

Ombudsman's Determination

Applicant	Ms Y
Scheme	Countrywide Assured PLC (the Plan)
Respondents	Countrywide Assured (Countrywide) Countrywide Assured Trustee Company Limited (the Trustee)

Outcome

1. Ms Y's complaint against Countrywide is partly upheld. To put matters right, Countrywide shall pay Ms Y £500 for significant distress and inconvenience.

Complaint summary

2. Ms Y has complained that Countrywide, the Plan provider, failed to carry out sufficient due diligence checks when transferring her benefits to the Eleven Property Pension Scheme (**the Receiving Scheme**).

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Ms Y was previously represented by Owl and Fox law (**the Solicitor**) in regard to her complaint.
5. On 8 March 2011, Ms Y contacted Countrywide and requested a retirement illustration and details of the options available to her under the Plan. She was then age 51.
6. On 15 March 2011, Countrywide sent Ms Y an up-to-date valuation of her Plan benefits. The letter also included the following statement:

“Unfortunately we are unable to issue you with a quotation at the moment as under HM Revenue & Customs rules you must be at least 55 to take pension benefits (unless you are retiring due to ill health).”

7. In September 2011, Ms Y informed Countrywide that she had moved and that she required an up-to-date Plan valuation.
8. On 29 September 2011, Countrywide provide Ms Y with a retirement illustration and reaffirmed that she could not claim any Plan benefits until she turned 55. It suggested that she obtain the input of an independent financial adviser to better understand the options available to her.
9. In early 2013, Ms Y says she received an unsolicited call from an introducer for the Receiving Scheme. The introducer took her details and explained that someone else would contact her about exploring the idea of a transfer of benefits. Ms Y says, at the time, she was trying to access her pension benefits, but she was unable to do so.
10. The following day, an unregulated financial adviser (the **Adviser**), telephoned Ms Y and proposed an opportunity to transfer her Plan benefits into the Receiving Scheme where they would be wholly invested in a storage unit with Strongbox Self Storage Ltd (**Strongbox**).
11. The Adviser provided Ms Y with a Strongbox leaflet which said:
 - upon receipt of a transfer, the Receiving Scheme would invest the money into a storage unit(s);
 - the investing and purchasing of a storage unit(s) needed to be completed by the end of April 2013;
 - she would receive a yearly investment return of around 8% from the start date of her investment;
 - upon the completion of the investment, she would receive a 250-year lease on the unit(s) from the freeholder, Merseyside Property Development Ltd; and
 - if she wished to sell the lease, she could organise a private sale or sell it to the Receiving Scheme or contact Strongbox directly to find a buyer for the unit.
12. On 22 January 2013, Ms Y emailed Countrywide and asked for details of her Plan benefits, including a transfer value.
13. On 5 February 2013, Countrywide sent Ms Y a transfer quote and provided the necessary transfer forms. It also said that she should consider seeking independent financial advice before proceeding with a transfer.
14. On 14 February 2013, The Pensions Regulator (**TPR**) launched a new awareness campaign regarding pension liberation schemes. Part of this campaign involved issuing cautionary documentation informing members about the potential risks of pensions scams. This comprised of:
 - a two-page warning note, which TPR wanted administrators and pension providers to include in the information they provided to members who requested a transfer;

- an information leaflet (**the Scorpion Leaflet**), which contained a number of warnings directed at potential members who were thinking of transferring; and
- a “fraud action pack” for pension professionals.

15. Page 8 of the fraud action pack provided a number of warning signs/red flags that pension providers should be on the lookout for:

- the receiving scheme is not registered, or is only newly registered, with HM Revenue and Customs (**HMRC**);
- the member is attempting to access their pension before age 55;
- the member is pressuring the Trustee or administrator to carry out the transfer quickly;
- the member was approached unsolicited;
- the member being informed that there is a legal loophole; and
- the receiving scheme was previously unknown, but is now involved in more than one transfer request.

If any of these red flags were present, then it was recommended that direct contact should be made with the member to query the receiving scheme and how they came to know of it.

