

## The complaint

Ms F, on behalf of the estate of the late Mr F, complains that Aviva Life & Pensions UK Limited failed to make Mr F sufficiently aware of the need to nominate a beneficiary for his pension benefits in the event of his death.

## What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I thought the complaint should be upheld and what Aviva needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*The late Mr F held pension benefits with Aviva in a pension plan that he opened in September 1988 with Norwich Union. Mr F sadly died in March 2024. As it did not hold any nominated beneficiaries for Mr F's pension benefits, Aviva paid the proceeds to Mr F's estate. As a result, his pension benefits became subject to inheritance tax.*

*Ms F is the executor of Mr F's estate. She is the sister of the late Mr F and shares the proceeds of his estate with a third sibling. When Aviva explained that it would need to pay the death benefits to Mr F's estate Ms F complained that it had failed to provide Mr F with sufficient information about making a beneficiary nomination. She said that, had that information been provided, Mr F would have made the appropriate nomination of her and her sister – most likely when he completed a new will in May 2020.*

*Aviva didn't agree with the complaint. It said that it was up to the late Mr F to decide whether or not to add a nominated beneficiary to his pension plan. It said that reminding a consumer to add a nominated beneficiary wasn't something that Aviva asked, or was required to ask, during the life of the policy. It said that the scheme rules meant that it could only pay discretionary benefits to a widow/civil partner, children (including adopted children), nominees, or the estate itself. So, it thought it had acted correctly in making the payment to the estate of Mr F in the absence of valid claims in respect of any of the other categories. Unhappy with that response Ms F asked us to look at the complaint.*

*As Aviva will be aware, unlike the Courts, I am not limited to looking only at the issues a consumer has focused on in their complaint. Our approach is "inquisitorial" - rather than the "adversarial" procedures of the courts, where the lawyers for the two sides "fight it out". By law, I am required to resolve complaints fairly. This means I decide what questions to ask to get to the bottom of things. And it means I can concentrate on the relevant facts of the case, rather than the complaint as presented.*

*When Mr F first opened the pension plan in 1988, he was aged 28. At that time, the application form for the plan included a section headed up "Nomination" that said the following;*

*“Under the Rules of the Scheme, Norwich Union has to distribute lump sum death benefits.*

*In most instances we would consider paying them to your spouse or if there is no spouse to your estate (benefits paid to your estate may attract Inheritance Tax).*

*You may however use this section of the Proposal to nominate another person(s) to receive all or part of the benefits. In paying the benefits Norwich Union will have regard to any such nomination.”*

*When he applied for the pension plan Mr F did not complete that section of the proposal form. And Aviva has confirmed that, over the lifetime of the plan, it hasn't written to Mr F asking him to add a nomination of beneficiaries to his policy.*

*I'm not persuaded that Mr F's failure to nominate a beneficiary when he first opened the plan indicates that he had no intention of doing so at a later date. Given his relatively young age when the plan was opened, I think it is understandable why Mr F made no nomination. But what I need to consider is whether Mr F continued to actively decide not to nominate any beneficiaries, or whether he might have made a more recent nomination had he been aware of that option.*

*Aviva has said that it doesn't warn consumers that there is no nominee for death benefits recorded against their pension plan. It says that prompting them in that way might be construed as financial advice. But I don't agree.*

*Aviva issues annual statements to its customers. I have been provided with a copy of the statement that was sent to Mr F in September 2023. The statement and covering letter runs to a total of 11 pages. On page 8 is a section headed “Reviewing your arrangements” that says;*

*Reviewing your financial arrangements at least once a year and taking action will help you achieve the best investment outcome. As a minimum you should consider*

- Has there been a change in your personal circumstances since your last review. For example do you have more money to invest, are you investing enough to achieve your desired outcome?*
- Have the funds you are invested in changed? Fund risk ratings can change over time so please refer to [www.aviva.co.uk/savings-and-retirement/fundcentre](http://www.aviva.co.uk/savings-and-retirement/fundcentre) and click on the Fund Centre for more details.*

