DRN-3667405

The complaint

Mr H has complained, with the help of a professional third party, about the transfer of his personal pension, previously held with Countrywide Assured Plc ('Countrywide') to an occupational pension scheme in April 2013. The investments made through the new scheme now appear to have little value and Mr H says he has lost out financially as a result.

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 argues 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

Mr H held a personal pension with Countrywide. In November 2012 and March 2013, Mr H asked Countrywide for general details about his pension policy.

Mr H's representatives have said that he was first in contact with a company called Signpost Marketing Limited ('SML') about a pension review. They said he was then put in contact with Fast Pensions Limited ('FPL'). Neither SML or FPL were authorised or regulated by the Financial Services Authority ('FSA') / the Financial Conduct Authority ('FCA'). His representatives say that he was told his Countrywide pension was not performing well, if he transferred and invested as recommended he'd receive returns of 5% to 6% each year and he could access 25% of his pension as a tax free lump sum. Mr H was 54 at the time.

On 28 March 2013, Mr H asked Countrywide to issue a transfer pack, containing the paperwork required to transfer his pension to another provider. Countrywide wrote to Mr H on 3 April 2013. This confirmed that the transfer value of his pension at that time was just over £17,250 but this figure was not guaranteed. The letter also said *"Please note that we are unable to give you any financial advice. However, we do recommend that you seek independent financial advice to discuss your personal circumstances before proceeding with the transfer."*

On 2 April 2013, Mr H signed an application to join the Galileo Retirement Plan ('GRP'). Amongst other things this application said the trustees would *"invest with a view to targeting a minimum return of 4.75%pa net of any charges"*. There was no information about the nature of the investment. The contact information on the application form included an email address for FPL.

I've seen a copy of a letter sent by SML on 9 April 2013. This included Mr H's name and address and said in enclosed a "*new client Fast Pension application pack*". The recipient of the letter has however been redacted from the copy I've received.

On 15 April 2013 a business called AC Management and Administration Limited ('ACMAL') wrote to Countrywide and requested the transfer of Mr H's pension benefits to the GRP. The enclosed forms said ACMAL was the administrator of the GRP. Also enclosed was an

HMRC registration certificate, confirming that the GRP had been registered with HMRC on 20 March 2013. ACMAL was also not authorised or regulated by the FSA / FCA.

On 17 April 2013, Countrywide wrote back to ACMAL acknowledging receipt of the transfer paperwork. It said a page of the receiving scheme declaration was missing so it needed this to be completed before it could proceed.

ACMAL sent the missing page to Countrywide on 22 April 2013. This confirmed that the GRP was an occupational pension scheme ('OPS')

On 26 April 2013, Countrywide wrote to Mr H to say it had transferred funds to the GRP in line with his request. The amount transferred was £17,257.28.

I've seen a copy of a letter addressed to Mr H dated 24 May 2013. This thanked him for "*choosing Fast Pensions to manage and administer your pension funds*". The letter included some information about Mr H's new pension including referring to a targeted yearly return of 4.65% over 65 months. It also referred to the scheme by using the words "*Exclusive sign post*". The letter set out the 'key principles' FPL adopted in pension investment, said it had appointed independent trustees to manage the fund and that the trustees invested in major asset classes (equities, bonds and company loans, property and cash) at their discretion. The letter did not however specify how Mr H's pension was to be invested.

On 24 September 2013 ACMAL replied to an enquiry from a company called Independent Financial Consultancy ('IFC') about the GRP. IFC was registered with the FCA as an appointed representative of an authorised business.

Mr H has said that he took 25% of the pension fund as tax-free cash but only after his 55th birthday in 2014.

The Pensions Regulator ('TPR') appointed Dalriada Trustees Limited ('Dalriada') as independent trustees of the GRP in 2018. Dalriada's announcement at the time explained this was done after the scheme, along with several others operated by FPL, was wound up by the High Court. The most recent announcement from Dalriada said that it had been working to understand the investments made by the scheme, having done so it expected any return from those investments to be minimal and it was exploring whether claims could be made through the Fraud Compensation Fund ('FCF').