16. The Scorpion Leaflet included examples of real-life pension scams and explained that the warning signs of a potential scam could be:

- receiving an unsolicited call about a free pensions review;
- the promise of accessing a pension before age 55, through the provision of an advanced loan payment, or cash bonus, upon the completion of the transfer;
- the promise of a unique investment opportunity in overseas property, which would make it harder to trace the transfer; and
- the use of a courier service to pressure members into signing transfer documents quickly.

17. On 7 March 2013, Ms Y completed the transfer declaration forms and forwarded them on to Pension Administration Resources (**PAR**), the Receiving Scheme’s administrator.

18. On 12 March 2013, a separate transfer of benefits was completed when Ms Y transferred her benefits from Equitable Life into the Receiving Scheme.

19. On 20 March 2013, PAR sent Countrywide the completed transfer declaration forms, signed by Ms Y. It confirmed that the Receiving Scheme’s Pension Scheme Tax

Reference Number (**PSTR**) was 00783381RB. It also provided a copy of the Receiving Scheme's registration details with HMRC confirming that it was registered for tax relief purposes on 23 April 2012.

20. On 27 March 2013, Countrywide wrote to Ms Y and asked for proof of her current address, as she had moved within the last six months. It asked her to complete an enclosed deed of indemnity form, as she had not provided her original policy documents for the Plan. Ms Y provided several bank statements confirming her current address and signed the deed of indemnity form.
21. On 2 April 2013, Ms Y telephoned Countrywide to see if the transfer was complete.
22. On 11 April 2013, Countrywide transferred £19,133.78 to the Receiving Scheme.
23. On 1 May 2013, Ms Y completed a Member Directed Investment Form for the Receiving Scheme. In doing so, Ms Y agreed to purchase Units C11, B12 (a 31.33% shareholding) and C4 (an 8.98% shareholding) through Strongbox. The form confirmed that she would already have purchased unit C11. Subsequently, £18,169.19 was invested into Strongbox. By signing the investment form, Ms Y agreed that her investment may be tied up for "several years" if she was unable to find a buyer for it.
24. On 14 May 2013, £3,000 was deducted from Ms Y's pension funds for administration fees covering a six-year period. At around the same time, Ms Y also received a sum of £3,000 from PAR. She says she understood this to be a payment from her pension and not an incentive for joining the Receiving Scheme.
25. On 26 June 2015, Brambles Administration Limited (**Brambles**) was appointed as the Receiving Scheme's administrator.
26. In April 2015, Ms Y contacted Brambles as she wished to sell her share of the storage units that her pension was invested in due to a decline in her health.
27. On 30 April 2015, Brambles responded to Ms Y explaining that it could not sell the storage units, on her behalf, unless someone else was interested in purchasing them. It confirmed that the Trustees of the Receiving Scheme were unaware of any person, or company, who was interested in buying her share of the storage units. However, the Trustees were in communication with various agents who were looking for interested parties.
28. Between 2013 and 2018, Ms Y was provided with annual benefit statements each of which showed that her initial investment had not generated the promised returns.
29. On 2 September 2019, the Solicitor submitted a formal complaint, on Ms Y's behalf, to Countrywide, and said that:-
 - In 2013, Ms Y received an unsolicited call from the Adviser about transferring her Plan benefits into the Receiving Scheme.

- Countrywide should have been reasonably aware that its members were financially unsophisticated. Nor were its members able to determine whether advice received was from a regulated or unregulated source.
- Countrywide had failed to carry out sufficient due diligence on Ms Y's transfer request which had exposed her to an unsuitable pension arrangement.
- The Pensions Ombudsman's (**TPO**) Determination PO-12763¹ provided that, despite not being regulated by the Financial Conduct Authority (**FCA**), Countrywide still owed a duty of care to its membership to protect their interests.
- Ms Y had suffered a financial loss of her Plan benefits through no fault of her own. If Countrywide had undertaken sufficient due diligence, and engaged verbally with Ms Y about the transfer, it would likely have determined that the Receiving Scheme was not suitable for Ms Y.
- In February 2013, TPR issued guidance and information about the serious nature of pensions scams at the time. So, it would have been aware of the potential risks associated with allowing Ms Y to transfer to the Receiving Scheme.

