

The complaint

Mr C has complained about a transfer of his Phoenix Life Limited self-invested personal pension (SIPP) funds to a small self-administered scheme (SSAS) in May 2013. Mr C's SSAS funds were subsequently depleted and held no value. HMRC took action to close the SSAS down as it no longer complied with the relevant legislation. Mr C says he has lost out financially as a result.

At the time of the events complained about Mr C's pension was provided by a different firm. Phoenix Life has since acquired that firm's business and is now responsible for responding to the complaint. For ease of reading I will only refer to Phoenix Life within this provisional decision.

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

Provisional decision

On 7 August 2024 I issued a provisional decision. I've copied the relevant extracts from that below.

"What happened

In October 2012, as a result of the liquidation of the company for which Mr C was a director, the court declared him bankrupt.

In December 2012 Mr C contacted Phoenix Life. He said he had completed paperwork to transfer out of his SIPP to another scheme. He told Phoenix Life he'd changed his mind and if it received transfer papers to disregard those. I've seen no evidence Phoenix Life received the transfer papers Mr C referred to.

Mr C told us that after his bankruptcy process he was contacted by a named insolvency practitioner I'll call Mr W. Mr W advised Mr C that his Phoenix Life pension could be at risk because of the bankruptcy. Mr W told Mr C that he would set up a meeting with a financial adviser, I'll call Mr G. Mr W and Mr G (the advisers) then visited Mr C. They told Mr C that if he transferred his pension to a SSAS it would be protected. And on that basis Mr C went ahead with the transfer.

In February 2013 Mr C's wife set up a company, with herself as the sole director, as she was intending to start trading. Mr C told us that the company didn't ever really get going but he used his wife's company as the sponsoring employer for his SSAS.

On 30 April 2013 Pension Practitioner.com sent a request for Phoenix Life to transfer the funds from Mr C's SIPP to his SSAS. Pension Practitioner.com, which was the SSAS administrator, said it had enclosed the HMRC's registration certificate for the SSAS. It added that Mr C would write to it separately with his authority to make the transfer.

On 10 May 2013 Mr C wrote to Phoenix Life authorising the transfer of his SIPP to his SSAS.

Phoenix Life completed the transfer of £115,867 to Mr C's SSAS on 24 May 2013.

Mr C told us that he didn't receive annual SSAS statements but each year Pension Practitioner would send him an invoice for its fees which it had deducted from his SSAS. In December 2018, Pension Practitioner told Mr C it had been unable to collect its fee. Mr C said this alerted him that something had gone wrong. He said that as he looked into it HMRC told him Mr G was a known scammer. Mr C said HMRC confirmed his funds had been lost (although he's provided no evidence of this).

The Pension Practitioner changed its legal name in 2017. It appears to have ceased trading around 2019 and was dissolved in 2021.

In December 2021 HMRC withdrew Mr C's SSAS registration as it no longer had an administrator and so was in breach of the relevant rules.

In the meantime, in July 2020 Mr C complained to Phoenix Life via his representatives. He said that owing to a lack of due diligence it allowed him to transfer his pension into an inappropriate pension product, with high risk investments.

Phoenix Life didn't uphold the complaint. It initially said Mr C had been advised to transfer by a regulated firm of financial advisers, I'll call N, and that it had played no part in giving Mr C advice.

Mr C brought his complaint to the Financial Ombudsman Service. After he'd done so Phoenix Life told us that its response to the complaint had been wrong. Instead, it said the Pension Practitioner had provided the SSAS' HMRC certificate and Phoenix Life concluded that Mr C had a statutory right to transfer. It was not given any information about Mr C's intended investments. It no longer asserted that N had given Mr C advice to transfer.

One of our Investigators looked into the complaint, including speaking with Mr C. Having done so the Investigator concluded that, while Phoenix Life didn't do everything it should have done, Mr C would most likely have gone ahead with the transfer anyway.

Mr C didn't accept our Investigator's complaint assessment. So, as the complaint hasn't been resolved informally it's been passed to me to decide.

