

The complaint

Mr L has complained, with the help of a professional third party, about the transfer of his Phoenix Life Limited ('Phoenix') pensions to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in December 2014. The QROPS was subsequently used to invest in a managed portfolio and Dolphin Capital Loan Notes. Mr L believes these investments are now likely to have little value and so he has lost out financially as a result.

Mr L 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 L says he 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

Mr L held three pensions with Phoenix. On 15 May 2014, Mr L signed a letter of authority ('LOA') appointing Servatus Ltd as his advisers in respect of his Phoenix pensions and giving Phoenix permission to provide information about his policies.

Servatus sent this LOA to Phoenix and it replied on 28 May 2014, providing a transfer quote for Mr L's pension. A copy of the transfer information was also sent directly to Mr L the following day.

On 24 June 2014, Servatus wrote to Mr L. The letter began by thanking him for his meeting with 'Portia' and a specific named representative of that business. The letter went on to explain that Servatus was writing to provide a recommendation. The enclosed report recommended that Mr L transfer his pensions held with Phoenix to the Harbour Retirement Scheme ('HRS'), a QROPS based in Malta, in order to invest in Dolphin Capital and a managed portfolio. The investments would be made through an asset management bond, the platform provider for which was SEB Life International ('SEB') – a business regulated in Ireland and able to offer certain products and services in the UK.

Mr L signed a copy of this recommendation on 1 July 2014, confirming he was happy with it. He also signed some forms to enable the transfer of his pension on the same day.

On 10 November 2014, Harbour Pensions Limited ('Harbour') wrote to Phoenix enclosing an application to transfer Mr L's pension benefits to the HRS. Harbour was authorised by the Maltese Financial Services Authority to act as a retirement scheme administrator and was the administrator of the HRS.

Amongst the documents provided was an LOA authorising Phoenix to correspond with Harbour, identity documents certified by Servatus, signed transfer discharge and HMRC forms and confirmation from HMRC that the HRS was entered onto its recognised list in April 2013.

I've seen a copy of the HRS application form, although this does not appear to have been

provided to Phoenix as part of the transfer application. In the section of this form about professional advisor fees Servatus, which was regulated by the Central Bank of Ireland and shown on the Financial Conduct Authority's ('FCA') register as authorised in the UK with passporting rights, was recorded as Mr L's advisor.

Phoenix wrote to Mr L on 18 November 2014 acknowledging his request to transfer but explained that one of the HMRC forms had not been completed correctly. So, it requested that he complete a new copy of the form. The correctly completed form was received by Phoenix on 11 December 2014.

Phoenix wrote to Mr L on 12 December 2014 confirming that a payment from one of his pensions would be made to the HRS in the next few working days. And it sent a letter to the HRS on the same day, providing a cheque. Phoenix then also wrote to the HRS on 15 December 2014 enclosing a cheque for the transfer value of Mr L's two other pensions, and confirmed this separately to Mr L. The total amount transferred was £118,656.51. Mr L was 49 at the time.

An annual policy valuation from SEB indicates, after the transfer, approximately 45% of Mr L's funds were invested in a managed investment portfolio and 55% with Dolphin Capital. Dolphin (now called German Property Group) was a German business which offered high yielding Loan Note investments offering over 10% investment returns per year. Its underlying business was described as the renovation of derelict properties to provide residential accommodation. Dolphin is now in insolvency proceedings in Germany having collapsed in 2020 owing significant amounts to investors. There has been a total loss on all non-matured Loan Notes.

In September 2020, Mr L complained to Phoenix. Briefly, he said Phoenix ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included that he'd been cold called, there were a number of unregulated introducers and advisors involved, Mr L hadn't received regulated advice, the transfer involved investment overseas and this was in an unregulated, high-risk area.

Phoenix didn't uphold the complaint. It said it had undertaken appropriate checks at the time, in particular confirming that the receiving scheme was recognised by HMRC, and it had received a genuine request to transfer from Mr L. So, it didn't think it had done anything wrong.

