

## **The complaint**

Mr B has complained about a transfer from his Sanlam personal pension to a small self-administered scheme ("SSAS") in January 2015. Mr B's SSAS was used to invest in a number of non-standard investments that have since failed. Countrywide Assured Plc is now responsible for this complaint so it is "Countrywide" that I will be referring to from now on.

Mr B says Countrywide failed in its responsibilities when dealing with his transfer request. He says that, as the administrator of his existing pension scheme, Countrywide 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 B says he wouldn't have suffered the losses he did if Countrywide had acted as it should have done.

## **What happened**

I have already issued a provisional decision in which I set out, in detail, the background to this complaint so I won't repeat what I said here. My provisional decision is, however, attached and forms part of this final decision.

In my provisional decision, I concluded Mr B's complaint shouldn't be upheld. Countrywide had nothing further to add. Mr B, through his representatives, made a number of comments which I address below.

## **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.

Rather than repeat everything I said in my provisional decision, I will focus on what Mr B's representatives have said in response to those findings (Countrywide having had nothing further to add).

### **Mr B's investments**

In my provisional decision, I noted that Mr B hadn't supplied evidence of all the investments he said he had made after the transfer. I said correspondence from shortly after the transfer showed Mr B's SSAS invested approximately £4,000 in gold and £32,000 in loan notes issued by Windermere Hydro Hotel Limited. I also said I'd seen a letter from Marbella Resort & Spa PLC to Mr B's SSAS, dated 19 September 2018, which indicated Mr B had invested in that particular resort but it was unclear exactly when that happened. Mr B had also mentioned to us that he invested in a hardwood venture but no details on that investment had been provided. I concluded that particular investment hadn't likely been made.

In response, Mr B's representatives have sent me a SSAS statement dated 20 February 2017 which shows the following investment values as at 24 October 2015:

- Windermere Hydro Hotel: £19,000

- Marbella Resorts: £5,000
- Windermere Hydro Hotel: £13,000 (in addition to the tranche listed above)
- Physical Gold: £4,219.08
- Sustainable Hardwood: £6,000
- Scheme Bank Account: £517.47

With that in mind, Mr B's recollections have proven to be reliable in so far as he did make the investments he told us about, including the investment in hardwood, within around 9 months of the transfer.

Had Countrywide conducted due diligence, what conclusions should it have reached?

In my provisional decision, I concluded Countrywide should have conducted due diligence into Mr B's transfer. I thought the most reasonable way of structuring that due diligence would have been to use the check list in the Scorpion action pack, the contents of which I discussed in detail in my provisional decision. I went on to conclude that had Countrywide conducted that due diligence, it wouldn't have considered it likely that Mr B was falling victim to a scam. I said the following:

*"The receiving scheme was correctly registered. The sponsoring employer had been incorporated long before the transfer request was made and Mr B's intention was to run it as a going concern, in the waste management sector, with a friend. And its address was in close proximity to Mr B. So Mr B's reason for setting up a SSAS would have appeared conventional – to provide an occupational pension scheme for a small business that had been incorporated for some time and to provide financing for that business. Mr H didn't need FCA authorisation to advise on this nor, ordinarily, on the purchase of gold or the making of commercial loans. And Mr H's involvement didn't come from an unsolicited approach, nor did he rush or pressure Mr B into a decision – conversations took place over the course of several years.*

*"None of this fitted the usual pattern of a scam or would have seemed particularly remarkable. Yes, there were some parallels with Mr B's situation and the warning signs as outlined in the scorpion action pack. Specifically, the SSAS was likely to have been recently registered and Mr H wasn't authorised by the FCA. An argument could also be made that of the two investments we know Mr B intended to make, one of them – the loan to Windermere hotel – was of the type the action pack, and the FCA's August 2014 bulletin, was warning about. Nevertheless, a firm needed 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. With that in mind, I think Countrywide would, reasonably, have taken comfort from the aggregate picture which is that Mr B didn't appear to have been led through a process by someone acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam."*

Mr B's representatives acknowledged that in 2012 Mr B intended to run his business (which I will continue to refer to as "W Ltd") as a going concern and that there was the "possibility" of a loan. But they have argued that at the time of the transfer, events had moved on and W Ltd could no longer be considered in the same way. They point to records at Companies House, which show W Ltd was dormant, to support this. In their view, once this is factored in the picture that would have faced Countrywide changes considerably because it would have been left with a list of concerns that can't be explained away, including a recently registered scheme, a non-trading sponsoring employer and someone wanting to transfer solely to

invest in esoteric, and high risk, investments. In short, the type of concerns the Scorpion guidance was highlighting.