Mr H complained to Countrywide in 2020. His representative said Mr H had no experience in pensions or investments and had been advised to transfer his pension benefits by FPL, an unregulated party. They said Mr H thought Countrywide ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included amongst other things that he'd been cold called, unregulated introducers and advisers had been involved and had provided him with advice, these parties had said he could access tax-free cash immediately even though he wasn't able to because of his age and the GRP had only recently been registered at the time of the transfer request. Mr H said Countrywide hadn't done enough to warn him of the risks and hadn't followed the Scorpion guidance that was introduced by TPR. Mr H's representative said if Countrywide had properly informed him of these warning signs, he wouldn't have transferred.

Countrywide didn't uphold the complaint. It said it had followed its processes properly, including checking that the scheme was registered with HMRC and that the parties involved were not on Countrywide's list of companies deemed to be of concern. It also said that the pension scheme and administrators were registered authorised and regulated by TPR and therefore the FCA.

Mr H asked our service to consider his complaint. I issued a provisional decision earlier this month explaining that I intended to uphold Mr H's complaint. Below are extracts from my provisional findings, explaining why.

The relevant rules and guidance

Personal pension providers are regulated by the FCA and prior to that, by the 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 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 comprised the following:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*
- *A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.*

- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. 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 transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.*

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 statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far 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 those 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 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.

<u>What did personal pension providers need to do?</u>

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. 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. *When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation 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 pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack 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.*

I recognise that the Scorpion guidance was only introduced on 14 February 2013. And I think it is reasonable that business would need a period of time to update their processes to take account of this. But the guidance was ultimately intended to reduce the risk of consumers falling victim to pension liberation scams. Bearing in mind the obligation on Countrywide to act in consumers best interests and conduct its business with due skill, care and diligence, I think pension providers like it, ought to have acted promptly and taken the guidance into account when processing any transfer. And I think Countrywide should reasonably have absorbed the guidance promptly, and before Mr H requested a transfer pack on 28 March 2013 (more than six weeks after the guidance was introduced) and the transfer being completed on 26 April 2013 (more than two months after the guidance was introduced.

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

Mr H's representative says he was cold called by SML and this started the process of transferring. Mr H however said he couldn't remember whether he was cold called or if he'd gotten in touch with the business he'd first spoken to. He said he does recall speaking to FPL though. He also recalled having contact with IFC but believed this might have been at a later date.

I've considered the documents from the time. As I mentioned there was a letter from ACMAL to IFC in September 2013. This letter provided some information about Mr H's pension scheme at that time. But this was the OPS that he'd transferred to. And that letter was sent months after the transfer was completed. I've seen no evidence that indicates IFC was involved in the transfer of Mr H's pension benefits from Countrywide. And on balance I think the letter was unconnected to the transfer that is the subject of this complaint.

Again, I've seen a copy of a letter from SML on 9 April 2013. This included some of Mr H's personal information and referred to an application for "Fast Pension" with Mr H being a new client. The letter refers to SML as promoting alternative investments and says it is not authorised or regulated by the FCA but instead forwards enquiries as an introducer. Given the description of the services of SML and that it had Mr H's personal information, I think it is likely that this was the first business he was in contact with.

I'm also satisfied that FPL was involved. Again, the letter from SML referred to an application to "Fast Pension", which I think was likely a reference to FPL. The application form for the GRP also included FPL's contact information. And after the transfer was completed FPL wrote to Mr H, thanking him for choosing Fast Pensions to manage and administer his pension funds. Incidentally the same letter uses a description "exclusive Sign Post" when referring to the new pension, which I think was a reference to SML and further evidence that it was involved.

ACMAL was also involved as it corresponded with Countrywide in its capacity as administrator of the OPS.

Countrywide said in its final response to Mr H that the pension scheme and administrators were registered authorised and regulated by TPR and therefore the FCA. But I haven't seen any evidence to support that ACMAL or GRP were registered with, authorised or regulated by the FSA / FCA. Neither ACMAL nor GRP appear on the FCA register. And neither do SML or FPL. So, all of the parties that appear to have had some involvement in the transfer from Countrywide were unregulated.

On balance I think it was likely SML and FPL that spoke to Mr H about the transfer and provided him with information.

