

The complaint

Mr H has complained about a transfer of his Sanlam Life and Pensions (Sanlam) personal pension to a small self-administered scheme (SSAS) in October 2014. Mr H's SSAS was subsequently used to invest in Dolphin Capital loan notes, a fractional property investment in a hotel development and in Park First. Mr H says he has lost out financially as a result.

Sanlam Life and Pensions now operates under the name Countrywide Assured Plc (Countrywide) who are now the respondent in this complaint. For clarity I will refer to Countrywide in this decision when referring to acts, omissions or expectations of the respondent business.

Mr H says Countrywide failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr H says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Countrywide had acted as it should have done.

What happened

Countrywide explain that it received a number of requests for pension information on behalf of Mr H between 2010 and 2013.

Mr H says he was cold called by Technical & Professional Solutions Ltd who recommended that he could get better investment returns by transferring his existing personal pensions to a SSAS. Mr H explains that he was attracted by the prospect of the improved investment performance in excess of what he could expect from his personal pensions.

In June 2014, a company was incorporated with Mr H as director. I'll refer to this company as Firm H. On 6 June 2014, Mr H signed documents to open a SSAS with Rowanmoor Group. Firm H was recorded as the SSAS's principal employer. The SSAS documentation also recorded that the SSAS was to be used to invest in: a care home, Dolphin, and Park First.

On 6 October 2014 Countrywide received a request to transfer Mr H's pensions via the ORIGO Options platform. The request was sent from Rowanmoor. It included details of the receiving scheme, described as a SSAS and it had a section headed 'Adviser Firm Name' where it gave the name Technical & Professional Solutions.

The funds for Mr H's Countrywide pensions were transferred to the Firm H SSAS account on 20 October 2014. His transfer value was around £147,500. He was 55 years old at the time of the transfer.

At the same time Rowanmoor made a transfer request for Mr H's personal pensions held with Sun Life of Canada (SLOC), via ORIGO Options. SLOC responded by requesting further information and the completion of transfer forms. It transferred pensions in February 2015 with a combined value around £21,700. That transfer is subject of a separate complaint

but I've taken into consideration the circumstances surrounding both transfers when considering this one.

On 3 November 2014 an investment of £50,000 was made in a Dolphin Capital loan note, a property development scheme in Germany. The properties were never developed and many investors lost their investments.

On 18 May 2015 an investment of around £34,000 was made in Park First (fractional car park ownership). The companies involved in this investment are understood to have failed and investor's money is unlikely to be repaid.

On 29 July 2015 an investment was made by the Firm H SSAS into a South Wales Resort Hotel via Kayboo Ltd. Kayboo Ltd went into administration in 2016. Issues with this investment included the fact that leases were not registered and property was never actually purchased.

By 12 August 2022 Mr H had transferred the residual value of his SSAS – £32,868.80 – to True Potential SIPP.

In August 2020, Mr H complained to Countrywide. Briefly, his argument is that Countrywide ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Countrywide didn't uphold the complaint. It said that the first contact it had regarding this transfer was the ORIGO request from Rowanmoor. So it didn't consider it had an opportunity to send Mr H the Scorpion insert prior to the transfer. It argued that he would have received the Scorpion insert as part of an annual statement pack in previous years. It explained that, under an ORIGO transfer, the receiving scheme was taking the lead and the receiving scheme should have provided the Scorpion insert to Mr H. And it explained that it considered that ORIGO carried out due diligence on participating schemes. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued a provisional decision to let both parties know what I thought about the complaint.

What I said in my provisional decision

"The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Countrywide was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- *Principle 2 – A firm must conduct its business with due skill, care and diligence;*
- *Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;*

- *Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and*
- *COBS 2.1.1R (the client’s best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren’t entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the “Scorpion” guidance.

The Scorpion guidance was launched by The Pensions Regulator (TPR). It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

The guidance was updated on 24 July 2014 (which was before Mr H’s transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

In late April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled “Protect Your Pension Pot” the increase in the use of SPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

The Scorpion guidance

The materials in the Scorpion campaign comprised:

- *An insert to be included in transfer packs (the ‘Scorpion insert’). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.*
- *A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.*
- *An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “watch out for” various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.*

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's rights.

