ASIC

Case studies

Report 806 Taking ownership of death benefits: How trustees can deliver outcomes Australians deserve

Case study 1

Excessive delays and poor service

A man died after a long battle with cancer, leaving behind his wife of over 20 years. The man had a death benefit of over $600,000 and had made a valid binding nomination in favour of his wife. There were no other dependants.

The wife notified the trustee of her husband's death and asked to be sent the claim form. The wife then told the trustee that she needed some time to deal with her late husband's financial affairs and make a plan about what to do with the benefit.

The wife asked the trustee some simple questions about options for payment to help her plan. The trustee's initial response was brief, and the wife requested further details. Despite further contact with the fund over several months, the wife never received a response to all of her queries.

When the wife provided documents for the claim, she was initially told that the death certificate was a 'bit hard to read' (despite it being legible) and that she needed to resend it. Over the next few months, the trustee asked for certified copies of the death and marriage certificates several times without explaining what was wrong with the documents the wife had already provided. She was also asked to provide other documents she had already provided.

When she first contacted the trustee, the wife told the trustee there was a binding nomination, which was confirmed by the trustee in various communications. Later, the trustee told her there was no binding nomination. After the wife pointed out the error to the trustee, the trustee denied ever telling her there was a binding nomination.

After several months of frustrating interactions with the trustee, the wife asked her financial adviser to assist her with providing documents to the trustee.

The trustee finally approved payment to the wife in accordance with the binding nomination. However, payment was delayed by 3 weeks, because the trustee asked the wife for a document it needed to make the payment – even though she had already provided the document a few weeks earlier.

After the benefit was paid, the wife queried the calculation of the benefit amount. It took 2 months and 2 follow-ups before the trustee provided a response.

The trustee took almost a year from when the wife first contacted the trustee until the benefit was paid and 5 months from when she submitted her claim, even though there was a binding nomination and there were no other claimants. While the wife did ask for extra time to gather documents and make financial decisions, the trustee could have better responded to her queries and concerns, which may have assisted her to submit her claim sooner.

Case study 2

Expediting the payment of a low balance account

A man passed away with an account balance of less than $60. He had no insurance and no nomination. He had no will, assets, spouse or children. The man was living with and financially dependent on his brother when he died.

His brother emailed to notify the trustee about the member's passing and attached a copy of the death certificate. Because of the low balance of the account, the trustee contacted the brother by phone to discuss the claim and undertake a risk assessment. During the risk assessment, the trustee collected some personal information and payment instructions from the brother, but waived all other requirements. The trustee paid the benefit to the brother 5 days after the call and 18 days after the email notification.

In this case, the trustee significantly reduced the effort for the brother – and for itself – to match the level of risk associated with a very small benefit. Contrast this case study with the approach to a low balance account in Case study 4.

Case study 3

Claim staking and financial hardship

An older man lost his wife to cancer. His wife had about $25,000 in her superannuation when she passed away. The couple had no children.

The husband made a death benefit claim to his wife's superannuation fund. There were no competing beneficiaries. The man had some difficulty understanding and responding to claim requirements, and the fund was not responsive to his initial inquiries. He was frustrated when the person handling his claim went on long-term leave and no one else was assigned to handle his claim. The husband eventually lodged a complaint with AFCA about the delays, stating that he was concerned his bank was going to sell his house to cover the outstanding mortgage.

Following the AFCA complaint, the trustee was quite responsive to the husband. The trustee accepted alternative documents as proof of spousal relationship and expedited a decision on the claim to help the man pay his mortgage before court proceedings commenced. Despite being on track to meet the man's deadline, the trustee chose to claim stake before payment, sending out a single claim staking notice to the husband, and then waiting 28 days for the claim staking period to end before paying the benefit.

Since the husband was desperate for the money and the proposed decision was to pay the husband the entire benefit, there was no reason to believe he would object to the decision – it would have been entirely appropriate in the circumstances to waive claim staking. The additional month waiting for money that the trustee knew he urgently needed likely caused the husband significant further emotional and financial distress with no benefit to the trustee.

