

The complaint

Mr H has complained, with the help of a professional third party, about the transfer of his personal pension to a small self-administered scheme ('SSAS') in July 2014. His personal pension was held with Phoenix Life Limited trading as Standard Life ('Phoenix'). Mr H's SSAS was subsequently used to invest in an overseas property development with The Resort Group ('TRG') and a general investment platform via a mainstream insurer. The TRG investment now appears to have little value and Mr H says he has lost out financially as a result.

Mr H 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 H 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 H says he was cold called and told he could potentially move his pension and achieve better returns. Mr H says he was put in touch with First Review Pension Services ('FRPS'). Mr H says he met with a representative of FRPS several times and they advised him to transfer his personal pension. FRPS was not authorised or regulated by the Financial Conduct Authority ('FCA').

On 18 March 2014, Mr H signed a letter of authority ('LOA') giving Phoenix permission to share details and transfer documents in relation to his pension with two businesses. The first was 'Moneywise' (which was Moneywise Financial Advisors Limited). Moneywise was regulated by the FCA. The other was FRPS. The LOA was on FRPS headed paper. This was sent to Phoenix via fax on 31 March 2014. The covering sheet again was on FRPS headed paper but referred to Moneywise's FCA registration number.

On 20 April 2014, Phoenix wrote to Moneywise providing information about Mr H's pension, including a valuation, and setting out what would be required for a transfer. On 22 April 2014 a similar letter was sent to FRPS. Both letters said that a leaflet from the Pension Advisory Service ('TPAS') about the dangers of early pension release had been included.

In May 2014, a company was incorporated with Mr H as director. I'll refer to this company as B Ltd. A SSAS was then set up and registered with HMRC on 18 June 2014. B Ltd was the SSAS's principal employer and Cantwell Grove Limited ('CGL') was the administrator.

On 25 June 2014, CGL wrote to Phoenix requesting the transfer of Mr H's pension to the SSAS. The covering letter said CGL was aware of concerns around 'pension liberation', it supported the efforts of the pension industry and that its business model, as a pensions administrator, had been vetted by HMRC. It also said CGL supported the 'Scorpion' campaign of The Pension Regulator ('TPR'), had spoken to Mr H and confirmed no cash incentive or other inducements had been offered and he was not accessing pension benefits before age 55. And it said that the 'Scorpion' information leaflet had been shared with Mr H.

CGL said it enclosed application forms for the transfer, a confirmation letter from Mr H, copies of the scheme trust deed and rules, the HMRC registration and a scheme details Q&A document which gave answers to some general questions about the receiving scheme and intended investments. Also enclosed was a copy of the transfer quotation that Phoenix had sent to Moneywise.

The confirmation letter which CGL referenced was signed by Mr H. This letter said he was aware there had been a rise in cases of pension liberation fraud and he was also aware of the issues relating to this. The letter said Mr H wanted to confirm he was requesting a transfer to take advantage of investment opportunities, none of which were connected with pension liberation. And it stated he was not seeking to access his pension before age 55 and had not been offered a cash or other incentive to transfer.

On 8 July 2014 Phoenix transferred the proceeds of Mr H's pensions held with it, to the SSAS. The total amount transferred was £56,266.54. Mr H was 45 years old at the time.

Account statements for the SSAS show that £31,650 was subsequently invested in an overseas property development with TRG. And just under a year later, approximately £23,100 was invested with a mainstream insurer. The statements indicate the TRG investment was providing credits to the pension bank account (returns) every few months until March 2019. I understand that those credits have since ceased and there is little market for re-sale of the TRG investment.

In 2021, Mr H complained to Phoenix. Briefly, he thought Phoenix ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included that the SSAS and B Ltd were only recently registered, Mr H had been cold called, no regulated advisers had provided Mr H with advice, he had been advised by an unregulated business (FRPS) the proposed investment, based overseas, was unregulated and high risk and the SSAS administrator was not authorised by the FCA. Mr H said Phoenix hadn't done any due diligence and if it had properly informed him of these warning signs, he wouldn't have transferred.

Phoenix didn't uphold the complaint. It said Mr H had signed a letter as part of the application making it clear he understood the risks of pension liberation and wasn't transferring for that reason. And, as that was what Phoenix was asked to be vigilant for at the time and he had a right to transfer, it didn't think it was wrong to approve the transfer.