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider that firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

- 1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.*
- 2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert*

should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

- 3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator’s Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn’t involve the sending of transfer packs.*
- 4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn’t an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.*
- 5. The considerations of regulated firms didn’t start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn’t involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm’s attention, or should have done so, would almost certainly breach the regulator’s principles and COBS 2.1.1R.*

The circumstances surrounding the transfer – what does the evidence suggest happened?

Mr H has said he had little experience with regard to pensions and investments and trusted the information he was being given by Technical & Professional Solutions Ltd. And I haven’t seen anything that leads me to think otherwise. What Mr H has said about what he was told is, in my view, consistent with him being advised - if he was told the transfer was in his interests and that the proposed investment would outperform his existing pensions and be better for him. But these are Mr H’s recollections at the time of the complaint, which he first raised in 2020. And these recollections aren’t consistent with the information he provided to SLOC at the time of the transfer.

SLOC sent Mr H an ‘Additional Information & Declaration’ form in October 2014, to gather more information about his transfer request. It included a question about whether Mr H had been advised to which Mr H ticked ‘no’. And it asked if he’d received cold calls or unsolicited contact which led to the request, to which Mr H again ticked ‘no’. And Mr H signed this form.

While I’ve taken on board what Mr H has now said about the events surrounding the transfer, I’m conscious his statement about this was more than around six years after the events took place. And the documentary evidence from the time, which I think it would be reasonable to place greater reliance on, is at odds with this. I think his testimony that he was being advised by Technical & Professional Solutions Ltd is generally plausible given what I know about the way these transfers came about in other cases.

What did Countrywide do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Mr H has said that he does not recall having been sent the Scorpion insert. And I don't think that the evidence that Countrywide provide makes it clear that it sent this to him. By this I mean that Countrywide haven't provided us with any evidence that it did, but has said that Mr H would have received it when he was sent statements. But hasn't said when Mr H was sent statements or shown us the contents of such correspondence so I don't think I can reasonably take this point into consideration.

Countrywide has said that it didn't send it because the transfer request came via ORIGO. But, for the reasons that I've already explained earlier, I think it should have sent the insert or given substantially the same warnings in some other way. And Countrywide has provided no evidence that it did.

I have also considered the other transfer request that was made on Mr H's behalf to SLOC. Nothing in that persuades me that Mr H had sight of the Scorpion insert prior to the Countrywide transfer completing. But the evidence I have seen persuades me that it wouldn't have made a difference in this case. As I will refer to later, I think that Mr H had seen the Scorpion insert ahead of the SLOC transfers and still went ahead with those anyway. So I don't think it's reasonable to conclude that anything in the Scorpion insert would have deterred him from transferring his Countrywide pension either.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. Other than checking the contents of the transfer request, Countrywide did no additional due diligence on the transfer.

I am aware that Countrywide argued that ORIGO would already have completed due diligence checks on the receiving scheme's administrators. And that this negated the need for it to do its own due diligence. However, Countrywide hasn't provided any details on what exactly ORIGO did in this respect. And I think that points to the problem here, which is that Countrywide relied on due diligence conducted by a third party even though it doesn't appear to have really known what that due diligence involved. I've taken into account what the due diligence in question was aimed at preventing – pension scams, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening. Given the duties of personal pension providers under PRIN and COBS 2.1.1R, I don't think Countrywide's approach was good enough here.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Countrywide could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of single-member SSASs; they don't have to be registered with TPR. In the absence of that oversight, Countrywide was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have

been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) weren't FCA-regulated so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded Countrywide could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr H's transfer.

Countrywide had limited information from the ORIGO request at the time. But I explained above that a minimum expectation of pension providers was always to check that the receiving scheme was properly registered. Had it done that it would have established that Mr H's SSAS was recently registered which would have been a feature of Mr H's transfer that was a potential warning sign of a scam. So Countrywide should have determined that and, having done so, followed up on it to find out if other signs of a scam were present.

Given this warning sign, I think it would have been fair and reasonable – and good practice – for Countrywide to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

- 1. The nature/status of the receiving scheme*

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them?

- 2. Description/promotion of the scheme*

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

- 3. The scheme member*

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr H's transfer request, and the relatively limited information it had about the transfer, I think in this case Countrywide should have addressed all three parts of the check list and contacted Mr H as part of its due diligence.

What would Countrywide have found out?

