DRN-3279473

The complaint

Mr P has complained about a transfer of their pension plan held with Phoenix Life Limited (Phoenix) in 2012. Mr P believe the monies have now been lost.

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

What happened

In September 2012 Mr P requested his pension transfer details from Phoenix. No information has been provided that points to how or why Mr P decided to transfer his pension or whether an introducer firm was involved.

On 11 October 2012 Phoenix has said it received a transfer out application form requesting the transfer of Mr P's pension to the Northland Pensions Scheme (the Scheme). The administrators of the scheme were CSN Trustee services. In its covering letter CSN provided (amongst other things) the Scheme's Pension Scheme Tax Reference ("PSTR") number and details of the bank account the transfer payment was to be paid into along with the Scheme's HMRC registration certificate and further information on the Scheme. The Scheme was an occupational scheme which was registered by HMRC on 1 July 2012.

Mr P's pension was transferred on 23 October 2012. His transfer value was around £87,000. He was 51 years old at the time of the transfer.

Around July 2020 Mr P complained to Phoenix. Briefly, his argument is that Phoenix didn't follow the correct procedure for pension transfer. It provided no risk warnings, it didn't send The Pension Regulator's "Scorpion" leaflet, it failed to gather enough information about the transfer and it didn't ascertain if he had taken financial advice or what investments were held within the scheme.

Phoenix didn't uphold Mr P's complaint. It said Mr P had a right to transfer and that none of the information it had about the Scheme at the time gave it cause for concern. It also explained that the Scorpion leaflet was issued after Mr P had requested the transfer and after it was completed (in 2013). Therefore, it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive (as some of it is here) I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Phoenix was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- 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 indeed they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.

- On 10 June 2011 the Financial Services Authority (FSA) issued a warning was about the dangers of "pension unlocking" and this specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- At the time of Mr P's transfer, Phoenix was regulated by the FSA. As such, it was subject to the 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 rules governing pension transfer requests, but the following have particular relevance:

  – 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.

For context, it's also worth noting that on 14 February 2013, TPR launched its "Scorpion" campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). The campaign came after Mr P's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by pension liberation was still in its infancy at the time of Mr P's transfer and that it wasn't until *after* his transfer that scheme administrators had specific anti-liberation guidance to follow.

What did Phoenix do and was it enough?

With the above in mind, at the time of Mr P's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Phoenix had the Scheme's HMRC registration certificate, and PSTR, so it didn't need to do anything further in this respect.

There was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering early access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

I'm satisfied nothing along these lines would have been apparent to Phoenix at the time of the transfer. Mr P's transfer papers wouldn't have given an indication that his interest in transferring followed a cold call or internet promotion offering early access to pension funds (if indeed that was the case). And, given the guidance in place at the time, there was no expectation for Phoenix to contact Mr P to see how his transfer had come about. And I haven't seen anything that Phoenix would, reasonably, have been aware of about the parties involved in the transfer that would have caused it concern.

It's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published, and it wouldn't therefore be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance. This means that I can't fairly expect Phoenix to have considered the fact that the Scheme was recently registered (which it would have known from the HMRC registration certificate it was sent) as being suspicious. And it means I don't expect Phoenix to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.

Also, whilst not necessarily relevant in this complaint, I'm also satisfied Phoenix didn't have to be alarmed at every contact it received from third parties that weren't authorised by the FSA. The FSA didn't regulate occupational pension schemes, so Phoenix wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. In any event, as mentioned previously, the FSA announcement about pension liberation mentioned that some advisers it regulated were involved in this very activity. So that doesn't suggest to me that, at that time, it considered the adviser's regulatory status as being a clear

determining factor of whether liberation was taking place.

Where they were accompanied by the consumer's valid authority, a personal pension provider might also receive requests for information from other parties that might be engaged in some legitimate aspect of a consumer's financial affairs (accountants, tax or legal advisers, credit brokers, debt charities, introducers to authorised financial advisers and so on). But none of these other activities were required to be authorised by the FSA at the time either. And when Phoenix received the transfer request itself, it came directly from the occupational scheme (or those administering it), which again did not require FSA authorisation.

I would expect an FSA-regulated personal pension provider at that time to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer request promptly (and in line with a member's legal rights). Taking all of this into account, and particularly where transfers to occupational schemes were concerned, my view is that it wouldn't have been practicable for a personal pension provider at that time, to have queried the regulatory status of every contact it had from third parties – or presume that there was a risk of harm from a third party involved in an occupational pension transfer purely because it was not FSA authorised.

Conclusion

At the time of Mr P's transfer, Phoenix would have been expected to know the receiving scheme had a PSTR and was correctly registered with HMRC. Phoenix had this information. Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-scam due diligence. The FSA's Principles and COBS 2.1.1R meant Phoenix still had to be alive to the threat of pension liberation, and other types of scam, and act accordingly when that threat was apparent. But I'm satisfied there weren't any warning signs that Phoenix should, reasonably, have spotted and responded to.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

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

Ayshea Khan
Ombudsman