The complaint was referred to the Financial Ombudsman Service. I issued a provisional decision in January 2025 explaining that I didn't intend to uphold Mr L's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such Phoenix 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.*

An overseas pension scheme is defined in HMRC regulations as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. To become a QROPS it must also be:

- *Recognised, meaning in short that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.*
- *Qualifying, meaning it must notify HMRC that it is a recognised overseas pension scheme; provide appropriate evidence of this; undertake to adhere to HMRC's requirements; and not be otherwise excluded by HMRC from being a QROPS.*

Overseas schemes that have notified HMRC that they qualify to be a QROPS are included in a published list on HMRC's website.

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, which is either registered with HMRC for tax purposes or is a QROPS. And indeed, 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 Serious Fraud Office ('SFO'), and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*
- *A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.*
- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.*

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's legal rights.

That said, the launch of the Scorpion guidance was an important moment in so far as 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?

When it was first launched in February 2013, 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. TPR talked about this being a transfer to a fund that allowed members to gain access to pension funds in an unauthorised manner. Unauthorised payments weren't just confined to a scenario where someone was offered a loan or cash incentive to transfer before age 55. But these scenarios were the focus of the literature at the time. And at the point Phoenix was first asked for information about Mr L's pension, in May 2014, transferring schemes were being directed to the threat posed by pension liberation.

The Scorpion guidance was updated on 24 July 2014 and widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. This updated guidance was in place when Mr L's request to transfer was received.

As I've explained, 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 that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

- 1. When TPR first launched the Scorpion guidance, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to “become best practice”. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the 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.*
- 2. 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.*
- 3. The Scorpion guidance initially asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. This was expanded to scams more generally before Mr L’s application to transfer was made and it is the updated guidance I think Phoenix ought to have considered. 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.*
- 4. Under the updated Scorpion guidance, ceding schemes also needed to check whether the receiving scheme was validly registered. And part of the requirements of a ceding scheme when processing a QROPS transfer, separate to the Scorpion guidance, was that they would always have needed to check whether the QROPS was on HMRC’s published list and ensure the necessary HMRC forms were completed.*
- 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 L says he’d initially been cold called and offered a free pension review by ‘Portia Financial’. He’d then been referred to Servatus, and it was Servatus that advised him to

transfer.

There isn't a business matching the name 'Portia Financial' on the FCA register. We have though, in other similar complaints, seen mention by customers of 'Portia Financial' or a similar variation of that name. So, I don't have reason to doubt Mr L that this might have been one of the business names he was given during the transfer process.

Mr L says he was presented professional looking marketing material by Servatus. He said he was aware that the proposed transfer involved moving money abroad and investing in Dolphin which, at the time, he was reassured by Servatus would provide good returns. Mr L said it felt during the conversation with Servatus, due to the language used, that they were guaranteeing these good returns. And it was the promise of potential good returns that drew Mr L to the transfer, and that, after around five years, when he reached age 55, he'd have the potential to access money for whatever purposes he then needed. Mr L says he didn't feel pressured to go ahead and he didn't receive any cash or other incentives to transfer.

Mr L didn't recall receiving anything from Phoenix warning him about the transfer or suggesting that he reconsider.

Mr L has acknowledged he was thinking about what to potentially do with his pensions. But he hadn't approached anyone and was cold called. Mr L doesn't appear to have had any prior connection with the QROPS. And he hasn't indicated he intended to move overseas – either to Malta, where the QROPS was registered, or anywhere else. I think it is unlikely he'd have sought to transfer his benefits to the QROPS on his own. I'm also satisfied that Servatus advised him to transfer. The written recommendation we've been provided makes it clear that it was advising him. And I think this advice led to the transfer.

I also think Mr L is correct that he has likely incurred losses to his pension savings. As I've said, Dolphin is in insolvency proceedings and I think Mr L's investment in it is likely to have no value. This is supported by a value statement from 2024 that Mr L has provided which lists the Dolphin loan note as having a zero value. The statement indicates though that the investment portfolio part of Mr L's pension continues to have value.

What did Phoenix 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 or given them substantially the same information.

We sent Mr L a copy of the Scorpion leaflet but he said he had no recollection of seeing or receiving this at the time of the transfer. And he said if he had seen it, he thinks this would've led to him giving more thought to the transfer.