We asked Mr C, via his representatives, to answer some enquiries and provide more information specifically about what investment vehicle his SSAS funds were invested in and documents concerning that and the set up of his SSAS. Mr C's representatives did send us some additional papers, which were largely sourced from Phoenix Life. But they didn't answer the questions about the SSAS investments or provide documents showing those or the papers associated with the set up of the SSAS.

What I've provisionally 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.

When doing so I've taken 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. And 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.

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 Life 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 liberation¹ – the "Scorpion" guidance (so called because of the imagery it contained).

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 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*

¹ Pension liberation referred to a type of pension scam where consumers are persuaded to transfer their pensions to another scheme to enable them to be 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.

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 checklist 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 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 its specific purpose was to inform and help ceding firms, like Phoenix Life, 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 a turning 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, without 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 with 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.*

Phoenix Life told us that it didn’t send Mr C the Scorpion insert as it was updating its procedures in response to the TPR’s new guidance. But I note that the Pension Practitioner submitted its transfer request on 30 April 2013, that was around six weeks after TPR published the Scorpion guidance. And Phoenix Life didn’t conclude the transfer until 23 May 2013, over two months after the publication. I think that a period of around one month would generally be enough for a provider to put in place the procedures necessary to implement the guidance. So I think Phoenix Life should have sent Mr C the Scorpion insert. But it didn’t do so.

The circumstances surrounding the transfer – what does the evidence suggest happened?

Mr C told us that Mr W, an insolvency practitioner, contacted him following his bankruptcy and said he could offer advice. Mr W told him that the bankruptcy put his pension at risk. Mr C says he now knows that's not the case and that the bankruptcy procedure couldn't affect his pension. However, the advisers convinced him that transferring would render his pension funds safe and it would be in his best interests to transfer. They didn't offer any form of cash incentive, nor did they say he could access his funds before he reached 55.

Mr C thinks the advisers recommended he invest in firms called 'Investec Corporation' and also 'Pinnacle Services'. He said he didn't receive yearly statements and only realised there was an issue when the Pension Practitioner wrote to him to say its fees hadn't been paid.

Mr C said Mr W was an insolvency practitioner and was appropriately authorised by the FCA. Mr C added that he'd looked into Mr W and he did "check out". However, Mr C's account is that someone at HMRC told him that Mr G was known to them as being responsible for scamming many people out of their pensions. Mr C said HMRC had confirmed his SSAS had no remaining funds and as such hadn't attracted a tax liability for him.

Without any supporting paperwork it's difficult to determine exactly who or what investment vehicles the SSAS invested Mr C's funds in or what happened to those. So it's equally difficult to establish if Mr C has genuinely been the victim of a scam. As we haven't seen any tangible documentary evidence to support that. So the only evidence before me is Mr C's own account. And, as I describe below some of that is contradictory.

Mr C believes he invested in a company called "Investec Corporation". But I can't find any other reference to a company of that complete name. There are a number of companies which use the word Investec in (part of) their names. Most of these are connected to a genuine banking and investment business which is fully authorised and regulated. But, as far as I can tell, none of those entities use the full name of "Investec Corporation".

Mr C also referred to a company which he believed was called Pinnacle Services. There are a number of firms, many of which legitimately operate in the financial services sector, which use the word Pinnacle in their names. But the only references I can find to firms called 'Pinnacle Services' were either incorporated many years after Mr C transferred or are companies working in the construction industry. It seems unlikely that these are the companies Mr C invested in.

Further, when he submitted his complaint (via his representatives) Mr C said that as a result of Phoenix Life's lack of due diligence he had diverted his funds to inappropriate and high risk investments. But that's not what he told our investigator when they spoke about events. Mr C said then that the advisers had spoken professionally about a number of different types of investment, in low, middle and high risk categories. He also said he believed that some of the investments were overseas, he recalls Italy being mentioned, but he couldn't now be certain. But he thought the investments appeared safe.