30. On 25 September 2019, Countrywide responded to the Solicitor's complaint. It did not uphold the complaint and explained that:-

- It had checked the transfer declaration forms to ensure that it was Ms Y who had completed them, and that they were completed accurately. The transfer forms recommend that Ms Y obtain independent financial advice before proceeding with a transfer.
- It received confirmation of the Receiving Scheme's PSTR and registration details with HMRC. So, it believed that the Receiving Scheme was a legitimate pension arrangement.
- On 5 February 2013, Ms Y was sent a transfer quote before TPR published its guidance about pensions liberation on 14 February 2013. The completed transfer declaration forms were received after 14 February 2013. However, the Pensions Ombudsman (**the PO**) had previously not upheld complaints with similarities to that of Ms Y's. That is, when the transfer paperwork was issued before TPR published its guidance on pensions liberation.
- It was reasonable to expect that some time would be required to update current procedures and literature to reflect TPR's guidance.
- As the transfer process was already underway when TPR published its guidance, it believed that the transfer was completed in line with its procedures at that time. Subsequently, it had met any regulatory requirements.

¹ <https://www.pensions-ombudsman.org.uk/decision/2018/po-12763/police-pension-scheme-po-12763>

31. Ms Y's position:-

- Initially she was interested in a transfer because, as she understood it, “the Government at the time announced new legislation allowing people over 50 years old to release or transfer funds from their existing pensions”.
- At no point in the time before, or during, the transfer was she aware that the introducer or the Adviser was unregulated.
- Prior to the transfer, she was not experiencing any financial difficulties and she was in full-time employment earning a monthly salary. The main purpose of the transfer was to increase the value of her Plan benefits so that she had something to leave her four children when she died.
- At the time of the transfer, she was no longer contributing into the Plan, as she did not work for the Plan's sponsoring employer. The Adviser explained that by transferring into the Receiving Scheme, she would see greater returns from the rental income charged on the units, less tax, and fees.
- The Adviser told Ms Y that she was able to withdraw a lump sum, from the Receiving Scheme. This was before the funds were invested into the storage pods. Despite not having reached age 55, Ms Y chose to withdraw a lump sum from the Receiving Scheme.
- She bought a new television and flooring for her home using the lump sum. However, at the time she was unaware that the lump sum was actually an unauthorised payment, until she received an unauthorised payment tax charge from HMRC.
- She did not carry out any due diligence or background checks on the Receiving Scheme before transferring her Plan and Equitable Life benefits into it.
- She did not receive a copy of the Scorpion Leaflet, if she had, she would have read it and reconsidered transferring to the Receiving Scheme. She was unaware that she could have transferred her Plan benefits into her current employer's pension scheme.
- After a breakdown in her health, several years after the transfer, she attempted to withdraw some funds from the Receiving Scheme. However, she was advised that she was unable to, and that the lease on the units was taken out on a long-term basis. While her benefits are not lost, she is unable to access them.

Adjudicator's Opinion

32. Ms Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Countrywide or the Trustee. The Adjudicator's findings are set out below in paragraphs 33 to 48.

33. Ms Y satisfied the definition of an “earner”, defined under section 3 of the Social Security and Benefits Act (**the 1992 Act**). The definition of “earnings” in the 1992 Act refers to an “employment” that is further defined as including any trade, business, profession, office or vocation. The ordinary meaning of earnings and earner implied that an individual was in employment, and this was confirmed in section 3 of the 1992 Act. Ms Y sent Countrywide copies of her bank statements, in response to its letter of 27 March 2013 (see paragraph 20 above), these indicated that she was in receipt of a monthly salary, and so was in full-time employment. Overall, the Adjudicator was satisfied that Ms Y was an earner for the purpose of the transfer.
34. Ms Y was also entitled to a statutory transfer if: a benefit crystallisation event had not occurred; she was no longer paying into the Plan; and she was below the age of 75. It appeared that Ms Y satisfied these criteria, so she was, at the time, entitled to a statutory transfer. As Ms Y held a statutory right to transfer, the extent to which Countrywide could delay or refuse a transfer of Ms Y’s pension rights in the Plan to a pension arrangement which had met HMRC requirements, such as the Receiving Scheme, was limited. However, this did not preclude Countrywide from carrying out sufficient due diligence checks that were in line with TPR’s recommendations applicable at the time.
35. The Adjudicator found that, by the time Ms Y’s transfer payment was completed, on 11 April 2013, Countrywide would have been aware of TPR’s updated guidance, which came into effect on 14 February 2013. Countrywide would also have been aware of the updated guidance prior to the 14 February 2013. So, Countrywide should have sent Ms Y a copy of the Scorpion Leaflet upon receipt the completed transfer declaration forms.
36. The question of when providers should have adopted the new TPR guidance was considered by the then PO and, in Determination PO-24554, he said:

“I am not bound by previous Determinations I have made, and each case is assessed on its individual facts. I have taken the opportunity to review the facts, further evaluate the evolving regulatory position and the cases I have previously Determined. Having done so, I consider that a period of approximately one month would generally be sufficient for a provider to put in place any procedures necessary as a result of the Regulator’s new guidance. This view is supported by previous Determinations I have issued, such as PO-6375, along with others. Should this timeframe not be met by any provider, I would expect it to consider temporarily suspending transfers while it makes the necessary arrangements or contacting The Regulator to request an extension on the stipulated transfer deadlines.”
37. Previously the PO allowed a period of approximately one month for providers to introduce the new transfer procedures. Countrywide said that it did not implement the changes brought about by TPR’s updated guidance until after April 2013. So, the transfer was completed under the previous process that applied, and Countrywide carried out the basic checks to see if the Receiving Scheme held a PSTR number

and that it was registered with HMRC. This meant that Countrywide had not issued the Scorpion Leaflet to Ms Y as this was not, at the time, part of its transfer process.

38. Upon receipt of the completed transfer declaration forms, on 20 March 2013, Countrywide was provided with an ideal opportunity to adhere to TPR's updated guidance, or provide Ms Y with a copy of the Scorpion Leaflet. This was because Countrywide needed additional information from Ms Y before the transfer could proceed, so it wrote to Ms Y on 27 March 2013, albeit without any mention of the updated guidance.
39. Based on page 8 of TPR's updated guidance, the Adjudicator considered whether there were any apparent red flags that should have alerted Countrywide to any suspicious activity regarding Ms Y's transfer. It was noted that, at the time of the transfer, Ms Y was 54, a year under the normal minimum pension age, the Receiving Scheme was registered with HMRC for a little under a year as of 23 April 2012. If Countrywide had been operating under TPR's updated guidance, it was likely that these signs would have been spotted, meaning direct engagement would have been required.
40. It was the Adjudicator's view that, at the time of Ms Y's transfer, Countrywide had not undertaken sufficient due diligence, which amounted to maladministration. Given its failing, it was appropriate to consider whether Ms Y would have acted differently if she had received the Scorpion leaflet. Though, it would be difficult to conclude, without the benefit of hindsight, how Ms Y would have acted if she was provided with the Scorpion Leaflet.
41. If Ms Y had received a copy of the Scorpion Leaflet, and engaged with its contents, she would have noted a number of similarities in her own circumstances to the examples provided in the Scorpion Leaflet. Namely, she received a cold call about the Receiving Scheme and was told about an opportunity to receive a cash lump sum upon the completion of the transfer. There was also the potential for investment returns of plus 8%, this helped to persuade her to proceed with the transfer. However, the Adjudicator noted that Countrywide was unaware of any of this information.
42. On the balance of probabilities, based on Ms Y's comments, see paragraph 31 above, it was likely that she still would have proceeded with the transfer even if she had been provided with the Scorpion Leaflet. This was because:
 - she actively engaged with Countrywide, and with Equitable Life, about claiming benefits before age 55;
 - she did not obtain financial advice from an independent financial adviser, despite recommendations to do so;
 - on 12 March 2013, she transferred the benefits she held with Equitable Life into the Receiving Scheme; and