What is key in this case is what I think Countrywide would have found out if it had contacted Mr H to assess the overall presence of warning signs in his transfer. I understand that Mr H has stated in his complaint in 2020 that he was cold called and that he received advice from a company not regulated by the FCA to give that advice. But for the reasons that I will explain, I am not persuaded that is what Countrywide would have been told had they asked those questions in October 2014 when assessing the transfer.

Of relevance in determining whether Countrywide did enough is what its enquiries would, more likely than not, have revealed. Whilst Countrywide did not appear to make any of the enquiries that were suggested in the Scorpion Action Pack, in the linked transfer from SLOC enquiries were made. In that case SLOC sent Mr H an 'Additional Information and Declaration' form. I referred to this earlier. I think it's fair and reasonable to consider the responses that Mr H gave SLOC in determining what Countrywide would, more likely than not, have found out. That's because, if asked the same questions by Countrywide, I don't see why Mr H's responses would have been different than those he gave SLOC.

Investigations under part 1 of the check list would have established that the scheme had been registered with HMRC less than two months prior to the transfer request. And that the sponsoring company was established four months before the transfer request. Had enquiries been made of Mr H, Countrywide would most likely have determined that he was a director of Firm H although it may have established that he wasn't employed in any meaningful way by Firm H and that it was not trading.

Under part 2 of the check list Countrywide would likely have established that the intended investments included overseas property and other unusual investments. But it would have also established that Mr H had not been offered any incentives or bonuses for making the transfer, which was the response he provided SLOC to this question.

For part 3 of the check list Countrywide had a named adviser on the ORIGO request. And that named adviser wasn't regulated to provide advice. But I still think it would have been reasonable for Countrywide to contact Mr H to ask about that. As SLOC did. I think that Countrywide would most likely have been told that Mr H wasn't cold called and wasn't acting on financial advice. Had it made such an enquiry of Mr H I think it would be reasonable for it to accept the answer it received. Even if that direct response from him contradicted what Rowanmoor had filled out on the ORIGO request. So, as I said before, I don't think Countrywide would have established that Mr H was receiving unauthorised financial advice.

Overall, even if Countrywide had done all it should have done, I'm satisfied that it wouldn't have considered there to be reason to provide further warnings to Mr H. I say this because Countrywide ought to have reasonably discounted the risk of pension liberation. And the consideration that Mr H may be about to become a victim of a scam, of the type highlighted in the Action Pack, ought reasonably to have also been discounted by the apparent lack of Mr H being cold called or advised by any unregulated party to transfer his pension in this way or by anyone rushing him through the process or by anyone offering him incentives. The

absence of anyone acting in this way would have indicated to Countrywide that Mr H wasn't falling victim to a scam but was, instead, acting independently. In short, without the presence of a scammer, it's difficult to see why Countrywide would have thought a scam was taking place.

I've already said that Countrywide should have provided Mr H with the Scorpion insert. But I'm not persuaded that this would have impacted Mr H. In SLOC's questionnaire, Mr H signed a declaration to say he'd read and understood the 'predators stalk your pension leaflet'. Whilst this title was for the Scorpion insert of February 2013, the letter provided a link to SLOC's website and I think it's more likely than not that the website would have provided the up to date information. Mr H's acknowledgement and declaration of his understanding of this Scorpion guidance did not prevent his proceeding with the SLOC transfer. So I don't think being provided with it prior to the Countrywide transfer would have made a difference either."

Responses to my provisional decision

Countrywide offered no response to my provisional decision. Mr H didn't agree with my provisional findings and detailed representations were made by his CMC. I have read and considered its representations in full but for brevity I will summarise those arguments as follows:

- The CMC questioned why I hadn't provided the determination that Countrywide had to contact Mr H to establish his employment status, in order to check that he had a statutory right to transfer.
- The CMC disagreed that the answers Mr H gave to SLOC in his other transfer were relevant in this complaint. It points out that Countrywide didn't actually receive information that contradicted the information it had in the ORIGO transfer request.
- The CMC re-iterated that Countrywide didn't send Mr H the Scorpion insert. And didn't agree with my conclusion that it was fair to consider the way that Mr H responded to that same insert in proceeding with the SLOC transfer later.
- That it wasn't fair to place more weight on hypothetical assumptions about what Countrywide may have done or found out.

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.