Mr B's representatives are correct that Countrywide, with the Scorpion guidance in mind, should have checked Companies House as part of its due diligence. If it had done so, it would have seen a record dated 30 April 2014 that reads: "*Accounts for a dormant company made up to 30 June 2013*". So, at the time of the transfer, it would have been evident W Ltd wasn't trading (and hadn't traded). Mr B's representatives also point to a Companies House record that shows two directors had resigned from W Ltd by the time of the transfer which, in their view, adds weight to the argument that at the time of the transfer W Ltd wasn't, and wasn't going to be, a going concern.

I disagree. I don't think any of this means Mr B no longer *intended* W Ltd to trade. And the purpose of the loan – to help establish the business – wouldn't be out of keeping with the fact that it hadn't yet traded. I'm also not persuaded the resignation of two directors means Mr B had given up on the business, or that the business could no longer be run as originally intended.

Importantly, when asked by us about the transfer, Mr B said he intended to run the business as a going concern, mentioned the sector the business was going to operate in (waste management, which tallied with Companies House records), and mentioned the loan – including the size of it and the fact that it didn't materialise. This doesn't suggest to me that those intentions had fallen into irrelevance by the time of the transfer. Indeed, as mentioned above, his recollections about the SSAS's investments have proved reliable, so Mr B seems to have had a good idea of the circumstances surrounding his transfer.

On a similar note, Mr B's representatives point to the SSAS statements which show most of the proceeds of Mr B's transfer value were invested, meaning there was little cash available to fund a loan to W Ltd. In their view, Mr B must therefore have already put aside any thoughts of a loan when he made the transfer request and, by extension, must therefore have considered W Ltd as no longer being viable.

It's true that by October 2015 Mr B's transfer value had been invested to the extent that there was just a small amount left as cash. However, it still isn't clear what investments Mr B intended to make in the run-up to the transfer or how much he wanted to put into those investments. All Mr B's representatives have shown me is that his SSAS was invested in the four assets mentioned above by October 2015, which was over nine months after the transfer.

So it's plausible that at the time of the transfer Mr B intended to take a loan from the SSAS to help establish his business, but at some point between transferring and October 2015 he realised this wasn't possible (or he had changed his mind) and it's at that point that he invested any funds still in cash. I'm satisfied that's more in keeping with Mr B's recollections, which have proven to be reliable in other respects, than the argument his representatives are now putting forward which are based on their reading of records at Companies House and Mr B's SSAS statements. Furthermore, even if a loan was no longer a consideration at the time of the transfer, that doesn't necessarily mean Mr B's intentions for the business had changed or that he would have appeared to be falling for a scam – not everyone transfers to a SSAS in order to access a loan from it. So, irrespective of whether Mr B would have told Countrywide he intended to obtain a business loan from the SSAS, or not, neither intention would have indicated he was being scammed, as both courses would have been normal and legitimate.

With all the above in mind, I remain satisfied that the aggregate picture that would have faced Countrywide wasn't one that would have indicated a scam was likely:

- The receiving scheme was correctly registered.
- W Ltd would have looked very different to the type of sponsoring employer highlighted in the Scorpion action pack:
  - It was incorporated in 2012, two-and-a-half years before Mr B's transfer request.
  - Its "nature of business" according to Companies House was waste collection.
  - It was located near Mr B's place of residence and the residence of the two other directors that had previous involvement with W Ltd.
- Mr B's recollections are that he intended to run W Ltd as a going concern in the waste collection sector.
- Mr B's interest in the transfer hadn't been prompted by an unsolicited approach.
- Mr B hadn't been rushed or pressured into transferring – the whole process took two and a half years.

Mr B's reason for setting up a SSAS would therefore have appeared conventional – to provide an occupational pension scheme for a small business that had been incorporated for some time and to provide financing for that business. I recognise Mr B says he was advised by someone who wasn't authorised by the FCA. But FCA authorisation wasn't required to advise on the setting up of a SSAS nor, ordinarily, on the purchase of gold or the making of commercial loans. So, taking everything into consideration, I don't think Countrywide would have had reason to question that adviser's involvement here as Mr B wouldn't have appeared as though he was being led through a process by someone acting in a potentially unlawful way, which would be the usual pattern for someone falling victim to a scam.