Case study 4

Complaint about suspected fraudulent activity

A mother lost her young adult son. He had a death benefit of less than $100.

The mother complained to AFCA about 3 months after her son passed away. In her complaint, she expressed frustration that the fund had failed to contact her about her concerns of fraudulent activity on her son's account. The mother said she had contacted the fund multiple times after she discovered her son's father had changed the beneficiaries on her son's other superannuation account several weeks after the son had passed away.

The lack of response to her messages led her to believe that there was a problem with the account. In her complaint, the mother also clearly stated that her preference was to be contacted by email for all matters regarding the death benefit claim.

In the fund's response to the mother's complaint, the fund apologised for the delay in contacting the mother, but did not acknowledge the loss she had experienced, address the concerns of fraudulent activity or provide any explanation. Instead, the fund stated that they had tried to contact the mother by phone and invited her to call the fund back, despite her explicit preference to be contacted by email. Most importantly, the response failed to demonstrate any recognition of the vulnerability the woman may be experiencing due to potential financial abuse.

A decision on the claim had not been made 15 months after the fund was notified of the son's death – the trustee was waiting for the mother to submit additional paperwork for a benefit worth less than $100.

Case study 5

Barriers for First Nations peoples accessing death benefits

A First Nations man living in a remote community passed away. He had a death benefit of around $100,000 including insurance. He had a wife, an adult son and other children by cultural adoption. The man's wife made a claim for his death benefit.

The wife told the trustee on several occasions that she was suffering financial distress and, based on our review, it was clear that she was having difficulty navigating the claims process and understanding how to complete claim forms. In particular, she did not understand which children were beneficiaries at law because Indigenous customs about adoption and financial dependency are different.

She also had difficulty meeting the identification requirements because she did not have standard identification documents for her deceased husband. The trustee wanted to contact the member's children separately to understand if they were entitled to death benefits, but many of them did not have a phone and had a cultural expectation that the wife would deal with the trustee on behalf of the family.

The trustee did not respond to the wife's concerns about financial hardship or support her to understand the claims process. Despite having an alternative identification policy, the trustee took more than a year to offer the wife alternative identification options.

The trustee finally decided to pay the wife after more than 500 days. However, as of the date we collected the claim file, the wife still had not received payment.

Case study 6

Avoiding unnecessary delays for First Nations claimants

A First Nations man with four children passed away. He had a small balance in his account and no insurance. The children's grandmother (i.e. the man's mother) lived in a very remote area. She made a claim on behalf of the children in her care.

When the grandmother returned the claim form and supporting documents by email, she was asked to resend them by post. This created an unnecessary delay. The trustee also asked the grandmother a number of sensitive questions about the man's life and death, without first seeking to understand if the information was actually necessary. These questions may have been upsetting for the grandmother.

The grandmother was also asked to provide information about each of the children. She explained that they had different mothers – two children lived with the grandmother and two children lived with their mothers. One of the children living with the grandmother did not have the member listed as the father on their birth certificate, but the child was widely regarded as the man's child by the rest of the family. The trustee accepted this and did not require the grandmother to obtain further evidence of the relationship, which could have been difficult given her location. This prevented an unnecessary delay.

The trustee asked for contact details for the other two children and made contact with the third child's mother. The remaining child's mother was contacted and declined to make a claim or provide any information.

The trustee requested information about the grandmother's custody of two of the children, which she provided by email. However, the trustee then waited 4 months before deciding it needed more information. This created an unnecessary delay. The trustee then obtained the information it needed by phone, avoiding further delay.

The trustee took two more months to make a decision and then over a month to notify all the claimants.

The trustee paid the benefit to the grandmother on behalf of the two children in her care, and to the mother of the third child on that child's behalf, waiving the requirement to set up minor trusts, which was appropriate in the circumstances and avoided further delays. However, the trustee then insisted on both the grandmother and the mother providing bank statements, which resulted in an additional delay of almost 2 months before payment. This delay could have been avoided if the trustee requested payment information earlier in the process or waived the requirement for bank statements.

The entire process took over 16 months.