

Ombudsman's Determination

Applicant	Mr I
Scheme	Banca Commerciale Italiana Retirement and Death Benefits Scheme (the Plan)
Respondents	Aon Hewitt

Outcome

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

Complaint summary

3. Mr I has complained that Aon Hewitt, the scheme administrator acting on behalf of the trustees of the Plan (**the Trustees**), has not allowed him to transfer his benefits under the Plan to another pension arrangement, and that this has caused him financial loss and distress.

Background information, including submissions from the parties

4. Mr I is a pensioner under the Plan. He was granted an early retirement pension on grounds of ill health with effect from 2 June 2012.
5. In September 2013, following discussions with his financial adviser about how he could increase his monthly income, Mr I requested a transfer from the Plan to the Gresham (2012) Pension Scheme (**the Gresham Scheme**).
6. In January 2014, having learnt that the Gresham Scheme had been closed so could not receive a transfer payment, Mr I requested a transfer from the Plan to the Abbey Mage Pension Scheme (**the AM Scheme**).
7. Aon Hewitt sent an email to Mr I on 23 October 2014, that said:

"I write with reference to your request for a transfer out of the BCI Pension Plan. As you are a retired member of the Plan you do not have a statutory right to transfer your benefits out of the Plan. Any decision to allow this is subject to Trustee discretion. As part of any transfer process, we are required

to undertake additional checks to ensure that the provider is not linked to any potential pension liberation actions. We have undertaken this check and it has highlighted that the Scheme may be associated with pension liberation and it is therefore unlikely that the Trustees will authorise a transfer of your benefits”.

8. Aon Hewitt later confirmed to Mr I that the Trustees would not authorise his transfer to the AM Scheme.
9. In 2015 Mr I invoked the Plan’s internal dispute resolution procedure (**IDRP**). Aon Hewitt informed Mr I in letters dated 10 December 2015 and 25 April 2016 respectively that his appeals under stage 1 and stage 2 of the IDRP were unsuccessful, because he had no statutory right to a transfer and the Trustees were entitled to decide that they would not exercise their discretion to make a transfer.

Adjudicator’s Opinion

10. Mr I’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Aon Hewitt. The Adjudicator’s findings are summarised briefly below:
 - Under Part 4ZA of the Pension Schemes Act 1993 (**the Act**), a member of a pension scheme has a statutory right to a cash equivalent transfer value, which can be transferred to another pension arrangement, provided that specific conditions are all met. The right is enforceable against the trustees or managers of the pension scheme.
 - Condition 2, set out in s.93(3) of the Act, is that “no crystallisation event has occurred in relation to the member’s accrued rights to benefits...”.
 - S.93(7) explains that “For the purposes of Condition 2 a crystallisation event occurs in relation to a member’s accrued rights to benefits...when (a) payment of a pension in respect of any of the benefits has begun,...”.
 - As payment of Mr I’s pension had started in 2012, it follows that he did not have a statutory right to a transfer out.
 - Where there is no statutory right to a transfer out, a transfer may still be available if the rules of the pension arrangement give the trustees of that arrangement a discretion to make a transfer, and if the trustees exercise that discretion to do so.
 - Aon Hewitt told Mr I that the Trustees had such a discretion, but would not exercise their discretion in his favour because of their concerns about “pensions liberation”.
 - It was noted that in 2014 the Determinations Panel of the Pensions Regulator decided to appoint an independent trustee of several pension arrangements, including the Gresham Scheme and the AM Scheme, citing various grounds,

including evidence that pension liberation payments had been made contrary to pensions legislation. The Pensions Regulator confirmed that decision.

- As the Trustees had a discretion whether or not to authorise a transfer for Mr I, but he had no statutory right to transfer, they were entitled to decide, having considered the matter, that they would not allow him a transfer to the AM Scheme.
11. Mr I did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr I provided his further comments which 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 Mr I for completeness.

Ombudsman's decision

12. Mr I complained that during the IDRP, and subsequently, Aon Hewitt did not cite any legislation to support the Trustees' stance that Mr I had no statutory right to a transfer payment. In my view it would have been helpful if Aon Hewitt's letters of 10 December 2015 and 25 April 2016, had contained more detail and had set out "chapter and verse". However, the relevant provisions of the Act were referred to in the Opinion (see paragraph 10 above). In short, as Mr I's pension had already started there was no statutory right to a transfer. Mr I has not put forward any evidence to show that he did have a statutory right to a transfer.
13. Furthermore, Mr I has not provided any credible evidence to support his comment that he lost out financially by not having a transfer to the Gresham Scheme or the AM Scheme.
14. I accept that it would have been frustrating for Mr I not to be able to make the transfer that he wanted, but the Trustees had good reasons for not exercising their discretion. In the circumstances, I do not consider that it would be appropriate to make any award to him for his distress and inconvenience.
15. Therefore, I do not uphold Mr I's complaint.

Anthony Arter

Pensions Ombudsman
30 September 2016