Phoenix has said its records show it started issuing the Scorpion insert in 2013 and that this was sent with all transfer packs. But these were manually inserted so aren't shown on its records.

Phoenix sent Mr L a copy of the transfer packs it had provided to Servatus on 29 May 2014. The covering letter makes no mention of the Scorpion insert being included. And the letters sent to Servatus, copies of which were in the information sent to Mr L, also don't refer to the Scorpion insert as having been included. The transfer declarations that Mr L was asked to sign as part of the transfer process also don't include an acknowledgment or declaration that Mr L had received, read or understood the Scorpion leaflet.

I think if the Scorpion information was sent to Mr L by Phoenix, I'd reasonably have expected to see some reference to this in the documentation – either it being noted as an attachment or being mentioned in the transfer declaration. And without that, I don't think I can reasonably say Phoenix did send Mr L the Scorpion insert when it sent him a copy of the transfer pack.

I would note though that the version of the Scorpion insert that I think ought to have been sent to Mr L was that which was in place in May 2014, when the transfer packs were requested. And that was the Scorpion guidance from February 2013, when it was first introduced – which was focused on pension liberation. And although the Scorpion insert was updated in July 2014, while the application to transfer was ongoing, I don't think, as a matter of course, Phoenix needed to send the updated booklet to all customers, like Mr L, with ongoing transfer requests.

Due diligence:

Mr L's application to transfer was received in November 2014, after the update to the Scorpion guidance in July 2014. And so, at that time I think firms, like Phoenix, ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. At the same time though its approach had to be proportionate, and it needed to balance any caution and due diligence with the fact that consumers were entitled to request a transfer.

Phoenix was aware that the transfer was to a QROPS and so involved transferring funds overseas. This was one of the potential warning signs of a scam that the action pack for businesses highlighted at the time. Given this information, I think Phoenix should have followed up on it to find out if other signs of a scam were present. But it appears that Phoenix's due diligence consisted of confirming that the receiving scheme was recognised by HMRC and that it didn't appear on its internal warnings list.

While this step ensured that the transfer payment qualified as an authorised payment for tax purposes, again the updated Scorpion guidance shifted the focus away from just pension liberation to pension scams in general. And the potential for a QROPS to facilitate investments which were at risk of a scam in that wider sense, rather than liberating funds back to the member, was greater.

And so, I think it would have been fair and reasonable – and good practice – for Phoenix to have looked into the proposed transfer further. 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 registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an

unregulated investment company?

2. Description/promotion of the scheme

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr L's transfer request, and the relatively limited information it had about the transfer, I think in this case Phoenix should have addressed all three parts of the check list as part of its due diligence.

What would Phoenix reasonably have discovered?

From a few simple questions directed to Mr L, Phoenix could have learned several facts about the transfer.

Under the first section of the checklist, I think Phoenix would have likely found out about the investment in Dolphin that had been suggested – which was an unregulated investment. I think Mr L would've been able to provide this information given the written recommendation he had received.

I also think Phoenix would have learned Mr L wasn't planning to move abroad – which tended to be uncommon for someone transferring their pension to a QROPS. And I think Mr L would also have explained that that he had been told about high returns he could earn by transferring and investing overseas.

Under the third section of the checklist (as above), had Phoenix structured its due diligence in this way, I think it would have learned that the prompt for Mr L to transfer his pension to the QROPS was a cold call. And it was the recommendation that he received which had led him to think about the transfer and investing overseas (through Dolphin) as he didn't have any previous experience of this. I think Mr L would likely have disclosed that he had first spoken to 'Portia Financial' which appears to have been an unregulated introducer. But I also think he would have told Phoenix, given that he had received a written recommendation and has told us he understood Servatus was advising him, that he'd been provided advice by Servatus.

The Scorpion checklist recommends that, to establish if a member has been advised by a

non-regulated adviser, the transferring scheme should consult the FCA's online register. I think Phoenix should reasonably have taken that step, which is not difficult. Had it done so, on receiving the application and contacting Mr L for further information, it would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000.

