Ombudsman's Determination

Applicant	Mr N
Scheme	Commando 2012 Pension Scheme (**the Scheme**)
Respondents	Liddell Dunbar Ltd (**Liddell Dunbar**) Mr Stuart Garner (**the Trustee**)

Outcome

1. Mr N's complaint is upheld and to put matters right Mr Garner should pay the transfer value, mitigate any investment losses and pay Mr N £500 to recognise his significant distress and inconvenience.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N is complaining that Mr Garner and Liddell Dunbar have delayed the transfer of his benefits out of the Scheme.

Background information, including submissions from the parties

4. The Scheme was established by Deed dated 28 June 2012 'for the sole purpose of providing pensions and lump sum benefits under occupational pension arrangements made by individuals and individuals' employers in accordance with the T12 Scheme Rules'. Membership is expressed to be open to officers and employees of the Provider, Manorcrest Limited and any [other] individuals.. 'with the consent of the Provider or the Trustees. Mr Garner is the sole Trustee and the scheme administrator. Mr N has never been employed by an employer relating to the Scheme. He joined the Scheme, via a transfer in, on 22 October 2012. The transfer value accepted into the Scheme was £41,120.56. He became a deferred member on the same date he transferred into the Scheme.

5. Mr N was unable to provide copies of any documents relating to when he joined the Scheme, but, as part of the investigation, a copy of the Statement of Investment Principles was provided[1]. The Statement of Investment Principles states that the investment is wholly invested in preference shares with Norton Motorcycles (UK) Ltd

[1] See Appendix I

(**Norton**) (of which Mr Garner is the company director). It goes on to state that 'funds cannot be withdrawn during the 24 months from the date of transfer to the Scheme and the further, the Scheme applies charges on a sliding scale for the early transfer out of funds from the Scheme after 24 months and prior to five years of investment in it. After the fifth year of investment there is no charge for fund transfer based on value beyond normal administration costs otherwise notified to the members from time to time.'

6. In July 2017, Mr A filled in a benefit payment request form seeking to take his benefits through Flex-access drawdown. . Mr N chased the matter regularly with Mr Garner and Liddell Dunbar, noting that he had incurred a 'fine of £7,000 from HMRC' in relation to the transfer in and wanted to immediately withdraw the maximum amount of Pension Commencement Lump sum ie 25% . Mr Garner responded on 13 September 2017 to say that he had been working with a tax specialist to reduce a tax charge being applied to members. He stated as funds are 100% invested, the Trustee has to buy back shares from Norton and turn them into cash and therefore it can take longer to have funds transferred back out to a nominated account or pension company

7. Having taken advice from his appointed advisors Mansion Park, Mr N withdrew his drawdown application and instead submitted an application for a transfer value.

   The transfer application from Royal London was dated Friday 23rd February 2018 and Liddell Dunbar say it was received on Tuesday 27th February.

   They say they passed it to the Trustee to begin the disinvestment process on Monday 5th March 2018.Liddell Dunbar submitted that it has been chasing Mr Garner regularly in relation to the disinvestment of the funds to allow the transfer.

8. Mr Garner has been contacted a number of times as part of this investigation, asking for a response to the complaint and additional information, including reasons for the delay.

9. Mr Garner responded on 25 March 2018 (following this office reminding him of our powers under Part X, Section 150 of the Pension Schemes Act 1993 (**the Act**)):

   "… Mr N transferred out of the scheme late in 2017 and I think we have all assumed it was all put to bed and sorted through.

   In answer to your questions around the complaint I feel we are looking solely at a time delay as Mr N had assumed funds would be transferred earlier and had already made other financial commitments over his transfer out and therefore found himself in an awkward position.

   The scheme invests fully to ensure best returns and therefore does sometimes take a while to get funds released and enable a transfer out, we do communicate this to members and ensure they are advised of transfer times.

We have reviewed our investments and are looking at ways to continue with best returns but to deliver a more liquid options for members.

Once again, my apologies for the delay and I am pleased to confirm the transfer took place many months ago. ”

10. On 17 May 2018 Mr Garner was asked for further information including details of the transfer, when it was requested, what steps were taken and when/where the funds were transferred to and a copy of the CETV statement.

11. On 6 June 2018, Liddell Dunbar were asked to comment on Mr Garner’s contention that funds had already been transferred.

12. On 22 June 2018 Liddell Dunbar replied that they had been in contact with Mr Garner and he had assured them that the transfer value of £48,830.67 will be sent to Royal London ‘in the coming weeks’. On being pressed for a copy of the CETV and copies of any correspondence with the Trustee, Liddell Dunbar responded on 6 July 2018, saying that the transfer was ‘progressing’, they were ‘just the Practitioners’ and Mr Garner is the appointed Administrator and Trustee.’

13. On 10 July 2018, Liddell Dunbar provided a document showing a transfer value payable of £48,830.67. They explained this was still current as at today’s date, the value had not changed during the period since the date of the transfer application and that they were requesting progress updates from the Trustee on a daily basis. They also stated that they intended to ‘run an up to date CETV before any funds are released to Royal London.’

14. , On 13 July 2018, Mr Garner was reminded that under the Act[2], Mr N has a right to transfer. Mr N also has a right to a transfer under the Scheme’s rules[3]. Mr Garner was also reminded that Part 4ZA, 99(7) of the Act provides the time frame in which the transfer should take place, i.e. six months from the date of the guaranteed CETV. It also states that any failures to comply should be notified to The Pensions Regulator (**TPR**).

15. He was also told that Mr N and Liddell Dunbar had contradicted his assertion that the transfer had already taken place and asked to explain the delay (with supporting evidence) and to provide a timeframe within which the transfer would complete.

