

The complaint

Mr B has complained about a transfer of his Phoenix Life Limited (Phoenix) pension to the Markstav Pension Scheme Limited in 1998. Mr B has said he had no knowledge of this transfer and believes the scheme was fraudulent. As Phoenix is unable to provide a copy of his authorisation for the transfer form, he believes it didn't carry out the correct checks to ensure the scheme was legitimate. He therefore feels Phoenix is responsible for the loss of his pension funds.

What happened

Mr B held a pension with Phoenix since 1994. It was previously transferred from an occupational pension scheme. In October 1994 the regulator established an industry wide review of particular pension businesses carried out by authorised firms between April 1988 and June 1994. During this process plan holders were invited to have a review of their pensions, for example, if they were advised to leave their occupational pension in favour of a personal pension.

Mr B's pension transfer in 1994 was part of this review and therefore he was sent relevant mailing in January 1999 to prompt him to consider whether he wanted his transfer to be reviewed. Phoenix has confirmed it never received a reply from Mr B about this.

Mr B has said that he didn't authorise the transfer of his pension in 1998 to Markstav and therefore was unaware it had moved elsewhere. He has explained he now understands the scheme was never registered or regulated which has been confirmed to him by the Financial Conduct Authority (FCA).

He believes Phoenix didn't carry out the correct checks in 1998 when transferring his scheme. But if transfer forms were completed it was done fraudulently without his knowledge. Mr B has explained that he has raised this issue with Action Fraud and has also reported it to the police. But he believes that as Phoenix didn't carry out the correct checks on the receiving scheme it is, in part, responsible for the loss of his funds.

Markstav Limited was established in February 1997 and dissolved in November 1998 according to Companies House. No other information can be found about this firm or the pension scheme Mr B transferred into.

When Phoenix investigated the complaint, it discovered that it held very little information on its systems about the transfer. So, it was unable to provide copies of the transfer authorisation forms which Mr B would have had to sign to authorise the transfer. However, Phoenix was able to find on its legacy systems that a transfer value letter was sent to Mr B on 18 August 1998. It also found confirmation that the transfer was completed on 1 September 1998, that the transfer value was around £42,000 and that a cheque was sent to the Markstav Pension Scheme and was cashed.

Phoenix also explained that when processing any transfer request its process was to send out a questionnaire to the receiving scheme to ensure it met the eligibility criteria for Phoenix to complete the transfer. Phoenix has provided an example copy of this and it can be seen

that it asked several questions to ensure the receiving scheme was registered and authorised. Phoenix also required a completed signed discharge form from the policyholder to agree to the transfer before it could go ahead. It therefore felt that it hadn't acted incorrectly at the time of the transfer and there was nothing further it could do for Mr B.

Unhappy with Phoenix's response Mr B brought his complaint to this service where it was assessed by one of our investigators. She was unable to resolve the matter and so the complaint 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 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 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.

Given the transfer took place in 1998 there is very little information that can be provided by either party about the transfer or even about the receiving scheme. As difficult as this makes an investigation it is not unreasonable given that most organisations have a retention period for information which is much shorter than twenty-six years.

It's impossible for me to know whether the Markstav Pension Scheme was a fraudulent one due to the lack of information available about it. I also can't know with any certainty whether the transfer authorisation/discharge forms were indeed signed by Mr B or were fraudulently completed without his knowledge. So the focus of this decision is whether Phoenix had any reason to suspect anything about the transfer was fraudulent and whether it conducted its duties correctly.

From the information I have been able to review I see no reason why Phoenix would have suspected there was fraudulent activity involved in this transfer. It has explained that it would have required certain documents before the transfer could be completed from Mr B as the policy holder and would also have written him to confirm that the transfer had been made. These requirements seem sufficient to me for Phoenix to have obtained what it needed at the time. Of course, this doesn't rule out fraud completely as the forms could have been signed by someone other than Mr B and they could have given a different address, but it isn't reasonable that Phoenix would have known this and all it could do was act in line with the instructions it received.

Mr B has said that Phoenix didn't carry out the proper checks to ensure that the scheme was appropriately regulated however, the questionnaire Phoenix sent out would have contained questions that focused on this. Also, it's worth noting that at the time of the transfer the guidance for this was very different to what is in existence now. So, there were no specific checks that a business was obliged to carry out. Therefore, I think the questions I have seen in the example copy of the questionnaire that would have been sent were sufficient for that time.

I have also reviewed Phoenix's general process for processes at the time. As already noted, the guidance and regulation around pension transfers and what providers had to do before

completing a transfer were very different back then. While there has been an increase in pension scams and fraud to which the regulators have reacted to with more formalised guidance and regulatory processes this didn't happen until 2013. So, in 1998 there was not a huge amount of awareness within the industry and transferring schemes were not expected to thoroughly investigate each transfer request and weren't aware of the potential warning signs of a pension fraud.

But given this took place in 1998 I can only look at Phoenix's practices from the time and decide whether they were robust enough for the time.

Phoenix has also told this service that it asked HMRC and The Pension Regulator (TPR) to find out more information about the Markstav Pension scheme but neither organisation has been able to provide anything. But again, as this was such a long time ago it isn't a surprise and it doesn't mean that at the time those organisations didn't hold the information and the scheme wasn't one they knew about.

Overall based on everything I have seen I am satisfied that Phoenix had no reason to think the transfer was a fraudulent one. I am also satisfied that the due diligence it carried out was in line with what was expected of it at the time.

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 B to accept or reject my decision before 23 April 2024.

Ayshea Khan
Ombudsman