice of Wish is not binding on the Trustee, but it will provide an influential guide in the exercise of their discretion.
 - The Notice of Wish was submitted by Mr E in person when he visited the Scheme's office. The purpose of his attendance at the office was recorded on the system as "handed NOW form." Mr E also made telephone calls from his

home landline number to request written confirmation that his Notice of Wish had been received. This indicated a clear and firm intention on Mr E's part to make the nomination. There is no evidence to say that his Notice of Wish was the result of any undue influence from his colleagues.

- There is no evidence to support the assertion that Mr E was, for medical reasons, unable to make decisions. Mr E had worked for British Airways for almost 43 years and engaged with the Scheme regularly throughout his membership. This suggests that he was aware of the Scheme benefits and options.
- Mr E's line manager did not comment on the relationship between Mr E and Mr N, other than to say that they worked on the same shift and Mr N visited Mr E in hospital and attended the funeral. Mr E's line manager confirmed that Mr E was single and "had no family apart from his sister and her family."
- The decision to pay the lump sum to Mr N, in accordance with Mr E's clear and current nomination, was within the range of decisions that a reasonable decision-maker could have reached.

9. Ms E did not agree with the Trustee's response and has referred her complaint to us for an independent review.

Adjudicator's Opinion

10. Ms E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:

- It is at the discretion of the Trustee to decide, in accordance with the Rules, to whom the death benefits should be paid. The Trustee considered all of the potential beneficiaries listed in the Rules, and the information submitted by Ms E, before deciding to pay the death benefits to Mr N as the member's nominated beneficiary.
- It is for the Trustee to decide how much weight to attach to any piece of evidence submitted by the potential beneficiaries. It is not within our remit to step into the role of the Trustee and say what the Trustee should have decided. We can only seek to overturn a decision if it was so irrational that no reasonable decision-maker could have reached the same decision.
- The Trustee considered representations from Mr E's family, friends and colleagues. The Trustee also held a second meeting to consider the additional information provided by Ms E. The Notice of Wish submitted by Mr E in June 2015 was an up-to-date expression of his wishes, as it was completed a few months before he passed away. This can reasonably be considered as providing a reliable indication of his wishes at the time he completed it.

- The Trustee also considered Ms E's contention that the Notice of Wish may have been impaired by Mr E's health or the undue influence of his colleagues, but found no evidence to support those claims.
- The Trustee's decision to pay the death benefits to Mr N, on the basis that he was Mr E's nominated beneficiary, was not perverse or outside the range of reasonable outcomes that could have been reached.

11. The Trustee agreed with the Adjudicator's Opinion and made no further comments.
12. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms E provided her further comments in the letter dated 16 June 2017, but these do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Ms E for completeness.
13. In her response to the Adjudicator's Opinion, Ms E said:-
 - Mr E's niece had passed away two days before he signed the Notice of Wish and he was aware of her death at the time.
 - Mr N was primarily Mr E's supervisor and their friendship was based on work with very little contact outside of working hours.
 - The Notice of Wish should define what is included in the lump sum death benefit. Had it done so, Mr E would not have nominated Mr N for 100% of the death benefit. The Trustee has been remiss in not producing a clearer expression of wish form. The members, who sign the Notice of Wish, are unlikely to understand what the lump sum death benefit actually means or take the time to refer to the Rules.

Ombudsman's decision

14. I would only look to overturn the Trustee's decision if it was so irrational that no reasonable decision-maker could have reached the same decision. I can see no basis on which their decision should be viewed as irrational.
15. The Notice of Wish submitted by Mr E in June 2015 was a recent expression of his wishes, as it was completed a few months before he passed away. Mr E also made subsequent telephone calls to request written confirmation that his Notice of Wish had been received. This showed a clear and firm intention on his part to make the nomination in favour of Mr N.
16. The Notice of Wish signed by Mr E included the following statement:-

"I [Mr E]...request that the Management Trustees should pay or apply any lump sum payable under the relevant Scheme on my death to or for the benefit of [Mr N]...100% [share of benefit]..."

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17. It is clear from this statement that Mr E's Notice of Wish was specifically in relation to the payment of lump sum death benefits. The fact that the AVCs were included in the lump sum was explained in the scheme documentation. There is no evidence to suggest that Mr E misunderstood what the lump sum payment would include.
18. The Trustee asked the correct questions necessary to decide who the potential beneficiaries were. Having identified them it considered representations from Mr E's family, friends and colleagues and having done so, exercised its discretion. The Trustee also held a second meeting to consider the additional information provided by Ms E. I conclude the Trustee exercised its discretion properly and its decision to pay the death benefits to Mr N was not perverse or outside the range of reasonable outcomes that could have been reached.
19. Therefore, I do not uphold Ms E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
17 July 2017