Keeping in mind firms were entitled 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, I'm satisfied any reasonable due diligence process by Countrywide wouldn't have necessitated further action.

### The Scorpion insert

In my provisional decision, I concluded the Scorpion insert had likely been sent to Mr B in April 2013 and February 2014. Mr B's representatives have accepted this. But when Mr B did finally transfer, in January 2015, I found that Countrywide *hadn't* sent the Scorpion insert. I thought it had failed in this respect. I went on to consider the impact this was likely to have had on Mr B's decision to transfer, taking into account the fact that the July 2014 version of the Scorpion insert (which was the one that Mr B should have been sent in January 2015) contained different messages to the insert Mr B had been sent previously and the overall tenor of the insert had moved on from warning about pension liberation to warning about pension scams in a more general sense.

I concluded that Countrywide's failure wouldn't have made a difference to Mr B's decision to transfer. I came to this conclusion because many of the warnings and actions listed in the July 2014 Scorpion insert didn't apply to Mr B and/or would have been sent to him previously anyway. The only warning that wouldn't have been given to Mr B previously related to the lure of "so-called one-off investments". I think it's fair to say that message could perhaps have resonated with Mr B – most of the investments he made were of the type that could,

conceivably, have been pitched as “one-off”, as they weren’t standard retail investment products.

But my view was – and remains – that it wouldn’t, ultimately, have made a difference to Mr B’s thinking because there were multiple reasons why he wouldn’t have thought a scam was in progress: he hadn’t been approached by cold call; conversations about the transfer had taken place over an extended period; he was already a director of the sponsoring employer and happy to be so; and someone he knew had already made good returns from transferring in similar circumstances. I’m satisfied none of this would have appeared to Mr B as being in keeping with the type of scam as outlined in the July 2014 version of the Scorpion insert.

In my provisional decision, I also made reference to a letter sent to Mr B with his transfer packs in 2013 and 2014. It said:

*“The decision to transfer is an important one, and you should consider this carefully before proceeding. If you have not already done so, we recommend that you consult your financial adviser. If you do not have one, you can get a list of financial advisers in your area from the Institute of Financial Planning. Their number is 0117 945 2470.”*

I thought Mr B’s reaction to the letters indicated he wasn’t particularly cautious because they contained a prompt for him to seek financial advice with directions on how he could go about that – a prompt he didn’t respond to. In response, Mr B’s representatives say Mr B would have considered that he already had an adviser so he had no reason to have taken action as a result of the letters in question. In other words, the letters don’t really tell us anything about Mr B’s mindset at the time of the transfer.

In itself, I don’t think this is an unreasonable argument. Mr B’s response to the letters is an imperfect guide to how cautious he was. Nevertheless, that doesn’t change my overall conclusion. For the reasons given above, I’m satisfied Mr B wouldn’t have changed his mind had he been sent the July 2014 Scorpion insert because that insert wouldn’t have given him sufficient reason for him to think he was falling victim to a scam.

For the reasons given above and in my provisional decision, which I now set out, I don’t uphold Mr B’s complaint.

## **COPY OF PROVISIONAL DECISION**

### **The complaint**

Mr B has complained about a transfer from his Sanlam personal pension to a small self-administered scheme (“SSAS”) in 2015. Mr B’s SSAS was used to invest in a number of non-standard investments that have since failed. Countrywide Assured Plc is now responsible for this complaint so it is “Countrywide” that I will be referring to from now on.

Mr B says Countrywide failed in its responsibilities when dealing with his transfer request. He says that Countrywide 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 B says he wouldn’t have suffered the losses he did if Countrywide had acted as it should have done.

### **What happened**

In 2012, Mr B says he was introduced to someone through a friend of his sister-in-law who advised him that his Countrywide personal pension would be better invested elsewhere. According to Mr B,

this person (who I'll refer to as "Mr H") worked for Cranfords, a SSAS provider. Mr B requested transfer documents from Countrywide on two occasions, in April 2013 and January 2014. Countrywide sent Mr B transfer papers both times (in April 2013 and February 2014) but Mr B didn't proceed with a transfer.