In my provisional decision I set out what I thought the relevant rules and guidance were and what they meant for SLOC. I've considered Mr H's additional arguments but I haven't changed my mind on what the implication of these rules were on SLOC in this case. Mr H's CMC has asked me to determine that it was also a requirement of SLOC to contact Mr H to determine if he had a statutory right to transfer his pensions. But I don't agree with its opinion for the following reasons.

There was no statutory requirement for ceding personal pension firms to check whether its customer had a statutory right to transfer on receipt of every transfer request. In this case I don't think that there would have been any reason for SLOC to think that Mr C didn't have a statutory right as Mr C had not at any point given an indication that he was not earning. And (for reasons that I explained in my provisional decision and will come on to again) didn't give the impression of falling victim to a scam.

Even if SLOC had checked with Mr C it would merely have established that he was earning so the scenario painted by his CMC (of detailed checks into the sponsoring employer and various issues that this would have revealed) wouldn't likely have come to pass in any case. Furthermore the CMC highlighted two decisions by the Pensions Ombudsman that it says are relevant to its argument. But I am not bound by Pensions Ombudsman decisions and, in any case, the circumstances of the cases it was considering were different to the circumstances in Mr C's complaint.

It follows that I am not persuaded to change my mind on whether SLOC should have been suspicious of whether a statutory right to transfer existed. However, the fact remains that SLOC would have been able to confirm that Mr H did have a statutory right in this case. As the CMC has confirmed. Nonetheless, I am not persuaded that this is pertinent to my finding for the following reasons.

Did Countrywide have reason to conduct further enquiries?

My provisional finding was that Countrywide had reason to conduct further enquiries. And my final decision remains the same for the reasons I will elaborate on. Which is why the question of whether Countrywide had to contact Mr H to establish a statutory right to transfer is largely irrelevant to my outcome of this complaint.

In my provisional decision I explained why I thought Countrywide needed to conduct further due diligence. I explained that Countrywide should have checked that the Firm A SSAS was correctly registered with HMRC. Which would have led to Countrywide being aware of the fact the Firm A SSAS was newly registered. And it is this fact that I think should have been the trigger for Countrywide to do further due diligence.

To be clear, the 2013 Scorpion Action Pack introduced a number of warning signs to help ceding schemes when looking for pension liberation fraud (page 8 of the Action pack). These were the warnings that businesses could use to determine whether it was necessary to then move on to the check list to look into a transfer further. The updated Action Pack in July 2014 similarly included a list of features that would warrant a ceding scheme to look into a transfer more closely. And a *receiving scheme being newly registered* was the first item on the list in the 2013 list. It would have been the only warning sign, from either Action Pack, that Countrywide would have had knowledge of at the outset. It is for this reason that I decided that Countrywide should have done further due diligence.

As I explained in my provisional decision Countrywide didn't do any due diligence. Which was a failing. But that alone is not enough for me to uphold Mr H's complaint. I need to also consider what additional due diligence it should have done and then consider whether it is more likely than not that doing that would have made a difference to what happened. This is a determination of what should have happened if Countrywide had done what I think it should have, and I am making the decision on a balance of probability. That is, what I think is more likely than not the case. For me to uphold Mr H's complaint then, I need to be persuaded that it is more likely than not the case that Countrywide would have found out information that caused it sufficient concern to give Mr H warnings and that he would then heed those warnings.

As Countrywide did no due diligence I explained, in my provisional decision, why my starting point in considering what it's reasonable to expect of it is by considering what the Scorpion Action Pack set out in its Checklist.

What should Countrywide have found out from its enquiries?

I think that Countrywide should have made further enquiries with Mr H. Key areas of the

checklist in the Action Pack (such as finding out if a consumer has been cold called or been advised by a non-regulated adviser) require the member to be contacted to establish information. I don't think it would have been reasonable of Countrywide to instead contact Rowanmoor to find out whether or not Mr H was being advised or how that came about.

I've considered Mr H's CMC's comments, but I am still persuaded that it is fair and reasonable to consider the way that Mr H responded to these questions when he was asked them by SLOC. It is pertinent to the question of what response Mr H would, more likely than not, have provided. Put simply, if Countrywide had asked the same questions of Mr H that SLOC did (as I think it should have) then I think it's fair and reasonable to conclude it would have received the same responses.