Mr C also told the Investigator that the proposed investments didn't strike him as high risk and appeared to be "run of the mill". He said the forecast growth figures sounded reasonable and a "good sound investment". But, as I've said above, without tangible evidence of where his funds went it's virtually impossible to say what happened to them. In fact, without that evidence, I can't possibly know whether or not Mr C simply legitimately transferred his funds to another pension fund elsewhere. However, having listened to his conversation with our Investigator, I believe that Mr C genuinely doesn't know what happened to his pension funds, except that is, to say that he no longer has access to them.

What did Phoenix Life 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. Phoenix Life has acknowledged that it didn't send the insert to Mr C. I've already said above that I think it should have done so.

Due diligence:

In light of the Scorpion guidance, 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 together with appropriate action if it was apparent their customer might be at risk. Phoenix Life didn't undertake any further due diligence.

Given the information Phoenix Life had at the time, one feature of Mr C's transfer would have been seen as a potential warning sign of liberation activity as identified by the Scorpion action pack. That is Mr C's SSAS was recently registered.

It transpires that while Phoenix Life believed it had Mr C's SSAS registration details it didn't. That's because, when the Pension Practitioner sent Phoenix Life the SSAS registration documents, the certificate it enclosed wasn't for Mr C's SSAS but – presumably mistakenly – for an entirely unrelated SSAS. But it doesn't appear Phoenix Life recognised this at the time. While this was a clear oversight on its behalf it doesn't change what happened subsequently. It's not in dispute that Mr C's SSAS was appropriately registered, so if Phoenix Life had noticed this at the time then I think it's reasonable to conclude that, at that point, the Pension Practitioner would have sent the correct registration document.

The registration certificate Phoenix Life had received, and which it clearly thought was associated with Mr C's transfer, showed the SSAS had been registered recently. So Phoenix Life should therefore have followed up on this to find out if other signs of liberation were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Phoenix Life to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the checklist in the action pack to structure its due diligence into the transfer.

The checklist 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 checklist could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The checklist is divided into three parts (which I've numbered for ease of reading and not because I think it 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 checklist identified actions that should help the transferring scheme establish the facts.

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

Had it done so, I think it likely that Phoenix Life would have found out Mr C was transferring to a recently established scheme with a newly incorporated sponsoring employer, who he wasn't actually employed by. All of which were signs of potential pension liberation under the Scorpion guidance:

Against this, Phoenix Life would also have known, and established, the following which would have indicated liberation wasn't a concern:

- Mr C's reason for setting up the SSAS and transferring didn't involve a cash payment, loan or other incentive. That is he wasn't intending to access his funds early or in another unauthorised way.*
- Mr C was getting advice from Mr W. Mr C believed Mr W was FCA authorised. In fact I've noted that, at that time, the FCA's register shows that there was an authorised financial adviser called Mr W working as an appointed representative of two FCA firms. So, if Phoenix Life had asked Mr C if he had received advice and if so who from, it's likely Mr C would genuinely have answered that Mr W, who was FCA authorised, was advising him.*
- Mr C told us that the vehicles he was investing in all sounded reasonable, they were of a diverse range of types and risk categories, which is the sort of advice regulated IFA's would be expected to give. And the fact that some of these proposed investments might have been overseas wouldn't necessarily raise red flags for Phoenix Life. That's because, while overseas investments could be a warning sign of liberation, as I've already said, Mr C said that this was only one proposed investment amongst others. And it's not unusual, within a suitably diverse portfolio of investments, for some of those to be in overseas investment vehicles. For example within Mr C's Phoenix Life SIPP he held investments within entirely legitimate funds investing in global, Asian and 'emerging markets'.*

So whilst Phoenix Life would have (had it conducted thorough due diligence) found there to be some liberation warning signs, I think it would have ultimately concluded that the liberation threat was minimal given Mr C's circumstances.

Mr C's evidence is that he was not looking to liberate his pension. And if Phoenix Life had questioned him about it, his response would have been that he had been advised by a regulated financial adviser. So Phoenix Life could have reasonably expected a regulated financial adviser to give Mr C appropriate advice about the dangers of pension liberation and the risks of a transfer more generally.