*I think it would be reasonable to conclude that Aviva doesn't consider the information it presented above to comprise financial advice. So, I think it unlikely that adding information in that section, to prompt consumers to review, or add, any death beneficiaries would be construed as financial advice either. In my opinion that suggestion would be less likely to be financial advice than Aviva's recommendation to consider increasing the amount of pension contributions or altering the way in which pension savings are invested.*

*As I said earlier, Aviva has told us the rules it needs to follow when deciding how to allocate death benefits. It says they can only be paid to a widow/civil partner, children (including adopted children), nominees, or the estate itself. I have not been sent a*

*copy of those restrictions in for example the terms and conditions of the pension plan, but I have no reason to doubt what Aviva says.*

*But Mr F did not have a partner, or children, so it would have been of even greater importance that he nominate a beneficiary so that Aviva could have made a discretionary benefit payment after his death. And I think that is something that Aviva should have prompted Mr F to at least consider as part of the information it sent to him each year.*

*But I need to consider whether I think Mr F would have acted upon any prompts sent to him in this way. After all he hadn't completed that section of the proposal form when he first applied for his pension plan.*

*As part of her submission to us about this complaint Ms F provided us with a copy of the annual statement that was sent to Mr F around six months before his death. So, I can only assume that Mr F had carefully retained that document and understood its contents. I think therefore, had some information about death benefit nominations been included on the statement (or on those sent in previous years), Mr F would have read it, and considered whether he needed to take any action.*

*Mr F completed a new will in May 2020. In my experience, around that time, many people gave careful consideration to what would happen in the event of their death. The coronavirus pandemic was very much active and many people around Mr F's age were concerned about how they might be affected by the virus. I can see no reason why Mr F might have been reticent to complete a death benefit nomination form at the same time. The will Mr F completed named his two sisters (one of whom was Ms F) as his sole beneficiaries. I am persuaded that, had he completed a death benefit nomination, it is most likely that Mr F's wishes would have been along the same lines.*

*I am mindful, as Aviva has rightly pointed out, that any nomination made by a pension plan holder is not binding on the scheme trustees. It is simply an indication of their wishes for the trustees to consider. But in my experience, where family relationships are as straightforward as they appear to be here, it would be unlikely that the trustees would not follow the nomination that had been made. So, I think it most likely that, had a nomination been in place for Mr F's two sisters, that would have been the decision reached by the trustees.*

*So in summary, I think that the death benefit options open to the trustees of Mr F's pension plan were perhaps more restrictive than might be seen on other schemes – where a discretionary payment could be made to anyone whether or not they had been nominated as a beneficiary before the consumer's death. But I'm not satisfied, particularly in the light of those restrictions, that Aviva acted fairly in not reminding Mr F that he had no nomination in place, and the impacts of that decision. And I think that, had Mr F been given better information, he would have nominated his two sisters as the recipients of any death benefits sometime before his death, and most likely when he completed a new will in 2020.*

*As a result of the pension death benefits being paid to Mr F's estate, they became liable for inheritance tax. From the evidence I have seen, the estate of Mr F was greater than the inheritance tax nil rate band even before the addition of the pension death benefits. So, I think it reasonable to conclude that the additional tax that needed to be paid by Mr F's estate amounted to a 40% charge on the full pension death benefits – a total of £53,226.38.*

*If the nomination I think Mr F would have made had been in place, I think that the death benefits would have been split equally between Ms F and her sister. Given the nature of Mr F's will that is what actually happened, albeit after the deduction of inheritance tax. Given the nature of this complaint, being brought by the estate of Mr F, I would normally think it reasonable for any compensation to be paid to the estate. But that would then generate a further inheritance tax liability and so covering that cost would increase the compensation I am asking Aviva to pay. So, since I am satisfied that any compensation, if it were paid to the estate, would be later equally shared by Ms F and her sister, I think it reasonable to direct any compensation be paid to them directly.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Ms F has said that she, on behalf of the estate of Mr F, accepts my provisional findings. Aviva has said that it doesn't agree and has provided some further comments. Although here I am only summarising what Aviva has said, I want to reassure the firm that I have read, and carefully considered, its entire response.