So, if Phoenix had made these inquiries, I think it's reasonable the presence of Servatus, as an authorised person advising Mr L, would have suggested that the transfer was unlikely to be a scam. As a regulated firm, in its home country, Servatus would have been held to a high standard by its own regulator. And Mr L would enjoy some regulatory protections in the unlikely event the transfer turned out to be a scam – not via the UK's complaints and investor protection institutions, the FOS or the FSCS, but through its own regulator. And the Republic of Ireland also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive.

So, in light of this, I think it's reasonable that Phoenix could (and would if it had checked up on Servatus' regulatory standing) have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

What should Phoenix have done and would it have made a difference?

As I've explained, Phoenix needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. I think Phoenix being aware Mr L was being advised by a properly authorised adviser, in this case, would reasonably have given comfort that the transfer was unlikely to be a scam or unauthorised pension withdrawal. And in the circumstances, with the transfer being made to a scheme recognised on HMRC's list, I think it would have been proportionate for Phoenix to undertake no further due diligence. Nor do I think Phoenix would've had reason to provide Mr L with explicit warnings or to delay the transfer further.

As I've said, I think Phoenix should have sent Mr L the Scorpion insert when the transfer packs were requested – which contained general warnings. But given when that was, again this would've been the 2013 insert. This insert only concerned pension liberation. And I don't think, given what Mr L has told us, that this would've resonated with him or that he'd have thought this relevant to him.

The insert did suggest checking that any adviser was regulated by the FCA. And Phoenix had referred to the importance of this in some of the letters it sent directly to Mr L. But, if he'd checked this, he'd have found Servatus was registered with the FCA. So, I think he'd have taken comfort in this, in the same way I think Phoenix would have.

Taking everything into account, even if Phoenix had sent Mr L the Scorpion insert when I think it should have and had carried out additional due diligence, I don't think this would have resulted in Mr L being in a different position. So, I don't intend to require Phoenix to do anything here.

Responses to my provisional decision

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

Phoenix said it had no further comments.

Mr L's representative said they didn't agree with my findings. In summary they said they didn't think my findings took account of Mr L's specific circumstances. The representatives said that they didn't agree that it was reasonable for Phoenix to conclude, based solely on Servatus being involved, that it didn't need to take further action when it should have identified six warning signs of a scam. And I hadn't commented on Phoenix having the option of providing the Scorpion information, updated in July 2014, when it found this. They also said that they believed that Phoenix making enquiries and talking to Mr L would in itself have led him to think again about the transfer and not proceed. And they said Mr L had been the victim of a scam, which I hadn't commented on.

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.

Mr L's representatives have said I haven't addressed whether he was the victim of a scam. But that isn't my role in considering this complaint. I'm looking at the actions of Phoenix and whether it did what it should have when it received a request to transfer Mr L's pensions to another scheme. They've also argued that I haven't considered the specific circumstances of Mr L's complaint. But that isn't the case. I have reached my decision based on the available evidence and arguments here, as well as taking into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances. But just because the representative does not agree with my findings, this doesn't mean I haven't considered Mr L's circumstances.

The representative has said that I found that it was reasonable, solely because Servatus was involved, for Phoenix to consider that the risk of a scam was low. But that isn't the only reason I thought it was reasonable for Phoenix to conclude that the scam risk was low. In addition to Servatus, a firm registered with the FCA with passporting rights which for UK purposes was an authorised person, providing Mr L advice, Phoenix was also aware, from the information it was provided and the due diligence it carried out, that the receiving scheme was recognised by HMRC as a QROPS and had been for around 18 months at the time of the transfer application. And indeed, it still appears on HMRC's list now. To be recognised and qualifying, the HRS had agreed to adhere to HMRC requirements, and it met specified tests applied by HMRC. And given how long it was registered at the time of the application, it was unlikely to have been a vehicle for early release pension liberation – otherwise it would most probably have already been removed from the QROPS list. And while the Scorpion guidance had been broadened to look at scams more generally, I think a combination of this information did mean it would've been reasonable for Phoenix to consider the risk of a scam to be low.