The complaint was referred to the Financial Ombudsman Service. I issued a provisional decision in November 2024 explaining that I didn't intend to uphold Mr H'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.*

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). 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 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?

For the reasons given above, 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. 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. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.*
- 2. When TPR launched the Scorpion guidance in February 2013, 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 liberation 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.*
- 3. 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.*
- 4. The Scorpion guidance 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. The action pack 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.

- 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 H says he was cold called and agreed to speak to FRPS about his pension. He said that FRPS recommended that he transfer his personal pension to an “alternative more modern flexible pension” to invest in a commercial property investment that had demonstrated a consistent return at a much better level than his Phoenix pension, which was variable. He said he had no experience of investments and trusted what he was told but did not know that FRPS was unregulated and wasn't told about the risks involved. His representative has said that Moneywise, although named on the paperwork, was not involved in the transfer and didn't advise Mr H.

When CGL submitted the application to transfer to Phoenix, it included a copy of the pension summary and valuation that had been sent to Moneywise at its registered address. Which I think indicates that Moneywise did have some involvement beyond just being named on the letter of authority – as it must have provided this document to CGL in order for it to be included in the application.

At the same time though, I'm conscious that the letter of authority was on FRPS headed paper. And the request for information was also sent to Phoenix by FRPS. And I'm aware, from several other complaints we've seen of instances where Moneywise and FRPS were both named on a letter of authority but Moneywise did not have involvement in the transfer. I'm also aware that FRPS appears to have been established with the aim of securing investment into TRG.

I'm also conscious that a representative of FRPS witnessed and certified Mr H's identification documents and the trust deed for the SSAS, indicating that it was involved throughout the process. Taking all of this into account, on balance I think it was likely FRPS that Mr H predominantly spoke to and corresponded with.

I've not seen anything to dispute what Mr H has said about having no more than a limited experience of pensions and investments. I also haven't seen anything about his circumstances or what he's said that leads me to think he'd likely have embarked on such a complicated arrangement on his own – setting up a new company, opening a SSAS, transferring his existing pension and investing overseas. So, I think it is unlikely he'd have sought to set up this arrangement if this hadn't been suggested to him. And based on what he's said he was told – with the returns of the alternative pension being talked up in comparison to his existing pension – I think he was advised to transfer, by FRPS.

I also think Mr H's TRG investment is likely to have little value, as has been suggested. As I've noted, I understand returns from the investment to the pension have stopped – which is consistent with what we've seen in other complaints involving TRG investments. And there is unlikely to be any real market for re-sale of the investment unit and the assets are likely

illiquid.

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.

I haven't seen evidence of Phoenix corresponding directly with Mr H and providing him the Scorpion leaflet. The covering letters, in response to the request for a transfer pack, that Phoenix sent to both Moneywise and FRPS suggest that a version of the Scorpion leaflet was included – its reference to TPAS providing this suggesting it may have been the longer booklet. But these letters were not sent directly to Mr H. And it isn't clear if the booklet was sent on to Mr H by FRPS or Moneywise.

CGL's letter to Phoenix requesting the transfer says that it had shared the Scorpion leaflet with Mr H. But I haven't seen evidence of this. And given CGL was an unregulated third party that stood to gain from the transfer, I don't think I can reasonably rely on it having shared the Scorpion leaflet with Mr H.

However, Mr H signed a letter as part of the application, saying that he was aware of the rise in pension liberation, had carefully considered the request to transfer and decided he wanted to proceed for the investment opportunities this provided. The letter also stated he was aware of the risks of pension liberation and confirmed that he wasn't planning to access his pension before age 55 and asked Phoenix to complete the transfer promptly.

This letter appears to have been pre-prepared for Mr H to complete. But it is only a page long and expresses that he is aware of what pension liberation is and that he wasn't planning to access his pension early.

So, Phoenix had evidence that declared that Mr H understood the risks of liberation and was not seeking to release pension funds before age 55. Therefore, in this case, even though Phoenix should have sent the Scorpion insert, I don't think that it would have made a material difference if it had. This is because the evidence suggests that Mr H was, more likely than not, already aware of the very risks that the Scorpion insert was intended to warn him of.