On 9 January 2015, Countrywide received a transfer request via the Origo transfer system. Origo is an electronic-based system that reduces the need for paper-based correspondence during pension transfers, so it is often used by providers to streamline the transfer process. The Origo screenshot in relation to Mr B's transfer included various pieces of information, the most relevant for the purposes of this complaint being:

- The date of the transfer request – 9 January 2015.
- The type of receiving scheme – a SSAS – and the receiving scheme provider – Cranfords.
- Confirmation that no adviser was involved in the transfer.
- The estimated transfer value – just under £45,000.
- Some personal details about Mr B, including his date of birth. He was 49 at the time of the transfer request.

Not on the Origo screenshot, but relevant to this complaint, is the date the SSAS's sponsoring employer (which I will refer to as "W Ltd") was incorporated. This was in June 2012, so approximately two-and-a-half years before the transfer in question. Mr B says the business was intended to be run as a going concern. Mr B says Mr H told him he could use his SSAS to make a loan to W Ltd to help it establish itself.

Mr B's Countrywide personal pension statement shows approximately £50,000 was disinvested from his pension on 12 January 2015. I've also seen correspondence from shortly after the transfer that shows Mr B's SSAS invested approximately £4,000 in gold and £32,000 in loan notes issued by Windermere Hydro Hotel Limited ("Windermere"). Mr B says the gold vanished and I understand the Windermere investment ran into financial difficulty. I've also seen a letter from Marbella Resort & Spa PLC to Mr B's SSAS, dated 19 September 2018, which indicates Mr B had, at some stage, invested in that particular resort and that the investment has since run into trouble. Mr B says the loan to W Ltd didn't materialise.

In 2019, Mr B (with the help of a claims management company) complained to Countrywide. Briefly, his argument is that Countrywide failed to adequately warn him about the potential risks of transferring. In particular, he says Countrywide didn't follow guidance launched by The Pensions Regulator ("TPR") on 14 February 2013. This is often referred to as the "Scorpion guidance" or "Scorpion campaign" because of the imagery it used. The guidance was launched in response to the increasing threat of pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age for instance) which can leave victims with little or no pension savings and liable to pay charges to HMRC. The Scorpion guidance was updated in July 2014. The updated guidance was broadened to address pension scams in general, not just pension liberation scams.

Countrywide didn't think it had done anything wrong. Briefly, it said it would have sent the relevant Scorpion warnings to Mr B in its transfer packs. It said it didn't do additional due diligence on the transfer because it derived comfort from the transfer request coming through Origo which, it says, would have vetted the receiving scheme provider. It said that more thorough due diligence wouldn't have made a difference to its ultimate decision to allow the transfer because Mr B had a statutory right to transfer, the receiving scheme had been properly registered with HMRC and no other "red flags" had been raised by the transfer request. In relation to this last point, Countrywide pointed to the fact that the receiving scheme's sponsoring employer had been incorporated a considerable time before the transfer occurred which wouldn't be in keeping with a typical pension scam.

The parties were unable to resolve the dispute informally, so the matter has now been passed to me

to decide.

### **What I've provisionally 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, my provisional decision is to not uphold Mr B's complaint. I'll explain why.

### 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 B'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 a similar vein, in 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 SIPP 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 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.

## 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 the above 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 B says he came into contact with Mr H through a friend of his sister-in-law, for whom Mr H had been generating good returns. Mr B says Mr H presented him with various investment opportunities over the course of several meetings. In his original complaint to Countrywide, Mr B said this process started in June 2012. Around that time, Mr B set up a company – W Ltd – with a friend which was intended to be run as a going concern in the waste management sector. This aligns with evidence from Companies House. Mr B says Mr H suggested W Ltd could be used to set up a SSAS in order to make his proposed investments. Mr B says Mr H was working for Cranfords, a SSAS provider.

Mr B has told us the investments he ultimately made were the Windermere hotel, gold bullion and the Marbella resort. Mr B has provided corroborating evidence to show he did invest in the first two of these following the transfer. He hasn't provided evidence to show when, or how much, he invested in the Marbella resort – just evidence that he invested in it at some point. As this is a provisional decision, Mr B should provide more substantive evidence if he considers it important to the outcome of the complaint and is an investment that he would want to be taken into account in any compensation award. Mr B also mentioned a hardwood venture, evidence for which I haven't seen. As such, I don't consider it likely that this investment was ever made. Again, Mr B should provide evidence of this investment if he wants it to be taken into consideration.

