

## Ombudsman's Determination

<b>Applicant</b>	Mr Mark Crossland
<b>Scheme</b>	Henley Retirement Benefit Scheme
<b>Respondent(s)</b>	Omni Trustees Ltd ( <b>Omni</b> )

### Complaint Summary

1. Mr Crossland complains that Omni has refused to act on his request to transfer his benefits out of the Henley Retirement Benefit Scheme (the Henley Scheme).

### Background

#### Pension liberation

2. This case is connected to what is known as “pension liberation” or “pension scams”.
3. To begin with the basics: present tax legislation is designed to prevent access to pension funds before the age of 55 (other than in ill-health or as benefits following death) as part of the policy that encourages pension saving by giving tax advantages, with penalties if the advantages are abused by using funds other than for authorised purposes. There was also, at the material time, a limit on the amount that could be taken as cash at any age.
4. The practice of pension liberation involves a transfer away from a genuine pension scheme intended to allow access to a scheme member’s pension savings before the age of 55, or to more cash than would normally be allowed. It is recognised as being contrary to the broad policy of encouraging pension savings and is of concern to the regulatory and tax authorities and those responsible for national pension policy.

#### The statutory right to a transfer value

5. Section 94 of the Pension Schemes Act 1993 (PSA93) provides that a member of an occupational or personal pension scheme has a right to a “cash equivalent transfer value” of any benefits which have accrued under the transferring arrangement.
6. Section 95(1) of PSA93 says that a cash equivalent transfer value can be taken by making an application in writing to the managers of the transferring arrangement

requiring them to use the cash equivalent in one of several ways set out in subsequent paragraphs. In summary, and so far as relevant, they are:

- for acquiring “transfer credits” in an occupational pension scheme or
- for acquiring rights under a personal pension scheme

which satisfies prescribed requirements in each case and where the trustees or managers of the scheme are able and willing to accept the transfer.

7. Section 99 of PSA93 requires the trustees or managers to carry out the member’s requirements within a specified period – basically within six months of application, or, in the case of salary related occupational pension schemes, six months of the date of guarantee of the amount of the cash equivalent. It also provides:
  - that the Pensions Regulator can extend the six month period in specified circumstances;
  - for notification to the Pensions Regulator where payment is not made; and
  - in the case of occupational pension schemes, for civil penalties to be imposed by the Pensions Regulator on trustees or managers who have not taken reasonable steps to comply.
8. An application, for the purpose of the time limit above, is one that requires the trustees or managers of the scheme to use the cash equivalent transfer value to acquire credits in an occupational or personal pension scheme which meets prescribed requirements under legislation and the trustees or managers of which are able and willing to accept payment.

### **Mr Crossland’s case - Material Facts**

9. Mr Crossland has transferred pension policies from Wesleyan Assurance and Scottish Widows to the Henley Scheme. The Henley Scheme, the advice given in connection with it and the investments under it have recently been the subject of media coverage. I am of course aware of that coverage, but I deal here purely with the facts in Mr Crossland’s case.

### **Mr Crossland’s transfers from Wesleyan Assurance and Scottish Widows**

10. Mr Crossland’s complaint is not about the decision to transfer to the Henley Scheme, but what happened gives context to his later attempt to transfer away from the Henley Scheme, about which he has complained.
11. On or around 16 November 2012 Mr Crossland authorised Sanderson Clarke to act on his behalf in obtaining information about his pension plans. The letter from Sanderson Clarke of that date says it would trace all pension plans, confirm current and forecasted values, and arrange for an independent financial adviser to produce a report setting out Mr Crossland’s options. It continued that Sanderson Clarke would

not provide any financial or investment advice, were not regulated by the Financial Services Authority (now FCA) and did not handle deposit or client funds.

12. I mention the regulatory matters for background only. Nothing turns on them because the giving of advice in relation to transfers to occupational pension schemes, as the Henley Scheme was said to be, was not a regulated activity.
13. On 31 January 2013, Scottish Widows confirmed receipt of a transfer request from Mr Crossland but requested it be dated and returned. This was done and on 15 February a further request was made for a transfer declaration form, which had been left out of the original paperwork. This must have swiftly followed because payment of £52,462.74 was made on 18 February 2013, to T12 Administration.
14. Around the same time a similar transfer request had been made to Wesleyan Assurance, whose letter dated 4 February 2013 confirmed the payment of £48,246.10 to the Henley Scheme c/o T12 Administration.
15. An Opening Unit Statement dated 21 February 2013 shows receipt of both payments by Omni for the Henley scheme, and that a charge of £1,800 had been applied.
16. On 7 March 2013, Omni wrote to Mr Crossland to tell him that DBC Pension Services Limited had been appointed as the new scheme administrator.
17. However, this had apparently changed again by September 2013, when Omni sent an undated letter to Mr Crossland saying:

“The Principal Sponsor of the Scheme is Henley Management Consortium Limited.

Other companies or bodies can become Participating Bodies under the Scheme.

The Scheme is an occupational pension scheme. The Scheme is a Registered Pension Scheme...

The Scheme is managed by Omni Trustees Limited (“OTL”). ITSL is the Administrator of the Scheme...

Copies of the governing documents of the Scheme are available to Members...

Admission to membership is at the discretion of the Principal Sponsor and is subject to terms and conditions. Members can terminate membership by giving one months’ notice in writing addressed to the trustees...

For members who leave the Scheme before taking benefits, applications may be made for a transfer of the value of the Member’s account. You should do this by writing to the OTL...”