16. Mr Garner responded on 14 September 2018. In relation to the transfer of funds, Mr Garner’s letter said:

“When we started the pension scheme I was led to believe by the individuals mentioned earlier that the investment would be over a ten year period. That was incorrect and as I’ve done my own work on behalf of members it transpires that members could in fact opt to leave the scheme after only five years.

[2] Part 4ZA, Section 93A to 95 of The Pension Schemes Act 1993
[3] See Appendix II

This misinformation has had a significant effect on the scheme and indeed Norton Motorcycles. We made some key decisions about investments and funding on the assumption that we would not have to repay the majority of funds invested by members until the ten year anniversary.

However, many members have chosen to withdraw their funds at the five year point which has caused considerable issues and resulted in unfortunate delays in making the requested transfers. Norton has now repurchased around £2m of Preference Shares to enable members to transfer out or take benefits. None of this was expected or budgeted for, the poor advice to members, Trustee and Norton Motorcycles from individuals at the outset has led to a difficult position for all of us now.

I appreciate how frustrating this has been for some of you but the good news is that I am working with Norton to re work cash flows and the business plan to secure additional funding and should be able to resume timely pay-outs to members wishing to leave the scheme."

Adjudicator's Opinion

17. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Liddell Dunbar, but further action was required by Mr Garner. The Adjudicator's findings are summarised briefly below:-

- Liddell Dunbar have regularly been chasing Mr Garner regarding the transfer and therefore no further action was required by them.
- However, Mr Garner had failed to respond to the complaint in any substance. Mr N has a statutory right to transfer and Mr Garner had failed to give a proper explanation as to the continuing delay, despite being reminded of his fiduciary duties and requirements under the Act.
- As Mr Garner had put forward no justifiable reason for the delay, it was the Adjudicator's view that the transfer should proceed, along with a payment for any investment loss caused to Mr N, as well as £500 to recognise the distress and inconvenience caused to him.

18. Mr N accepted the Opinion and neither Liddell Dunbar or Mr Garner responded to the Opinion. The case was therefore referred to the Ombudsman for decision.

Ombudsman's decision

19. Mr N is entitled to take a transfer value under the terms of the Scheme and under the Transfer Value Regulations. No dispute has been raised about that right or the amount of the transfer value itself. The statutory timeframe for transfer of his benefits expired on 27 August 2018. Despite assurances to the contrary, the transfer has still

not taken place. I therefore uphold the complaint and make the following direction which is enforceable as if it were an order of the County Court.

Directions

20. To put the matter right, Mr Garner must within 21 days of the date of this Determination:

- Complete the disinvestment of the funds and transfer the up-to-date transfer value as at 27 August 2018, to Mr N's chosen fund at Royal London;
- Upon Mr N or Royal London providing details of the fund values on 28 August 2018 and at the date of the transfer along with a calculation of any shortfall in the number of units actually purchased compared with the number which could have been purchased on 28 August 2018, pay an additional sum equivalent to the shortfall direct to Royal London; and
- Pay Mr N £500 to recognise the distress and inconvenience caused.

Karen Johnston

Deputy Pensions Ombudsman
2 November 2018

Appendix I

STATEMENT OF INVESTMENT PRINCIPLES

Background

1. This Statement sets out the principles covering decisions about the investment of the assets of the Commando 2012 Pension Scheme ("the Scheme"). The Trustees of the Scheme ("the Trustees") issue this Statement to comply with the legislation and regulations relevant to investments by pension schemes from time to time ("the Investment Regulations").

2. Preparing this document, the Trustees of the Scheme have sought advice from advisers. It is the intention of the Trustees to review this document regularly and at least once in every three years; or sooner following any material change in the asset of liability position of the Scheme. It will also be reviewed immediately following any material change to the Scheme's investment strategy.

Scheme investment objectives

3. The Trustees aim to invest the assets of the Scheme prudently to ensure that the benefits promised to members are provided. In setting investment strategy, the Trustees invest primarily in preference shares in the capital of Norton Motorcycles (UK) Limited ("the Company"). The Trustees intend to ensure that the Scheme has an appropriate degree of liquidity given predicted cashflows in respect of benefit payments.

4. Funds invested in the Scheme are designed to maximise their return over a five year plus period to coincide with the investment in preference shares issued by the Company. In order to protect the investments of all members of the Scheme, funds cannot be withdrawn during the 24 months from the date of transfer to the Scheme and further, the Scheme applies changes on a sliding scale for the early transfer out of funds from the Scheme after 24 months and prior to five years of the investment in accordance with the following table:

Charge (% of fund value)	**Transfer of funds prior to following anniversary**
20%	Third
15%	Fourth
10%	Fifth
After the 5th year of investment there is no charge for fund transfer based on value beyond normal administration costs otherwise notified to the members from time to time.	

Appendix II

Commando 2012 Pension Scheme

Scheme Rules

9 TRANSFER OUT OF THE SCHEME

9.1 Member's Right to a Recognised Transfer

A member has a right to request that the "cash equivalent" of all the accumulated funds, assets and other rights held within any or all arrangements under the scheme should be transferred in accordance with section 169 of the 2004 Act to:

- Another registered pension scheme; or
- A qualifying recognised overseas pension scheme.

The transfer must be made by a direct payment between the trustees/scheme administrator and the administrator or trustee of the other scheme. The transfer may not be paid or passed through a financial intermediary or broker. If the scheme has appointed a pensioneer or managing trustee, then the pensioneer or managing trustee must be a party to the transaction.

The scheme administrator will make enquiries of the proposed receiving scheme to satisfy itself that the receiving scheme qualifies as a registered pension scheme or qualifying recognised overseas pension scheme. Unless satisfactory evidence is received, the scheme administrator will not process the transfer of funds.