

## The complaint

Mr B and Mrs S complain about Countrywide Assured Plc, formerly Sanlam Investments and Pensions, referred to as “Countrywide”.

They’re unhappy that Countrywide is refusing to allow them to choose their own Discretionary Fund Manager (DFM) and platform – in relation to an onshore bond held in a discounted gift trust (DGT), and another held in a Loan Trust (LT) that no longer exists – with a third-party business (namely Close Brothers) that’s unconnected to Countywide.

## What happened

This case has a long and protracted history which I don’t need to repeat in detail for the purposes of this decision.

The original complaint relates to Countrywide refusing to allow Mr B and Mrs S to change their DFM in relation to the bonds. Countrywide said that because they had older investments (with Atomos Asset Management (‘Atomos’) as servicing agent and DFM) they didn’t have the option to change. Countrywide also said that given the DFM relationship set up, it would be an expensive process. In other words, it was the legacy bonds with Atomos that it couldn’t easily alter.

The investigator initially rejected the complaint – on the basis that it was a matter for Countrywide how it chose to run its business – but she subsequently changed her mind.

In her latest view, the investigator said that Mr B and Mrs S should be allowed to change their DFM – to one of the three available options with Countrywide, even though they had older investments – in line with what other recent (non-Atomos) customers were able to do. Put differently, the investigator felt that Countrywide refusing to let them change DFM was unfair because it disadvantaged customers with Atomos.

Having reconsidered section 11.8 of the terms and conditions she found it was possible to effect the change, but it wouldn’t be straightforward. The main obstacle to the change was the charging structure which was specific to Atomos.

The investigator also said that if Countrywide disagreed it should allow Mr B and Mrs S to move their investment elsewhere – in other words to a new DFM – and effectively cover the cost of doing so including any tax implications, exit fees and set up fees that might arise.

In relation to the LT bond, she recommended that Countrywide put steps in place to cover any reasonable costs of surrendering the bond and setting up a new one. Countrywide should also take out an ‘inter vivos’ policy for Mr B’s benefit to cover the amount encashed from the bond. This should cover any inheritance tax (IHT) payable by the estate. Or give an undertaking that Countywide would pay any IHT liability payable as a direct result of its error.

The investigator also noted Mr B’s concerns about not qualifying for the same level of discount (as he’s a few years older) and recommended that Countrywide should take this into account when carrying out the redress recommended by her.

In a response dated 21 November 2023, Countywide eventually agreed with the investigator's uphold view in relation to the DGT and LT and in due course it sent out details of the new agreement.

In relation to the DGT, it said:

- It's prepared to agree to Mr B's 'preferred solution' and permit to change the DFM and platform.
- However, this would need to be with a firm that it has an existing relationship with, namely:
  - 7IM (which Mr B had previously expressed an interest in)
  - Parmenion
  - Morning Star Wealth Platform
- Because it wasn't something that it has previously done for this specific bond product, it would require it to produce 'new paperwork and implement new processes & system changes'. So, it will take some time to facilitate this.

In relation to LT, it said:

- It has already made the investigator aware there are no IHT implications for this kind of set up and there were no surrender penalties.
- In the circumstances, Mr B may have only suffered set up costs with the new provider. If he provides evidence of this, it will be happy to reimburse the sum with interest in the usual way.

Countrywide also agreed to pay £250 compensation in recognition of the distress and inconvenience caused.

Mr B disagreed with the investigator's view and asked for an ombudsman's decision. There's been much correspondence between him, Countrywide and the investigator. But in summary, he made the following key points:

- His complaint is that he can't change DFM without using one of the three restrictive platforms authorised by Countrywide. In other words, he can't appoint a DFM of his choice using a platform of his choice.
- He put the investments in trust to make use of IHT allowances, but Countrywide sold a product that obliterated Trustee rights over their investment.
- In other words, the trust he purchased gives every right of management to the trustees, however, Countrywide cancelled these rights and replaced them with its own control.
- But as Trustee, he will notify Countrywide of the new DFM and platform he'd like. He won't be using the 'restrictive platforms' stipulated by Countrywide.
- A DFM doesn't need to work through a (prescribed) platform and must have its own system for holding customer assets allowing them to trade investments.
- Mr B went on to make other points about the Financial Conduct Authority (FCA) principles of treating customers fairly and how Countrywide failed to meet these.

Mr B having had some time to reflect on the situation decided he wanted Close Brothers as his DFM and wanted to invest in one of its platforms that wasn't compatible with Countrywide.

I understand that Countrywide hasn't completely said no to the proposal even though it wasn't specifically what the primary complaint was about. At present I understand that Countrywide doesn't have the means to facilitate Mr B's request.

In summary, Countrywide said:

- Close Brothers contacted it about setting up an approved platform so that it could hold the assets within its custody and manage accounts on its platform.
- However, it has a temporary halt on making the onshore bond available to new platforms until its data migration project is completed.
- Current projection for completion is quarter three of this year. Close Brothers was told to contact it in September for an update.
- As things stand Mr B can't use Close Brothers as his DFM unless it is willing to use one of its three approved platforms (listed above).