Mr B says he was told he would achieve returns of around 10% per year which, according to him, was pitched as being in keeping with a medium risk investment. He also says he was told that he would receive a loan of around £15,000 to £20,000 in order to help his business – W Ltd – get going. SSASs can be used to make loans to the sponsoring employer. With this in mind, along with the fact that Mr B's representatives say pension liberation wasn't a feature of this case, I will proceed on the basis that the loan wasn't intended as, or could have been construed as, an unauthorised payment.

Mr B's motives for transferring were therefore two-fold: to benefit from the higher returns from an assortment of investments and to access a loan from the SSAS to help support his fledgling business. Mr B says the loan never materialised. And he said the investments have all failed, including the gold which, he says, vanished. Whilst I'm aware that the Windermere investment did run into trouble, it seems doubtful that his gold would have disappeared so Mr B should provide further evidence of this if he wants this to be taken into consideration.

Mr B says he can't remember receiving the Scorpion insert, although he was open to the possibility that he received it but didn't read it. He said he didn't have any real concerns at the outset about his investments and isn't sure what impact Countrywide would have had on his decision to transfer had it done more to highlight some of the risks he was facing, although he says he may have done further research.

#### 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 when sending transfer packs.

Mr B is unsure whether he was sent the Scorpion insert. Countrywide says it included the Scorpion insert with all transfer packs from 18 February 2013 onwards. So this would mean it sent the Scorpion insert to Mr B in April 2013 and February 2014 – both of which were in response to a request from Mr B for transfer papers. (Mr B also requested policy information in September 2014 but as this wasn't a transfer request, I see no reason why Countrywide would have sent a transfer pack at that point.)

Countrywide hasn't been able to provide any clear-cut evidence to show it did send the Scorpion inserts with its transfer packs in April 2013 or February 2014. For instance, in April 2013 Countrywide sent Mr B a letter (dated 9 April 2013) and an email (undated but responding to Mr B's 5 April 2013 transfer request). Both the letter and the email say a "standard transfer pack" was enclosed and that Mr B should read the "Pension Transfer documents". But neither the email nor the letter refer to the Scorpion insert, scam warnings or anything similar. And the pages that follow the letter – which appear to be the transfer pack that the covering letter and email are referring to – are similarly silent on the matter.

However, Countrywide has pointed to the two named attachments in its email to Mr B: a "Transfer Pack Flyer.pdf" and a "Document.pdf". It says the flyer would "likely" have been the Scorpion insert. I think a "flyer" would suggest a generic document sent as a matter of course in a mailing. I think in this context the most likely flyer that Countrywide would have sent with transfer papers was the Scorpion insert.

I've also considered the more circumstantial evidence provided by Countrywide, which is as follows:

- A "Pension Liberation Process Flow" document – essentially a flow chart with a series of questions for Countrywide to investigate when dealing with a transfer request. Countrywide says this was drafted in 2013 (which is corroborated by the document's creation date) and would therefore have been in place for Mr B's transfer.
- A "Pension Transfer Due Diligence Checklist" – a check list of 21 boxes for Countrywide to complete as part of a transfer request. Although this dates from 2016, Countrywide says it would have been "very similar" to one used at the time of Mr B's transfer.

- A timeline of key changes in guidance and case law, along with Countrywide's internal responses to those changes. The dates are mainly from after the events in question, other than a bullet point to say the Scorpion insert would have been sent with every transfer pack from 18 February 2013.
- Internal emails showing Countrywide staff discussing anti-liberation guidance and steps to update internal procedures. Specifically, this is an email from 29 July 2014 in which a member of staff points out to two colleagues that pension liberation guidance had been updated and a rather more detailed email chain, with a wider distribution list, from March 2015 pointing to another update in the guidance along with comments on the steps Countrywide were taking to adopt that new guidance.

I think the evidence outlined in the bullet points above *taken as a whole* point to Countrywide being aware of the Scorpion guidance and being responsive to updates to it. So taking all the above into consideration, including the attachments sent in the April 2013 email and Mr B's recollections, I think it more likely than not Countrywide did include the Scorpion insert with the transfer packs it sent to Mr B in April 2013 and February 2014. It means Mr B was sent the Scorpion insert on at least three occasions: attached to the email Countrywide sent to him in April 2013 and enclosed in the transfer packs it sent to him in the post in April 2013 and February 2014. (It's also likely that the Scorpion insert was sent by email in February 2014 along the lines of what happened in April 2013. I haven't, however, seen corroborating evidence for this.)