18. On 25 November 2014, a company named Timoran Capital Trust wrote to Mr Crossland. This company said that it was the Trustee of the Timoran Capital SSAS, which had received a transfer of assets of the Henley Scheme from Omni on 24 July 2014. However, it had quickly become apparent that some assets had not been transferred and a report was said to have been made to the Pensions Regulator. Why such a transfer was made, if at all, and whether it involved Mr Crossland's pension fund is unclear.

### **Mr Crossland's attempt to transfer from the Henley Scheme**

19. Mr Crossland says that he has not been able to obtain any information about his pension for over 12 months.
20. On 3 March 2014 Mr Crossland wrote to Omni (and this office) to summarise his concerns. Within that letter he requested a transfer value. He did not say where he wanted the transfer to go but indicated that he had recently made previous similar requests.
21. Mr Crossland attempted to contact Omni by phone and in writing on several further occasions but has not received a response. He made a further transfer request on 3 June 2014, specifically stating that he wished to transfer to the Genwick Retirement Benefits Scheme. This seems to be an occupational pension scheme, but Mr Crossland is apparently not employed by an employer in relation to it.

### **Omni**

22. Omni has been invited to respond to the allegations brought against them but the only response has been an email of 18 June 2014 saying that Omni remained the scheme administrator but its service to members had been affected by a number of administration problems and disruptions over the last 12 months. A similar email was sent to Mr Crossland.
23. The scheme assets were said to be currently invested in commercial property and due to a number of member requests to take benefits, a sale of a commercial property was requested by the Trustees to create sufficient liquidity in the fund. The sale had yet to be completed but was imminent. Once completed, they would be in a position to honour all outstanding member requests (transfer values, pension commencement lump sums and death claims). In the case of Mr Crossland, as he was under the age of 55, he was not yet eligible to request retirement benefits but he was eligible for payment for a transfer value, subject to written request.
24. We have received no update since from Omni regarding the claimed transfer to Timoran Capital Trust.

## Conclusions

25. Mr Crossland has transferred away from two reputable established schemes and there is little doubt that it was against his best interests to do so. He transferred to the Henley Scheme, which is of a type that is designed to avoid regulatory obligations that would otherwise limit scope for abuse and/or bad advice. He apparently did so in search of high investment returns. I do not know what has happened to the assets he transferred. They may or may not be secure, though he is very rightly concerned that they are not.
26. However, I am not dealing with advice to transfer to the Henley Scheme. The matter Mr Crossland has brought to me is his inability to get the money out of the Henley Scheme now.
27. The primary question is whether Mr Crossland had a legal right to transfer out of the Henley Scheme. My usual approach would be to look at his rights first under the Henley Scheme and then under statute. Mr Crossland has told us that he has never seen the Henley Scheme's governing documents. No detailed response to my investigator's enquiries has been forthcoming from Omni and I am not therefore able to reach any sort of conclusion as to whether Mr Crossland has a freestanding right under the Henley Scheme to a transfer or whether there might be an element of discretion involved. The email from Omni of 18 June 2014 suggests that he may have a freestanding right. But in any event whatever the transfer provisions of the Henley Scheme are Mr Crossland cannot be deprived of a statutory right to a transfer, if he has one.
28. So I move on to whether Mr Crossland's application met the statutory requirements for a request for a cash equivalent transfer value.
29. Section 94 of PSA93 provides that a member of an occupational or personal pension scheme has a right to a "cash equivalent transfer value" of any benefits which have accrued under the transferring arrangement. Section 95(1) of PSA93 says that a cash equivalent transfer value can be taken by making an application in writing to the managers of the transferring arrangement and Section 99 of PSA93 requires the trustees or managers to carry out the member's requirements within a specified period – basically within six months of application in this case.
30. In the information provided to Mr Crossland, the Henley Scheme is referred to as an occupational defined contribution scheme. Correspondence from Omni is addressed either to Mr Crossland or 'Member.' So on Omni's own account, Mr Crossland was a member of an occupational scheme.
31. He wrote to the trustees of that occupational scheme and asked for a cash equivalent transfer value. However to qualify as an application for the purpose of the six month time limit for payment it needed to require Omni to use the transfer value to acquire credits in an occupational or personal pension scheme the trustees or managers of

which were able and willing to accept payment. Strictly, Mr Crossland's original request did not meet the test.

32. Mr Crossland made a later request to transfer to the Genwick Retirement Benefits Scheme, which is said on its application form to be an occupational scheme. I do not have a copy of that scheme's rules, however on its face, this application would also not appear to meet the requirements for the exercise of a statutory transfer right.
33. But, it was unquestionably maladministration not to respond – and it is the lack of response that stopped the process. If Mr Crossland had then submitted a full transfer request to a pension scheme, which met the prescribed requirements under legislation and was prepared to accept it, he would have acquired a statutory transfer right.
34. I strongly recommend to Mr Crossland that his next transfer application should be to a pension arrangement of which the provider is regulated by the Financial Conduct Authority or to one that is directly related to active employment. I also recommend that he takes the advice of a person authorised by the Financial Conduct Authority. Doing otherwise will leave him vulnerable to a repeat of the experience he has already suffered, or worse.

**Directions**

35. Within 14 days of Mr Crossland requesting a transfer value to a named scheme that meets the prescribed requirements under legislation and is prepared to accept it, Omni are to pay the transfer value to that arrangement.

**Tony King**

Pensions Ombudsman  
12 May 2015