Mr H says he was told that his Countrywide pension was not performing well, if he transferred he'd receive better returns, which would be between 5-6%, and he could access 25% of his pension as tax free cash straight away. And he says he was advised to transfer. I think this information was likely provided by SML / FPL. Mr H says the offer of better returns were what led him to transfer. And he says he didn't receive any warnings from Countrywide about any potential risks involved.

Mr H's recollections appear to be plausible and consistent with other evidence about the transfer that I've seen. For instance, the application form for the GRP talks about targeting returns of 4.75% per annum net of fees, which is consistent with what he has said as gross growth would need to be higher (and around 5-6%) to account for fees. This information was repeated in the welcome letter FPL sent to him after the transfer. So, I think on balance the prospect to receive better returns was likely promoted to him, and that this was the reason that he transferred. I also haven't seen anything that suggests Countrywide sent him any risk warnings prior to the transfer.

I haven't seen anything to indicate that Mr H had any prior connection with the GRP. The application to transfer listed his employer. But there has been no suggestion that it was the sponsoring employer of GRP. So, I can't see that he had an employment connection to the OPS. Nor have I seen anything to dispute that he had very limited experience of pensions and investments. So, in the circumstances I think it is unlikely he'd have sought to transfer his benefits to the GRP on his own. And I think it's likely that he only did so based on his conversations with SML / FPL, both of which again were unregulated. I also think on balance he was advised to transfer, given Mr H has said he was told he'd receive better returns by doing so – so the person he spoke to was promoting the advantages of the OPS over the ceding scheme and that a transfer was in his interests. And that advice was given by a business not authorised to do so.

I also think Mr H and his representatives are correct that the money still invested in the OPS following the transfer appears likely to be lost. Mr H confirms that he did receive tax free cash but hasn't received any other benefits. And Dalriada's communication with him indicates that any investments made through the OPS are likely to have little value.

<u>What did Countrywide do and was it enough?</u>

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.

The Scorpion guidance had been in place for six weeks by the time the transfer pack was requested here. And I think that is sufficient time for Countrywide to have begun taking the guidance into account. But Countrywide hasn't suggested that it sent Mr H the Scorpion insert along with the transfer pack. The covering letter makes no reference to it having been sent to Mr H. And a copy isn't included in the records it has provided in answering this complaint.

So, based on what I've seen, I can't reasonably say that the Scorpion insert or associated warnings were provided to Mr H before he transferred.

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 pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Countrywide says it received confirmation, by way of the registration certificate, that the receiving scheme was registered with HMRC. And it says it checked the administrator and scheme were not on its suspicious list and says they were registered with TPR and therefore with the FCA. As I've explained though, there is no evidence that supports the administrator or the scheme being registered with the FSA / FCA.

I agree that the certificate it received as part of the application shows the OPS was registered with HMRC. But it also showed that this only happened in March 2013. The Scorpion action pack for businesses said that a receiving scheme being newly registered with HMRC was a warning sign that suggested pension liberation could be occurring which Countrywide should've been on the look-out for. And if that or any of the other warning signs was present, it provided a checklist that businesses could use to find out more. But I can't see that Countrywide did anything further, other than erroneously recording that the scheme and administrator were FSA / FCA regulated.

I'm satisfied Countrywide should have done more. I think, given the presence of one of the noted warning signs of potential pension liberation, it should have followed up and asked for more information about the transfer, to find out if other warning were present. I think this would have been fair, reasonable and good practice. And I think the most reasonable way of going about that would have been for Countrywide 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, or is the receiving scheme connected to an unregulated investment company?

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 liberation 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.

<u>*What should Countrywide have found out?*</u>

Investigations by Countrywide under part one of the checklist would've revealed that, in addition to the scheme being newly registered, Mr H does not appear to have been employed by the sponsoring employer.

Mr H hasn't suggested that he was offered cash incentives to transfer. And he says he wasn't told how the OPS was to be invested and whether these were unusual, creative, new or based overseas. And these are the things that enquiries under part two of the checklist was aimed at discovering. But what these enquiries would likely have shown is that he hadn't been given any information about how the pension would be invested, just that he was promised a specific return. And, while not something that the Scorpion guidance specifically listed, I think this is something that should've flagged to Countrywide, based on its knowledge and experience, as unusual.