Furthermore, I note that both the April 2013 and February 2014 covering letters sent with Countrywide's transfer packs included the following paragraph:

*"The decision to transfer is an important one, and you should consider this carefully before proceeding. If you have not already done so, we recommend that you consult your financial adviser. If you do not have one, you can get a list of financial advisers in your area from the Institute of Financial Planning. Their number is 0117 945 2470."*

So not only was Mr B sent the Scorpion insert on at least three occasions, he was also told – twice – that he should consult a financial adviser and where he could find such an adviser.

There is one final point to note on this subject, which is that Countrywide didn't send Mr B a transfer pack when he contacted it for information in September 2014. This is not surprising because it wasn't a transfer request. But Countrywide didn't send a transfer pack during the transfer process that followed because the transfer request came in via Origo rather than direct from Mr B. It follows that Countrywide didn't send Mr B the Scorpion insert in the run-up to his actual transfer because it didn't send him a transfer pack. In fact, as far as I can tell, it didn't contact him at all in this period.

I think Countrywide fell short in this respect. I've previously explained why I consider the warnings contained in the Scorpion insert to be an additional safeguard for transferring members and that those warnings should have been provided as a matter of course. So I think Countrywide should have ensured that Mr B got those warnings during the transfer process (either by sending the Scorpion insert or by other means). I note here that the warnings contained in the Scorpion insert that should have been given in 2015 were different to the ones Countrywide had sent in 2013 and 2014.

I recognise Countrywide says it thought Cranfords would have sent the Scorpion insert to Mr B. But I've already explained why I don't think ceding schemes could rely on other parties sending the insert on to members (especially those with a vested interest in the transfer). I'm therefore not satisfied with the information Countrywide provided to Mr B at the time of his transfer. I think its failure to provide Mr B with the warnings contained in the Scorpion insert meant it failed in its responsibilities under Principles 2, 6 and 7 and COBS 2.1.1R.

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

Given the information Countrywide had at the time, at least one feature of Mr B's transfer would have been a potential warning sign of pension liberation as identified by the Scorpion action pack: Mr B's SSAS was recently registered. (It wouldn't have been clear from the Origo request when the SSAS was registered. But in checking the scheme was correctly registered – which Countrywide needed to do – it would likely have become apparent that it had been recently registered.)

In addition, Countrywide said in its response letter to Mr B's complaint that it would have done further due diligence on Mr B's transfer because the destination scheme was a SSAS. It says it didn't do so because the transfer request came via Origo, which it took some comfort from, and because it wasn't aware that the Origo system could be used for transfers to SSASs. It's worth noting that further due diligence wouldn't have been necessary as a matter of course for transfers to SSASs at this time. Nevertheless, Countrywide considered such transfers as worthy of further due diligence. It's unclear why – possibly because it had seen an unusual amount of transfer requests to SSASs. But it follows that Countrywide had its own specific reasons for considering a transfer like this as being worthy of further due diligence. And I think in that light, and anyway because of the fact that the SSAS was recently registered, it would have been fair and reasonable for it 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 or not registered with HMRC, is it sponsored by a newly registered employer, is that employer geographically distant from the transferring member and 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', 'preference shares', 'one-off investment opportunities', 'free pension reviews', 'government endorsement' 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' or 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? Has the member 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 firm 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. That applies here. Given the warning

sign about the recently registered scheme and its own specific reasons for wanting to do further due diligence – and the relatively limited other information it had about the transfer – I think Countrywide should have addressed all three parts of the check list and contacted Mr B as part of its due diligence.

Countrywide's due diligence didn't extend beyond checking the SSAS was registered with HMRC because the transfer request was via Origo, which it took some comfort from. Countrywide's argument here is two-fold. First, the very nature of Origo transfer requests means there is limited need for the ceding scheme to intervene. The transfer process, in Countrywide's view, would have been controlled by the receiving scheme and any intervention on the part of Countrywide would have been unnecessary and would have defeated the object of Origo, which is to speed-up the transfer process by removing manual processes and the sending of additional paperwork. Second, Origo would already have completed due diligence checks on the receiving scheme's administrators negating the need for Countrywide to do so.