Mr H's response to my provisional decision explains that the information he provided SLOC was incorrect. I am not clear why that was the case and I appreciate that it is difficult for Mr H to recall. But SLOC's forms had been sent directly to Mr H to complete. They weren't, for instance, sent to an unregulated third party first. So I am persuaded that Mr H was able to read, understand, complete and sign the form. That information is problematic when it differs from the recollections Mr H has provided pursuant of his complaint a number of years later.

Regardless of how the answers came to be given, SLOC were told, directly from Mr H, that his transfer had not been recommended by a financial adviser. For clarity, the actual question asked was: "was the transfer recommended by a financial adviser?". I think this was clear. SLOC were giving Mr H the opportunity to tell it whether he was acting on a recommendation by a financial adviser to transfer. And he said that he was not.

I think that Countrywide should similarly have sought this information and would, more likely than not have been told that Mr H had not been acting on financial advice. I also think that, having said that it should have obtained this information, it would also have been reasonable for Countrywide to accept the information that it was likely to have received. The most persuasive information ought reasonably to have been the direct responses Mr H would likely have provided when directly asked this question.

I also think that it's fair and reasonable to give weight to the fact that Mr H told SLOC that he hadn't been cold called. Even though his subsequent complaint said that he had. It follows, for the same reasons I've already explained, that Countrywide would more likely than not have also been told this if it had asked the question of Mr H. Which, again, I think it should have. It follows that I don't think that further due diligence would, more likely than not, have led Countrywide to conclude that Mr H was acting on a recommendation following a cold call.

Furthermore I don't think it's fair or reasonable to conclude that making further requests of Mr H if he was sure that he wasn't being advised would, more likely than not, have produced a different response from him than the one he'd already given to these questions.

Whilst I agree that some of the warning signs from the Scorpion checklist would have become apparent to Countrywide (recently registered scheme, a newly registered employer, taken no advice etc) there would, more likely than not, have been significant reassurance that I think it would have been fair and reasonable for Countrywide to have relied on. Namely: Mr H would have provided reassurance that he was not making any unauthorised access to his pension; and he had not been cold called and was not acting on the advice of an unregulated adviser.

I think that it's key that Mr H wouldn't, on a balance of probability, have given Countrywide the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a

scam. Mr H was entitled to establish an employer for the purposes of being able to act as trustee of their own pension scheme and, on its own, a non-trading employer isn't a significant enough cause for concern.

Weighing everything in this case I don't think it's fair or reasonable to say that Countrywide would more likely than not have reached the conclusion that Mr H was about to become a victim of a scam, of the type highlighted in the Action Pack. It ought reasonably to have been discounted by the apparent lack of Mr H being cold called or advised by any unregulated party to transfer his pension in this way. The absence of anyone acting in this way would have indicated to Countrywide that Mr H wasn't falling victim to a scam but was, instead, acting independently. In short, without the presence of a scammer, it's difficult to see why Countrywide would have thought a scam was taking place.

Did Mr H see the Scorpion insert?

I explained in my provisional decision that I was persuaded that Mr H had more likely than not seen the Scorpion warning insert prior to the SLOC transfer. I reached that decision because he signed a declaration to say that he had. I'm still persuaded that was the case. In that case Mr H was provided with information that made him aware of this warning material and where to find it. I don't think it's fair and reasonable for me to conclude that Mr H would have signed a declaration to say that he had seen something that he had not. So I am still persuaded, on a balance of probability, that he had seen the Scorpion insert before transferring his SLOC pension.

I accept that the Countrywide transfer happened prior to that. So I am not persuaded that Mr H saw the Scorpion insert before Countrywide transferred his pension. Again, this was a failing by Countrywide. But I need to consider whether a failure to make Mr H aware of the contents of the Scorpion insert is the cause of his loss. Or whether providing it would have caused him to act in some way to stop the transfer. And this is where, I think, the way that Mr H responded to the Scorpion insert information before the SLOC transfer is relevant. In that instance it made no difference to his decision to proceed with the transfer. It follows that I don't think it's likely that the same information being provided by Countrywide in this case would have been any more impactful than it was in the later SLOC transfer. So I don't think that it would have resulted in a different outcome in this transfer had Countrywide provided the Scorpion insert.

My final decision

For the above reasons I am not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 October 2024.

Gary Lane
Ombudsman