- upon the completion of the transfer, she received £3,000, from the transfer value, before the funds were invested.
43. It appeared that prior to the transfer Ms Y had attempted to access her pension before the age of 55. In 2011, on two separate occasions, Countrywide informed Ms Y that that she was unable to do so until she turned age 55. Despite being told this, Ms Y still elected to proceed with the transfer, and accept a lump sum of £3,000. So, it was reasonable to suggest that Ms Y might have queried why she was able to take a lump sum, before age 55, from the Receiving Scheme, but not from Countrywide, but she did not. This, in the Adjudicators view, supported the argument that Ms Y would not have effectively engaged with the Scorpion Leaflet if she had been provided with a copy.
 44. Countrywide suggested, on a number of occasions, that Ms Y should obtain independent advice before making any decisions regarding the transfer, but she did not. This suggested that Ms Y was not effectively engaging with, or reading the materials that were provided to her by Countrywide. So, it was again unlikely that this would have been any different if she had been provided with a copy of the Scorpion Leaflet.
 45. By 12 March 2013, Ms Y had already transferred her Equiniti pension over to the Receiving Scheme. So, it was unclear how receiving a copy of the Scorpion Leaflet might have changed Ms Y's attitude toward the transfer, given that one had already been completed. Based on what Ms Y stood to gain from the transfer, it was unlikely that the provision of the Scorpion Leaflet would have resulted in a different outcome.
 46. Overall, Ms Y held a statutory right to a transfer, and upon receipt of the completed transfer forms, Countrywide had a statutory and contractual duty to transfer Ms Y's funds to the Receiving Scheme. That was unless there were any indications of why the transfer should not go ahead, such as those concerning pension liberation fraud. The Adjudicator accepted that, at the time of the transfer, Countrywide should have adhered to the updated due diligence guidance. However, it was likely that Ms Y would not have changed her position and that the transfer would have proceeded in any event.
 47. The Solicitor referred to a previous determination, PO-12763, in support of Ms Y's complaint. However, the circumstances in PO-12763 differed to those in Ms Y's case. In PO-12763, the transfer was carried out 18 months after TPR issue its updated guidance. The then PO found that the respondent failed to issue the Scorpion Leaflet and carry out sufficient due diligence prior to the transfer.
 48. It was regrettable that the decision to proceed with the transfer did not transpire to be in Ms Y's best financial interests. But even if Countrywide had carried out appropriate due diligence checks, in line with TPR's updated guidance, it was likely that Ms Y would still have elected to transfer to the Receiving Scheme.
 49. Ms Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms Y has provided her further comments which do not change the outcome.

I agree with the Adjudicator's Opinion, save in one respect, which I deal with below, and note the additional points raised by Ms Y which are:-

- At the time of the transfer, she had gone through a divorce and was working full-time to support her children. She was worried that, due to her declining health, she might be forced to take early retirement, so she needed to review her finances. She had three separate pensions, so it made sense to look into amalgamating them into one arrangement.
- The purpose of transferring to the Receiving Scheme was to make use of a long-term investment that would allow the flexibility to access her pension benefits, if required, due to her health. The length of time between her enquiries about her benefits in 2011 up until the transfer was completed in April 2013 should demonstrate that she was cautious/risk adverse.
- Countrywide had an ample amount of time between 14 February 2013, up until the completion of the transfer, to provide her with the Scorpion Leaflet, or directly engage with her about the transfer and the possibility of pension scams. She would have engaged with the Scorpion Leaflet as it outlined step by step circumstances similar to that of her own at the time.
- Countrywide owed a duty of care to her, and this should have meant implementing appropriate and adequate checks in relation to transfers. In failing to implement TPR's updated guidance, it had failed in its duty of care.
- It was unfair to suggest that she would not have engaged with the Scorpion Leaflet, if she had been sent a copy. The transfer was to help secure her and her children's financial futures. Based on her own attitude towards finance, she would take every precaution to protect her pension benefits.