I make no comment on the due diligence undertaken by Origo, not least because 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. Given the importance of what the due diligence in question was aimed at preventing – pension scam activity, 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, not to mention the duties of ceding schemes under PRIN and COBS 2.1.1R, I don't think Countrywide's approach was good enough here.

#### What should Countrywide have found out?

Had Countrywide done further due diligence, I think it would, reasonably, have concluded that the scam threat was minimal here. The receiving scheme was correctly registered. The sponsoring employer had been incorporated long before the transfer request was made and Mr B's intention was to run it as a going concern, in the waste management sector, with a friend. And its address was in close proximity to Mr B. So Mr B's reason for setting up a SSAS would have appeared conventional – to provide an occupational pension scheme for a small business that had been incorporated for some time and to provide financing for that business. Mr H didn't need FCA authorisation to advise on this nor, ordinarily, on the purchase of gold or the making of commercial loans. And Mr H's involvement didn't come from an unsolicited approach, nor did he rush or pressure Mr B into a decision – conversations took place over the course of several years.

None of this fitted the usual pattern of a scam or would have seemed particularly remarkable. Yes, there were some parallels with Mr B's situation and the warning signs as outlined in the scorpion action pack. Specifically, the SSAS was likely to have been recently registered and Mr H wasn't authorised by the FCA. An argument could also be made that of the two investments we know Mr B intended to make, one of them – the loan to Windermere hotel – was of the type the action pack, and the FCA's August 2014 bulletin, was warning about. Nevertheless, a firm needed 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. With that in mind, I think Countrywide would, reasonably, have taken comfort from the aggregate picture which is that Mr B didn't appear to have been led through a process by someone acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam.

However, Countrywide should have given Mr B the warnings contained in the later Scorpion insert so that he could assess for himself the risk he was facing. It didn't send the Scorpion insert because the transfer was requested through the Origo system. Nevertheless, for the reasons given previously, I think Countrywide should have given the same warnings somehow. And the most reasonable way of doing that here would have been at the end of its due diligence process. Even so, I'm not persuaded the warnings contained in that Scorpion insert would have made a difference here.

The Scorpion insert at the time of Mr B's transfer request highlighted the following warning signs for someone to be on the lookout for:

- claims that a pension pot can be accessed before age 55;

- being approached out of the blue over the phone, via text message or in person door-to-door;
- being enticed by upfront cash; and
- being offered a free 'pension review' or being lured by 'one off' investment opportunities.

It went on to say that if someone thought they were being targeted by scammers, they should not be rushed or pressured into a decision and that they should call TPR before signing anything – or Action Fraud if an offer had already been accepted.

Many of the warnings and actions listed didn't apply to Mr B and/or would have been sent to Mr B previously anyway when he was sent the previous version of the Scorpion insert with his transfer packs in April 2013 and February 2014.

The only message that wouldn't have been received previously relates to the lure of one-off investments. That could have applied to Mr B's situation. Whilst it's doubtful that gold could credibly be pitched as a "one-off" investment, the Windermere hotel loan may well have been. And the overall tenor of the message was to be cautious about "too good to be true" claims about various investments. This may have resonated with Mr B. I note too that the later version of the Scorpion insert warned about scams in general rather than the narrower warning about pension liberation. So that too may have put Mr B more on guard than he was previously.

However, on balance, I don't think messages along the lines of the above would have been enough for Mr B to change his mind given the many reasons why he *wouldn't* have thought a scam was in process. Those reasons are similar to those that would have comforted Countrywide: namely he wasn't approached unsolicited, he intended to run his business as a going concern, he was setting up a scheme for that business and someone he knew had apparently done well by doing something similar. Of course, a prudent person may still have done further checks had they been given the appropriate information. But I'm not persuaded Mr B falls into this category. He ignored the Scorpion insert sent to him on at least three separate occasions. And whilst that may have been understandable given those warnings were in the context of liberating his pension – which he wasn't doing – he also ignored a letter recommending he consult a financial adviser, and how to find one, which was sent on two occasions. All things considered, therefore, it strikes me as being highly unlikely that Mr B would have shown more caution in 2015.

It follows that I don't intend to uphold Mr B's complaint.

## **END OF PROVISIONAL DECISION EXTRACT**

### **My final decision**

My final decision is to not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 January 2025.

Christian Wood  
**Ombudsman**