Enquiries under part three of the check list would have also alerted Countrywide to further warning signs. Mr H has said he was told if he transferred he could access tax-free cash from his pension straight away. But Mr H was only 54 at the time. So, wasn't entitled to access his pension benefits. As it turned out Mr H wasn't given access to tax-free cash from the OPS until he reached age 55. But even if there had been a misunderstanding in what he was told about the tax-free cash, Countrywide would also have been in a position to clarify with him that he was entitled to take tax-free cash from his Countrywide pension from age 55. So, he didn't need to transfer to do this and this wasn't a reason to transfer.

Countrywide would've also learned details of the businesses involved including SML (an introducer) and FPL. And more importantly it would've learned that Mr H had been advised to transfer by these unauthorised businesses.

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom. So, the actions of the adviser in promoting the transfer to Mr H pointed to a potential criminal breach of FSMA – which ought to have given Countrywide serious concern. And on the balance of probabilities, for the reasons I've already explained, I'm satisfied such a breach likely occurred here.

<u>What should Countrywide have told Mr H – and would it have made a difference?</u>

I think Countrywide's failure to uncover this risk of illegal advice and then warn Mr H about it meant it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for Countrywide to have informed Mr H that the business he had been advised by appeared to have been unregulated and could put his pension at risk. Countrywide should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

Countrywide also didn't uncover the risk that Mr H was being told he could access his pension benefits before age 55, which was in line with TPR's explanation of what pension liberation scams were – the very thing the Scorpion guidance focused on. But from what I've seen Countrywide failed to provide any warnings to Mr H about the risks of pension liberation scams.

If it had correctly found these things out, I think Countrywide could've provided Mr H with a personalised warning, specific to his circumstances, that there was a risk that he was falling victim to a scam. It could've highlighted the warning signs identified and explained there were several that matched the Scorpion guidance. Countrywide ought to have told Mr H that the advice he'd received was potentially illegal. Which I think would've served to illustrate to Mr H the seriousness of the risks involved with what he was being recommended.

And I think if Countrywide had warned him along the lines I've mentioned this would have changed Mr H's mind about the transfer. The warnings would have seemed to Mr H (and indeed would have been) specific to his individual circumstances. These would have been given in the context of Countrywide raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr H aware that there were serious risks in using an unregulated adviser and that what he was doing bore warning signs of a potential pension liberation scam. I think the gravity of any messages along these lines would prompt most reasonable people to change their mind. And I've seen no persuasive reason why Mr H would've acted differently to a reasonable person when the warning signs and risks were explained. So, I consider that if Countrywide had acted as it should, Mr H wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

<u>The cause of Mr H's loss</u>

I bear in mind that this complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give someone the information or advice to which they were entitled. In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

So, it's important I bear in mind that the Scorpion guidance was directed towards protecting people from the risk of pension liberation. And that doesn't appear to strictly be what happened here. The loss was suffered because Mr H accepted unsuitable advice from a business who wasn't authorised to act as a financial adviser at all.

Nonetheless, the circumstances that gave rise to this complaint were very similar to those of a pension liberation scam: the transfer followed advice from an unauthorised business and involved transferring to an OPS that was only recently established, where Mr H has no connection to the scheme or the sponsoring employer, to facilitate investment in an unusual and unregulated investment. The Scorpion action pack and insert both recommend checking that financial advice comes only from an authorised person by checking the FSA/FCA register. And Countrywide's obligations under the Principles and COBS were of general application and went well beyond just protecting its customers from pension liberation. In the circumstances, even though this doesn't appear to be a case of pension liberation, I'm satisfied there is sufficient connection between the harm Mr H wants to be compensated for and the risk that Countrywide had a duty to guard against. So, I do consider it fair and reasonable for Countrywide to compensate Mr H for his losses.

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Mr H's representatives said that he had no further comments to add.

Countrywide did not provide a response to my provisional decision.

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.