Ombudsman's decision

50. I have considerable sympathy for Ms Y, who appears to have been a victim of pensions liberation fraud and is not able to access her pension funds. However, this matter cannot be viewed with the benefit of hindsight, and it is the circumstances and specific facts at play at the time of the transfer which must be considered.
51. As the Adjudicator has explained, in the period leading up to the completion of the transfer, Ms Y satisfied the definition of an "earner" and she held a statutory right to a transfer, which she exercised by completing the transfer declaration forms. So, the extent to which Countrywide could delay/stop the transfer was limited, that is, unless it provided sufficient reasoning for doing so. This would generally be if there is evidence of suspicious pensions liberation activity.
52. I will not repeat the findings of the Adjudicator regarding the identified maladministration relating to Countrywide's inadequate due diligence's checks. Suffice to say that a period of one-month was more than sufficient for new

procedures, adhering to TPR's updated guidance, to be implemented. It is unfortunate that Countrywide did not seize the perfect opportunity to provide Ms Y with pensions scams material, or the Scorpion Leaflet, when it wrote to her on 27 March 2013 to request additional information, and prior to the transfer completing on 11 April 2013. In my opinion it should have done so and, as both of those dates fell outside of the one-month grace period that I, and my predecessor, have given for the implementation of the new procedures, I consider that to be maladministration. Accordingly, and in contrast to the findings of the Adjudicator, it is in my view appropriate to make an award of £500 for the significant distress caused in those circumstances.

53. However, as the Adjudicator has said, it is likely that Ms Y would not have engaged with this material, even if she had received it. I have considered Ms Y's comments regarding her circumstances leading up to the transfer. Ms Y has explained that at the time she was recently divorced, and her health was declining to the extent that she believed she might have to consider ill health earlier retirement. As a result, she decided that it was best to consolidate three separate pensions. Following a cold call, she was informed about the Receiving Scheme and its potentially lucrative investment returns, this was in addition to a lump sum payment upon the transfer's completion.
54. Ms Y has explained that she took a cautious approach before agreeing to the transfer. However, this is at odds with a previous statement she made about not having conducted any due diligence in regard to the Receiving Scheme. Further, Ms Y was twice informed by Countrywide that she was unable to access a pension benefit until she reached age 55, yet, upon the completion of the transfer, she was paid a lump sum, from her pension benefits, at age 54. This, in my view, builds a picture that Ms Y was, to an extent, seeking to access funds from her pension before age 55. If she was not, it would be reasonable to suggest that she would have queried what loophole allowed for the early payment of a benefit that was unavailable under Countrywide.
55. I appreciate that if it were not for Countrywide's lack of adequate due diligence checks, Ms Y would have been afforded the opportunity to review the Scorpion Leaflet. That being said, as I have explained above, it would seem that once Ms Y was informed about the advantages of the Receiving Scheme it was very unlikely that she would have changed her mind in regard to the transfer. Especially when her Equiniti benefits had already been transferred to the Receiving Scheme.
56. Consequently, I agree with the Adjudicator that, on the balance of probabilities, it is unlikely that Ms Y would have engaged effectively with the Scorpion Leaflet or decided to stop the transfer. I believe it is fair to say that Ms Y's most recent comments about how she would have engaged with the Scorpion Leaflet are made with the benefit of hindsight given what subsequently occurred with the Receiving Scheme.

57. As the Adjudicator identified, there were a number of warning signs that could have alerted Countrywide to suspicious activity about the transfer. But it was not informed that Ms Y had been cold called and promised lucrative investment returns and the early payment of a lump sum if she transferred to the Receiving Scheme.
58. Despite not providing the Scorpion Leaflet, Countrywide conducted due diligence checks, in line with its then current practice, before its process was updated in April 2013. There was nothing immediately obvious as to why the transfer should not proceed, especially given Ms Y's statutory right to transfer.
59. It is regrettable that the transfer does not appear to have been in Ms Y's best interests. Nonetheless, even if the appropriate level of due diligence had been undertaken, it is likely that Ms Y would still have proceeded with the transfer.
60. I uphold Ms Y's complaint in part..

Directions

61. Within 28 days of the date of this Determination, Countrywide shall pay Ms Y £500 for significant distress and inconvenience.

Dominic Harris
Pensions Ombudsman
31 May 2024