CASE STUDY

NO EXPRESSION OF WISHES AND INHERITED FUNDS

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A client passes away without an expression of wishes in place. Her daughter-in-law contacts Curtis Banks to learn more about the options available to appropriately distribute death benefits.

The Challenges

Margaret Jones has just passed away age 71. She leaves behind her husband, Fred, children Dan and Julia, and grandchildren Paula, Alfie, and Flo. Her Curtis Banks SIPP is worth £350,000, of which £200,000 was from her own pension savings, and £150,000 was in nominees' drawdown, inherited from her sister who died two years ago aged 68.

Margaret and Fred had discussed leaving their pensions to their grandchildren, as their children are financially comfortable and will inherit other non-pension assets. They envisioned the grandchildren keeping the benefits in pensions, much as Margaret did with the funds from her sister. This way they could help boost the grandchildren's savings and allow them to benefit from the tax advantages of a pension wrapper, while the funds would still be available for them to take as income if needed.

Unfortunately, despite these conversations Margaret never quite got around to making an expression of wishes and died without one in place, which the family discovers when Dan's wife Karolina calls Curtis Banks to notify them of her death.

The Actions

A representative from Curtis Banks, Tuma, will be looking after Margaret's case. He explains to Karolina that in the absence of an expression of wishes, he will look to gather as much information as possible to allow Curtis Banks to make a decision about how to distribute the death benefits. He will build a full picture of Margaret's circumstances and the views of the family members, and will also ask to see a copy of Margaret's Will and any other information the family feels is relevant. Karolina thinks it might be easier for the grieving family if Tuma can liaise with one person, and asks if it would be possible for her to be that point of contact as a family member and an executor of Margaret's Will. Tuma confirms that this is absolutely fine.

Thankfully Margaret and Fred had discussed their plans with Dan and Julia, and the grandchildren are happy with whatever their parents and grandfather decide, so there's no disagreement between the family members about who should receive the funds. Based on the grandchildren's current circumstances, Fred also has a view about how much of Margaret's SIPP should go to each, and Dan and Julia both agree with him.

Karolina provides Tuma with a copy of Margaret's Will and letters from each of the family. Fred's letter describes his and Margaret's conversations about leaving their pensions to their grandchildren, and confirms that it was a conscious decision for the pensions not to be left in line with their Wills. He confirms that based on the grandchildren's circumstances, if the decision were his he would leave Paula 25% of the funds, Alfie 35%, and Flo 40%. Fred also states that he is financially comfortable and does not wish to receive any of the death benefits. Dan and Julia's letters confirm that they were aware of their parents' wishes, are financially comfortable and do not want to be considered as beneficiaries, and that they agree with their father's view about how to distribute the funds. Paula, Alfie and Flo's letters state that they understand they are being considered as beneficiaries but do not wish to offer any views as to the split of the benefits, as they believe their grandfather and parents will have the best understanding of their late grandmother's wishes.

Tuma contacts Karolina to confirm that the trustees have looked at all the information provided to them and have decided to split the death benefits between the three grandchildren according to the percentages suggested by Fred. However, there is a further complication caused by Margaret's lack of expression of wishes which Tuma wanted to discuss with Karolina before proceeding.

The problem relates to the death benefits options available to Paula, Alfie, and Flo. Tuma understands that they are all likely to prefer beneficiaries' drawdown, but this won't be an option for them for Margaret's own pension benefits.

Tuma explains that there are very strict rules for when beneficiaries' drawdown is available, and the rules are different depending on whether the death benefits in question have already been passed on previously.

For death benefits relating to the original scheme member's pension, drawdown is only available to:

- Beneficiaries who meet HMRC's definition of a dependant
- Beneficiaries who were nominated on the deceased's expression of wishes
- Beneficiaries who were chosen by the scheme administrator, but only if the deceased had no dependants *and* he or she hadn't nominated any people or charities on an expression of wishes.

For death benefits relating to funds which are already in beneficiaries' drawdown, drawdown is only available to:

- Beneficiaries who were nominated on the deceased beneficiary's expression of wishes
- Beneficiaries who were chosen by the scheme administrator, but only if the deceased beneficiary hadn't nominated any people or charities on an expression of wishes.

In Margaret's case, her husband Fred will be classed as a dependant. Therefore for her own pension funds, Paula, Alfie, and Flo don't meet any of the three conditions, and they will only be able to receive a lump sum death benefit. With the funds Margaret had in beneficiaries' drawdown from her sister, the grandchildren will meet the second condition and can therefore have drawdown.

Tuma wanted to make sure that this didn't change the family's view about how to distribute the death benefits.

The Results

After consulting with the rest of the family, Karolina confirms to Tuma that they would still like to proceed with the original plan. Paula will receive a £50,000 lump sum and put £37,500 into drawdown, Alfie will receive a £70,000 lump sum and put £52,500 into drawdown, and Flo will receive an £80,000 lump sum and put £60,000 into drawdown.

Lump sum death benefit payments are tested against the Lump Sum and Death Benefit Allowance (LSDBA). This is an allowance to limit the amount that can be taken as a tax-free lump sum during lifetime or following death aged 75.

In order for the lump sum death benefits to be paid out tax free from the SIPP, 3 key criteria would need to be satisfied:
- Margaret died before age 75
- her death benefits were paid out within 2 years of the notification of her death; and
- The lump sum death benefits were within her remaining LSDBA.

These criteria were satisfied, allowing the lump sums to be paid to the beneficiaries tax free.

Important points to consider

The value of pension funds may fall as well as rise. Your money is tied up until you take your benefits. Benefits can generally be taken any time after age 55, although this is due to increase to 57 in 2028.

Contact details

If you'd like to speak to us about anything in this case study, please contact us on:

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We may record and monitor calls. Call charges will vary.

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Please remember not to send any personal, financial or banking information via email as it is not a secure method of communication.