Having done so, given that neither party has provided anything further for me to consider, I see no reason to depart from my provisional findings. So, for the reasons explained in those findings, set out above, I don't think Countrywide did enough due diligence here, in line with the industry guidance at the time. If it had, I think it would've found several things present in the transfer that the Scorpion guidance warned about. I think it ought to have informed Mr H of these warning signs, as well as the potential for him to fall victim to illegal activity. And if Countrywide had warned Mr H about this, I don't think he'd have proceeded with the transfer. So, I uphold the complaint and think Countrywide should compensate Mr H for its error.

Putting things right

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if Countrywide had treated him fairly.

The GRP only seems to have been used in order for Mr H to make an investment that I don't think he would have made from the proceeds of this pension transfer but for Countrywide's actions. So, I think that Mr H would have remained in his pension plan with Countrywide and wouldn't have transferred to the GRP.

To compensate Mr H fairly, Countrywide should subtract the actual value of his entitlement under the GRP from the notional value if the funds had remained with Countrywide. If the notional value is greater than the actual value, there is a loss.

Actual value

Countrywide should ask Dalriada, the new trustees, of the GRP whether Mr H's entitlement can be valued at the date of my Final Decision. If it can't, that's likely to be because the position for members is uncertain. In its most recent update, I understand Dalriada said only a fraction of the money invested was likely to be recovered. And what that, or any potential claim to the Fraud Compensation Fund ('FCF'), which it was exploring, means for members pensions doesn't yet appear to have been fully determined.

Until any value can be realised from all the scheme's investments, Mr H's entitlement can't be determined, and further costs are likely to be incurred from any liquid funds the scheme holds. So, if the new trustees cannot provide a value, I consider it appropriate to treat the actual value of Mr H's entitlement from the GRP as nil at the date of my Final Decision.

In return Countrywide may ask Mr H to provide an undertaking. Countrywide may ask Mr H to do either of the following, when the value of his entitlement under the GRP has been finalised:

- Make a full transfer of his entitlement back out of the GRP to Countrywide's pension plan. Countrywide may then recover that value from its pension plan so that Mr H isn't overcompensated. Or, if this isn't possible:

- Withdraw his entitlement from the GRP as tax-free cash and income payments over a period of time agreed between Countrywide and Mr H, so that the net amount Mr H receives can be returned to Countrywide and he is not overcompensated.

Countrywide will need to meet any costs in drawing up the undertaking. If Countrywide asks Mr H to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

Notional value

This is the value of Mr H's funds had he remained invested with Countrywide up to the date of my Final Decision.

Countrywide should ensure that any pension commencement lump sum or gross income payments Mr H received from the GRP are treated as notional withdrawals from Countrywide on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the GRP given its position. There also doesn't appear to be any reason why Mr H needed a pension arrangement that wasn't privately held, administered by an established provider and under FCA regulation.

So, Countrywide should reinstate Mr H's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr H was invested in).

Countrywide shouldn't reinstate Mr H's plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Countrywide to determine whether this is possible, but if Countrywide doesn't consider this is possible, it should explain why.

If Countrywide is unable to reinstate Mr H's pension and it is open to new business, it should set up a new pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr H's original pension.

If Countrywide considers that the amount it pays into a new plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mr H is entitled based on his annual allowance and income tax position. However, Countrywide's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mr H doesn't incur an annual allowance charge. If Countrywide cannot do this, then it shouldn't set up a new plan for Mr H.

If it's not possible to set up a new pension plan, Countrywide should pay the amount of any loss direct to Mr H. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mr H is retired. (This is an adjustment to ensure that Mr H isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr H is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr H was yet to take his 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to him in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mr H had already taken his 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to him in cash.

If payment of compensation is not made within 28 days of Countrywide receiving Mr H's acceptance of my Final Decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my Final Decision to the date of payment.

Income tax may be payable on any interest paid. If Countrywide deducts income tax from the interest, it should tell Mr H how much has been taken off. Countrywide should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Countrywide is reinstating Mr H's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mr H was invested.

Details of the calculation should be provided to Mr H in a clear, simple format.

My final decision

For the reasons I've explained, I uphold this complaint and require Countrywide Assured Plc to make an award to Mr H by carrying out the steps outlined in the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 August 2024.

Ben Stoker
Ombudsman