Due diligence:

When the Scorpion guidance was initially published in February 2013 the campaign referred to pension liberation fraud. 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. The Scorpion guidance was not updated until the end of July 2014 – after Mr H's transfer from Phoenix had completed.

The front page of the 2013 Scorpion insert has the following message: "Companies are singling out savers like you and claiming that they can help you cash in your pension early. If you agree to this you could face a tax bill of more than half your pension savings." So, it singled out early access to a pension, and cash incentives and enticements to do this as the area of concern. It goes on to say: "Pension loans or cash incentives are being used alongside misleading information to entice savers as the number of pension scams

increases. This activity is known as 'pension liberation fraud' and it's on the increase in the UK. In rare cases – such as terminal illness – it is possible to access funds before age 55 from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences." So again, the emphasis is on the promise of 'early cash' and 'early access' to pension benefits before pension age and the associated tax consequences that could follow.

The 2013 Scorpion action pack for businesses was titled 'Pension Liberation Fraud'. And the case studies in the 2013 action pack are about people wanting to use their pension in order to access cash before age 55, the repercussions of which were tax charges and the loss of some pension monies to high administration fees. The warning signs that were highlighted followed suit: "accessing a pension before age 55", "legal loopholes", "cash bonus", "targeting poor credit histories", "loans to members". So the focus, and what TPR was emphasising, was pension liberation, in particular access to pensions before age 55.

So, at the time of Mr H's transfer, transferring schemes were being directed to the threat posed by people wanting to take cash from their pensions in an unauthorised manner – pension liberation – which was seen as being most likely when someone was under the age of 55. Therefore in light of the Scorpion guidance, as I've said above I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk of pension liberation.

At the same time though Phoenix had to take a proportionate approach and balance any caution and due diligence with the fact that consumers were entitled to request a transfer. And I don't think delaying all transfer requests, such as Mr H's, in order to carry out extensive due diligence in every case would've been proportionate. Rather I think it was fair that Phoenix made a judgement call based on the information available to it.

Here Phoenix had documentary evidence that suggested Mr H was aware of pension liberation fraud and was not about to become a victim of it - the letter signed by him that confirmed that he understood pension liberation fraud and was not intending to access his benefits early.

I think a reasonable person in Mr H's position, having been contacted out of the blue by a business they were not familiar with and told that moving his pension savings was in his interests, would, even with very little financial or investment experience, take the time to familiarise themselves with the documents they'd signed and agreed to. More than that, I think it was fair for Phoenix to assume Mr H had done so. The letter I've referred to, while pre-drafted, was concise. And I think Mr H could and ought to have reviewed this before signing. And, I see no persuasive reason why Phoenix shouldn't have taken Mr H's signed declaration at face value.

As a result, in the circumstances I think it was fair and reasonable for Phoenix to accept the information and consider the threat of pension liberation – which was the focus of the Scorpion guidance at that time – to have been discounted. So, I think it was reasonable for Phoenix, in the specific circumstances of this transaction to proceed with the transfer without further due diligence.

I understand that Mr H has likely lost out financially by investing in TRG. But the guidance that TPR had put in place at the time when Mr H's transfer request was made was focussed on the risk of consumers falling victim to a pension liberation scam. And for the reasons I've explained above, I think there was enough information for Phoenix to reasonably discount the risk of that in the transfer request it received. So, while I know this is likely to come as a disappointment to Mr H, I don't think it would be fair or reasonable in these circumstances to

suggest that Phoenix ought to have delayed the transfer process to conduct further checks simply to further safeguard against an outcome type that it should have already reasonably discounted.

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 to add and would await my final decision.

Mr H, nor his representative, provided any further comments for me to consider by the deadline for responses I gave in my provisional findings.

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.

Having done so, given that neither party have provided any additional information or arguments for me to consider, I'm not inclined to depart from my provisional findings. So, for the reason I've explained, in the particular circumstances of Mr H's transfer, I think Phoenix acted reasonably by proceeding. This is because, the information it had meant it was reasonable for it to consider that the threat of pension liberation could be discounted.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 January 2025.

Ben Stoker
Ombudsman