

Ombudsman's Determination

Applicant	Mrs S
Scheme	Aviva Personal Pension Scheme (the Scheme)
Respondent	Aviva UK Life (Aviva)

Outcome

1. I do not uphold Mrs S's complaint, and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S's complaint about Aviva is that it did not take into account the expression of wish form completed by her fiancé Mr R when it decided how to distribute the lump sum payable from the Scheme on Mr R's death.

Background information, including submissions from the parties

4. Mr R worked for Brenntag UK Ltd (**Brenntag**) and was a member of the Scheme.
5. Shortly after Mr R had been diagnosed with cancer he completed an expression of wish form (**EW Form**) dated 16 February 2015. This said that on his death in service he would like 50% of his pension fund to be paid to his fiancée/partner Mrs S and the other 50% to be paid to his daughter Miss R.
6. Brenntag's human resources adviser later submitted a sworn statement that he posted the completed EW Form to Aviva's Norwich office address on 18 February 2015.
7. In his will dated 28 September 2015, signed while he was in hospital, Mr R provided for 70% of his residual estate to be paid to Miss R, 15% to Mrs S and the other 15% to his mother Mrs T. Mr R's sister Miss N was appointed as the executor of the will.
8. Sadly, Mr R died on 3 October 2015, eight months before he was due to marry Mrs S.
9. Brenntag sent Mrs S a copy of the completed EW Form, which she forwarded to Aviva on 23 November 2015 when claiming death benefits under the Scheme.

10. On 25 November 2015 Aviva told Mrs S:

“I understand from your email that this [the EW Form] was held by Mr [R’s] employer Brenntag. In order for us to be able to accept an expression of wishes we need to have received it in our offices prior to the passing of the policy holder. As we were not in receipt of this at that time, we regretfully cannot accept this expression of wishes.”

11. Mrs S replied: “I am assured from Brenntag that the original signed form of the expression of wishes were sent to Aviva...”. She also said that Mr R had concerns that Miss R (aged 21) might spend a large inheritance quickly, and said that Mr R would not have wanted Mrs T to benefit from the Scheme because their relationship was never close and she had very little to do with Miss R.

12. Mrs S made a formal complaint to Aviva that it had not processed the EW Form. Aviva rejected the complaint on 22 December 2015, saying:

“I can see from our records you kindly forwarded a copy of the expression of wish form, which you had received from Brenntag UK & Ireland. We had no record of this on our files.

Unfortunately as previously confirmed as this was received after Mr [R’s] death, the Scheme administrator is unable to take this document into account when dealing with this claim. I’m sorry about this...

The Scheme Administrator exercised their discretion in line with the parties referred to in our Scheme rules. You as Mr [R’s] partner are not part of the discretion under these scheme rules and as such cannot be considered by the Scheme Administrator.”

13. On 21 January 2016 Aviva paid all the lump sum death benefit arising (£72,797.77) to Miss R.

14. Mrs S complained to us after having correspondence with The Pensions Advisory Service, which concluded that Aviva had not acted improperly.

Adjudicator’s Opinion

15. Mrs S’s complaint was considered by one of our Adjudicators, who concluded that no further action was required by Aviva. The Adjudicator’s findings are summarised briefly below:-

- Under Aviva’s policy terms and conditions (see Appendix hereto) the lump sum death benefit arising on Mr R’s death became payable at Aviva’s discretion to any one or more of the following persons:
 - Any person or persons whose names had been given to Aviva by Mr R in writing;
 - Mr R’s widow or surviving civil partner;

- Mr R's children including adopted children;
 - Mr R's estate.
- This meant that no individual had any automatic entitlement to receive all or any part of the lump sum death benefit. It was for Aviva to choose one or more beneficiaries from the classes of potential beneficiaries listed.
 - When he died, Mr R did not leave a surviving widow or civil partner. Although Mrs S was his partner and fiancée she was not a civil (same sex) partner. Aviva was entitled to pay the lump sum to Miss R, Mr R's daughter, as Miss R was one of the potential beneficiaries listed in Aviva's policy terms and conditions.
 - Mrs S argued that Aviva should have reached a decision consistent with the EW Form. However, Aviva maintained that it did not receive the EW Form during Mr R's lifetime, so in accordance with its terms and conditions there was no valid nomination. It was noted that Brenntag had insisted that the EW Form had been sent to Aviva while Mr R was alive. It was possible, therefore, that for reasons unknown the correspondence had gone astray in the post. In that event, Aviva should not be criticised for not following the EW Form. However, even if Aviva had received the EW Form before Mr R died it would have been under no obligation to make any payment to Mrs S.
 - Nor was Aviva bound to follow the distribution set out in Mr R's will, as that related only to the distribution of his freely disposable estate, not death benefits payable by Aviva under discretionary powers.
 - As Miss R was clearly within the class of eligible beneficiaries set out in Aviva's terms and conditions, Aviva would not be viewed by the Pensions Ombudsman as having made a perverse or improper decision.
 - In the circumstances the Pensions Ombudsman would not require Aviva to reconsider its decision.
 - Therefore this complaint should not be upheld.
16. Mrs S did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs S for completeness.
 17. Mrs S said that Mr R's wishes to benefit her on his death were made clear in both his will and the EW Form; they were due to marry on 11 June 2016 but could not bring forward that date due to his worsening condition; it was unfair that one person named on the EW Form should benefit but the other should not; perhaps a paper copy of the EW Form had been received by Aviva but misfiled.

Ombudsman's decision

18. My role is to consider whether the decision was reached in a proper manner. The decision-maker must take into account all relevant matters and no irrelevant ones. It must not make a perverse or improper decision, namely a decision that no reasonable decision-maker, properly directing itself, could arrive at. If I am not

satisfied that the decision has been taken properly I can ask the decision-maker to look at the matter again. However, I will not usually replace the decision-maker's decision with a decision of my own, or tell it what its subsequent decision should be.

19. With regard to Mrs S's recent comments, Mrs S does not qualify for payment under Aviva's terms and conditions as a surviving widow because at the relevant date she was not married to Mr R. Being engaged was insufficient. Furthermore, Aviva had discretionary distribution powers under those terms and conditions, and would have had no obligation to make any payment to Mrs S even if she had already married Mr R. The fact that Mrs S had been named in Mr R's will did not give her an automatic entitlement to benefit under the Scheme. Similarly, if Aviva had received the completed EW Form before Mr R died it would not have given her an automatic entitlement to benefit under the Scheme. I am satisfied that Aviva made reasonable efforts to locate the EW Form.
20. In conclusion, I consider that Aviva reached a decision that was not improper, and was within a range of reasonable outcomes. In those circumstances there is no basis on which it would be proper for me to remit the matter to Aviva for further consideration, or to replace its decision with a different decision.
21. Therefore, although I have sympathy with Mrs S's position, I do not uphold her complaint.

Anthony Arter

Pensions Ombudsman
18 December 2017

Appendix

Aviva's policy terms and conditions – death benefits

“If any lump sums(s) are payable and at that time we are satisfied this policy is written under a trust where no beneficial interest in a death benefit could be payable at your direction to:

- your estate; or
- your personal representatives; and
- your estate or personal representatives were not the sole object of the trust at its inception

we will pay the money to the trustee(s) of that trust.

However, if we are not satisfied there is such a trust we will pay the lump sum(s) at our discretion to, or for the benefit of, any one or more of:

- any person or persons, including trustees, whose names you have given us in writing;
- your widow, widower or surviving civil partner;
- your children including adopted children;
- your estate.”