Aviva has now provided me with the relevant terms and conditions of the pension plan, both when it was first opened in 1988 and when they were changed to include children as a potential beneficiary in 1990. It says that, at no point, could the benefits from the plan have been paid directly to a member's sibling.

Aviva still thinks that reminding Mr F to nominate a beneficiary could be construed as financial advice. It says it would have no knowledge of the policyholder's personal or financial situation so wouldn't continually prompt the policyholder to add a nomination when they've made the decision at outset not to add one. It says there is an onus on the policyholder to be aware of this due to being aware of their own circumstances.

So Aviva believes that the payment was made correctly and in accordance with the discretionary scheme rules. It says that Mr F didn't nominate a beneficiary when he opened the plan, or following his revised will being drawn up in 2020.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms F and by Aviva. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead, this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional points that Aviva has raised. But those comments haven't caused me to conclude that I should alter my provisional findings. I would however like to comment further on some of the matters Aviva has raised.

I'm grateful to Aviva for providing me with copies of the relevant terms and conditions of the pension plan. As I thought would be the case in my provisional decision, those terms fairly reflect what Aviva has said about who was able to receive death benefits from Mr F's pension plan.

But I cannot agree with Aviva's conclusions that those terms would prevent a payment being made to a policyholder's sibling. The crux of this complaint is that Mr F was not made sufficiently aware that he would need to nominate his siblings to receive death benefits. But, had that nomination been made, it would have been entirely possible for them to receive the death benefits – not as a specifically named relative (as would be the case for a spouse or child), but as a nominee – one of three categories of beneficiary set out in the rules.

I still don't think reminding a policyholder to check whether they wish to nominate a beneficiary is financial advice. And as I explained in my provisional decision, I think that reminder is particularly pertinent here where the classes of discretionary beneficiary are so restricted by the scheme rules. I don't think a single question on an application form – that in most cases would have been completed many years earlier – is sufficient to demonstrate good practice. I think it would be appropriate for Aviva to provide regular reminders of the importance of the nomination process – particularly where the trustees have limited discretion in awarding death benefits.

Mr F took steps in 2020 to put his financial affairs in order in the event of his death. He left the entirety of what was a sizeable estate to his two sisters. I have seen no reason why he wouldn't have made a similar election for his pension death benefits had he been aware of the need to do so. There is no evidence that Mr F wanted his pension benefits to be paid to others. And there is no rational explanation for him being aware he needed to complete a nomination form, and then choosing not to do so. By not completing a nomination, Mr F's pension death benefits would still ultimately be paid to his sisters via his estate – albeit with the deduction of 40% inheritance tax.

So, in summary I am not satisfied that Aviva treated Mr F fairly by failing to remind him of the opportunity to nominate beneficiaries for any pension benefits after his death. And I think that, had Mr F been given better information, he would have nominated his two sisters as the recipients of any death benefits sometime before his death, and most likely when he completed a new will in 2020.

### **Putting things right**

I have concluded that Aviva fell short of what I would consider good industry practice by failing to remind Mr F, over an extended period of time, that he should consider nominating a potential beneficiary for any death benefits paid by his pension plan. Had those reminders been issued I think that Mr F would have nominated his two sisters as potential beneficiaries, and that nomination would have been followed by the scheme trustees following his death.

As a result of Aviva's failings, and so no nomination being in place, the death benefits it paid became liable to inheritance tax so reducing the monies received by Ms F and her sister. Ms F, in her role as executor of Mr F's estate has provided us with an undertaking that one half of any compensation she receives as a result of this complaint will be paid to her sister.

In order to put things right I direct Aviva to pay Ms F compensation of £53,226.38 to reflect the inheritance tax that was charged on the death benefits paid to Mr F's estate.

**My final decision**

My final decision is that I uphold this complaint and direct Aviva Life & Pensions UK Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F, on behalf of the estate of Mr F, to accept or reject my decision before 12 December 2025.

Paul Reilly  
**Ombudsman**