The investigator having considered the additional points wasn't persuaded to change her mind. She said that Mr B's existing bond held in a DGT was being treated in line with others so she can't ask Countrywide to do anymore.

Mr B disagreed with the investigator. He maintains that the DGT gave the trustee 'absolute discretion' and ownership of the investment. A new customer buying an onshore bond is allowed to appoint their own DFM without the loss of ownership management of the investment. Countrywide is just delaying the process.

Mr B also said that he never agreed to restrict his investments to one company and three platforms. He's also asked Countrywide to provide the original forms signed which he needs to provide to HMRC, but Countrywide is saying that they don't have them.

As no agreement has been reached the matter has been passed to me for review.

### **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, I agree with the investigator's conclusion for much the same reasons. I'm going to uphold this complaint.

On the face of the evidence, and on balance, I agree with the investigator's latest conclusion that Mr B and Mrs S should be permitted to choose their own DFM and platform albeit from the range offered by Countrywide. In other words, it's not fair Mr B and Mrs S weren't able to change their DFM and platform on their existing investments.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr B's and Mrs S's strength of feeling about this matter. Mr B has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr B and Countrywide, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

Because Countrywide agreed with the investigator's view to uphold this complaint – and allow Mr B and Mrs S to change DFM and platform in relation to the DGT and undertake to cover any set up costs in relation to the LT – I don't need to address any of the many other points raised by Mr B in relation to FCA principles and fairness. In effect, I feel the business is giving him what he initially wanted and making any additional points about what it should do in the alternative is redundant.

I'm aware that Mr B has subsequently raised issues about wanting a DFM with Close Brothers and a platform (that's not compatible with Countrywide).

I understand that Countrywide, in the spirit of upholding the complaint and assisting Mr B to get what he wants, hasn't said no to the proposition, however I'm conscious that it's not straightforward either for it deliver what Mr B wants without further consideration.

As things stand, Countrywide has made clear that Mr B can't have Close Brothers as his DFM unless it uses one of its platforms which Mr B disagrees with.

I'm aware that Countrywide has mentioned that it's undergoing a data migration so it's possible in future it may be able to assist with Mr B's latest request. I am however aware that there isn't a specific timeline. That might be something that Mr B and Mrs S wish to pursue with Countrywide if they still want Close Brothers and a different platform.

If Countrywide can't accommodate Mr B's latest request – over and beyond what it has undertaken and agreed to do in line with the investigator's latest view – that's not something I can consider further in this complaint.

As matters stand, Countrywide has agreed to allow Mr B and Mrs S to change their DFM and platform as long as they chose one of the three platforms that it offers which I think is reasonable in the circumstances.

I'm conscious that Mr B as trustee feels that he should be entitled to decide what happens to the funds, and Countrywide not permitting him to do so without restriction is incorrect and against his rights as a trustee. Despite what Mr B says, I don't agree with him.

I think the two issues are separate. Whilst Mr B as trustee can (to some extent) decide what happens with the investment, this is not an absolute right, and certainly not when it interferes with the running of a financial business. So, in this instance Mr B can't just decide to go with his own DFM and platform (that isn't compatible with Countrywide) and expect it to find a solution because he's a trustee and has rights.

A business is, in the reasonable exercise of its legitimate commercial judgement, entitled to decide how to run its affairs, even when dealing with trustees. In other words, Countrywide can't accede to every demand by Mr B just because he's a trustee and it hasn't done anything wrong by not being able to do so.

So, having agreed to uphold this complaint – allowing Mr B to change his DFM and platform from a list of those that are available to Countrywide, in line with other customers – I then can't say that it has behaved unreasonably by not (immediately) being able to accommodate Mr B's request for Close Brothers and one of its platforms that it isn't linked to Countrywide.

I agree with the investigator's comment that we can't get involved with business decisions, as long as Mr B and Mrs S are being treated fairly, which I believe they are in this instance.

In this instance, by way of redress Countrywide should do the following:

- In relation to the DGT, it should permit Mr B and Mrs S to choose their DFM and platform from the options available with Countrywide which it has agreed to.
- In relation to the LT, it should refund any set up costs that Mr B and Mrs S incurred, with interest at 8% simple from the date of payment to the date of settlement, subject to being provided with evidence of the costs incurred.
- Pay £250 compensation for the trouble and upset caused.

I appreciate that Mr B and Mrs S will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what they want to hear.

Whilst I appreciate their frustration, I'm not persuaded to require the business to do anything other than what I have suggested above. In other words, I'm unable give them what they want.

### **Putting things right**

To put things right, Countrywide Assured Plc should do the following:

- In relation to the DGT, it should permit Mr B and Mrs S to choose their DFM and platform from the options available with Countrywide which it has agreed to.
- In relation to the LT, it should refund any set up costs that Mr B and Mrs S incurred, with interest at 8% simple from the date of payment to the date of settlement, subject to being provided with evidence of the costs incurred.
- Pay £250 compensation for the trouble and upset caused.

### **My final decision**

For the reasons set out above, I uphold this complaint. To put things right, Countrywide Assured Plc should award the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs S to accept or reject my decision before 14 October 2024.

Dara Islam  
**Ombudsman**