That isn't to say there wasn't anything at all about the transfer that might've given Phoenix pause for thought. As I said in my provisional findings, had it done further due diligence, which I thought it should, it would've become aware of several things about the transfer that the Scorpion action pack for businesses at the time, said *could* be an indication of a potential scam. But again Phoenix's approach had to be proportionate, and it needed to balance any caution and due diligence with the fact that consumers were entitled to request a transfer, including to a QROPS.

Phoenix has said it would've sent Mr L the Scorpion information along with the transfer pack - the February 2013 version being the one applicable at the time. It hasn't been able to provide evidence of this and so I can't safely say that it *did*. But Phoenix was operating on

the understanding that it had. And so, I still remain of the opinion that it would've been reasonable for Phoenix - knowing the receiving scheme was and had been recognised by HMRC for approximately 18 months, Mr L had taken advice from an FCA registered business and believing it had provided Scorpion warnings - to conclude that it had no reason to provide further warnings and to delay the transfer further.

Again, I can't be sure that Phoenix did share the Scorpion warnings. But as I've explained, the February 2013 version of the Scorpion warnings was focussed on pension liberation – which Mr L wasn't doing. So, I don't think the contents of the Scorpion leaflet that should've been sent in May 2014, would've changed Mr L's mind about transferring.

Mr L's representative says that the updated July 2014 Scorpion warnings should have been sent by Phoenix when, as part of the due diligence it ought to have done, it discovered that there were some warning signs of a scam present. I remain of the opinion though that it was reasonable, based on what it knew, for Phoenix to conclude further warnings weren't required. But even if Phoenix had sent the updated Scorpion warning leaflet to Mr L while the application was being considered in late 2014, I still don't think this would've made a difference.

The July 2014 version of the Scorpion warning insert did say that pension scams were on the increase. But the warning signs that it highlighted were still largely the same as those previously highlighted in respect of pension liberation – accessing pension benefits before age 55, being approached out of the blue and being offered upfront cash. Transferring money overseas or investing overseas was not highlighted in the consumer leaflet as something to be concerned about, nor were advisers providing potentially inflated or misleading information about the returns achievable.

The only warning contained in this version of the Scorpion insert which wasn't in the earlier version that might've resonated with Mr L was being offered a free pension review – which he's said happened here. But as none of the other warnings were relevant to him, I don't think this alone would've led him to think there was potentially a problem.

Mr L's representatives have said Phoenix contacting him to carry out due diligence would've alerted him to there being an issue, as it would've explained while talking to him that the purpose of this was to guard against scams, so this would've led to him being concerned, looking into the transfer further and ultimately not going ahead. But I don't agree.

The Scorpion guidance didn't mandate or require businesses to carry out due diligence in a specific way. And so, Phoenix could've undertaken further due diligence in writing, meaning there wouldn't have been a discussion between it and Mr L. I don't think that would've been unreasonable. But in any event, even if it had asked further questions and said it was doing so for the purposes of guarding against scams, Mr L still would've been aware, as he would've from receiving the Scorpion insert, that a lot of the things that were being discussed at the time did not apply to his situation. He wasn't being offered incentives to transfer or access to his pension early. And Mr L also said that he wasn't pressured to proceed. He'd also been provided documented written advice. And, even if he'd been promoted to do some further independent research, he'd have found that the business which had advised him, Servatus, was registered with the FCA.

Mr L's representative says that the asking of questions by Phoenix would've meant any reassurance Mr L took from Servatus being regulated disappeared. But I don't agree. While Phoenix was a recognisable name it wasn't providing Mr L with advice. And I think Servatus being registered with the FCA and the majority of the warning signs that the Scorpion inserts for consumers warned about not being present in Mr L's transfer would've still meant that he took comfort from Servatus' involvement – much like Phoenix did. So, while I know this will

come as a disappointment to Mr L, I don't think any proportionate due diligence I'd have expected Phoenix to carry out here would've led to him not going ahead with the transfer. So, I don't require it to do anything here.

My final decision

For the reasons given above, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 March 2025.

Ben Stoker
Ombudsman