DRN-4610609

The complaint

Mr F has complained about a transfer of his Phoenix Life Limited (Phoenix) personal pension to an occupational scheme in 2013. Mr F's occupational scheme was subsequently found to be a vehicle for pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension invested in an inappropriate way.

Mr F 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 F 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 F says his interest in the transfer followed an unsolicited approach. He says he was approached out of the blue by an introducer firm called Hiffin Ltd (not regulated by the FCA) and offered a free review of his pension. He was told there were other pension opportunities available to him. So, attracted by the prospect of being able to earn more on his retirement savings Mr F agreed to speak with Dorrixo Alliance (UK) Ltd (Dorrixo) who were the trustees of the Hammersley Consultants Limited Retirement Benefit Scheme (The Scheme). Dorrixo advised Mr F to transfer out of his personal pension into the Scheme.

On 7 February 2013, Dorrixo wrote to Phoenix requesting it transfer Mr F's policy to the Scheme (received by Phoenix on 8 February 2013). In its covering letter Dorrixo 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. Included in the transfer papers were the Scheme's HMRC registration certificate and further information on the Scheme. The Scheme was an occupational scheme which was registered by HMRC on 6 December 2012. Dorrixo had been authorised as the practitioner manager of the scheme. The PTSR quoted on HMRC's website was the same one quoted in the transfer request from Dorrixo.

Mr F's pension was transferred on 15 February 2013. The transfer value was around £32,000. He appears to have been invested in car parking spaces in Dubai and a medical research facility in Barbados. He was 66 years old at the time of the transfer.

On 1 November 2017, The Pensions Regulator ("TPR") announced that it had appointed independent trustees to the Scheme because of concerns that it had been used as a vehicle for pension liberation. The statement also said scheme funds had been invested inappropriately. Around the same time, the independent trustee wrote to members, and issued a statement on its website, with further information. Further statements from the independent trustee followed. It's very likely that at this stage Mr F's investment has little or no value.

in April 2021, Mr F complained to Phoenix. Briefly, his argument is, amongst other things, that Phoenix, failed to carry out sufficient due diligence on his transfer request; failed to warn him about the risks of pension liberation and fraud; failed to carry out any enquiries into the Scheme to rule out the risk of pension liberation; and generally failed to spot the signs of pension liberation.

Phoenix didn't uphold Mr F's complaint. It said it took appropriate checks into consideration and applied the appropriate due diligence to the transfer. The relevant HMRC certification of the Scheme was checked in line with its processes at the time and checks against the receiving scheme prior to the transfer being approved didn't present any red flags. It also said that it had issued transfer quotation letters to Mr F in May 2012 and August 2012, and it was made clear in these that Phoenix didn't offer financial advice and if he had any queries, he should contact his financial adviser - it also provided details on how to find one if needed. The letters also included a separate page within the transfer document called "Transferring Your Pension" and this strongly recommended that Mr F seek advice from his financial adviser. It also said there was no indication on the transfer forms that were received that the funds were going to be used for overseas investments nor did it appear from the paperwork submitted to it at the time that Mr F received advice about the transfer.

Our investigator was unable to resolve the dispute informally, so the matter has been 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 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 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.

<u>The relevant rules and guidance</u>

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 about the dangers of "pension unlocking" which 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 F'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 illustrates that the industry's response to the threat posed by pension liberation was still in its infancy at the time of Mr F's transfer.

I appreciate that the transfer took place one day after the guidance was introduced. However, given what this guidance was asking ceding schemes to do in response to transfer requests from its members and the fact the guidance was the first of its kind I don't expect Phoenix, at that stage, to have been in a position to use and apply the guidance to Mr F's transfer. Its only reasonable that some time was given for ceding schemes to have adapted their processes in line with the requirements under the guidance and I would say that up to four weeks from the introduction of the guidance on 13 February 2014 would be fair. So in relation to the specifics of this complaint, its reasonable in my view that Phoenix wasn't using the guidance at the time of completing Mr F's transfer.

<u>What did Phoenix do and was it enough?</u>

With the above in mind, at the time of Mr F'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 could tell the Scheme was an occupational pension scheme and 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.

However, I'm satisfied nothing along these lines would have been apparent to Phoenix at the time of the transfer. Mr F'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. And, given the guidance in place at the time, there was no expectation for Phoenix to contact him 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 had just been published one day before completing the transfer, 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.

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. So sending information to unregulated party ahead of the transfer, which Phoenix did, wasn't problematic in itself and it wasn't something it needed to be mindful of when it came to processing the transfer. 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 F's transfer, Phoenix would have been expected to know what type of scheme it was transferring to and that it 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.

I know this will come as a disappointment for Mr F and I have considerable sympathy for him. But I hope that my reasons why I can't uphold this complaint are clear.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 17 October 2024.

Ayshea Khan
Ombudsman