In the above scenario, even if it had done all it should have done, I'm satisfied Phoenix Life wouldn't have considered there to be reason to provide any further warnings to Mr C.

That said, there is one feature of Mr C's transfer journey that was particularly unusual. That is he said that the spark which instigated the process was Mr W warning him that his pension could be at risk because of his bankruptcy. However, that was not the case. As I understand it personal pensions are not an asset of a bankrupt's estate which can be seized following bankruptcy. So, transferring his pension funds to a SSAS did not make those funds any safer than they were in his SIPP. And had that come to light then Mr C might have learned that his initial reason for transferring was not as he believed it to be.

However, had Phoenix Life done its due diligence the question it would have been asking at that time would have been looking out for warning signs of liberation not misadvice concerning bankruptcy processes. So I think it's unlikely Phoenix Life's due diligence process would have uncovered this.

At that time due diligence investigation, including questions around the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. Once that threat was discounted, as I think Phoenix Life would have done in this instance, then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal. As I've said previously, a firm needed 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 statutory rights.

Also, Mr C wouldn't have given the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Indeed Mr C firmly believed Mr W was an insolvency practitioner who was FCA regulated. And I haven't seen anything that Phoenix Life would, reasonably, have been aware of that should have alerted it to the potential of Mr C being misled in this way. His wife was intending to trade and he was entitled to establish her company as the sponsoring employer for the purposes of being able to act as trustee of his own pension scheme. Also, Mr C only needed to be employed to be a member of a SSAS, he didn't actually need to be employed specifically by the SSAS' sponsoring employer. So, I'm satisfied Phoenix Life wouldn't, reasonably, have thought a scam was in progress.

I'm also not persuaded that Mr C would have stopped the transfer even if Phoenix Life had done more thorough due diligence in line with the Scorpion action pack. The end result of any such due diligence wouldn't have resulted in any warnings being given to Mr C. He wasn't trying to liberate his pension, he believed he'd taken appropriate advice, and he said his investment vehicles seemed reasonable and well diversified. And I don't think the mere act of contacting Mr C and asking questions about the transfer would have prompted a change of heart. Any due diligence questions would have been asked with the intention of establishing the liberation risk Mr C was facing – a risk that doesn't appear to apply here.

Similar considerations apply to the sending of the Scorpion insert. As discussed previously, Phoenix Life should have sent this but didn't do so. Mr C told us that, if he'd seen the Scorpion insert he wouldn't have gone ahead with the transfer. But, on the balance of probabilities, I think he's arrived at that position with the benefit of hindsight. That is, he now believes he would have acted in a certain way, because he knows the outcome would have been better for him if that's what he'd done at the time.

Mr C's pension transfer has apparently caused him to lose a pension fund of over £115,000. I think it would be very hard for anyone in his circumstances to discount what he knows to have actually happened without then applying that knowledge when answering hypothetical – what would you have done? – type questions. So, I think it's fair to regard Mr C's answers to any such questions with appropriate caution, given that his answers will undoubtedly be influenced by his current circumstances and his knowledge of events.

Instead I think it's reasonable to look at what Mr C's actual circumstances were at the time, what he believed to be the situation, what he was hoping to get out of it, and the choices he actually made. And I need to consider what action he was more likely than not to have taken on the basis of what I think most reasonable people acting reasonably would have done in the same or similar situations.

Our Investigator asked Mr C why he believed the Scorpion insert would have led him to abandon the pension transfer. Mr C pointed to the image of the scorpion and said it raised instant concerns as it "spells danger". That is, of course, the point of the imagery. It's intended to catch the eye and make consumers considering transferring their pensions think twice. But, I would find it very difficult to believe that Mr C would have changed tack simply because of the imagery. While eye catching I don't think many, if indeed any, consumers would abandon a proposed pension transfer on the basis of an image. Instead, I think the vast majority would have read the messages in the insert to see if it applied to their circumstances.

Mr C also said the first warning sign the insert advises to look out for – being approached out of the blue by phone – happened in his case. However, in Mr C's instance, this wasn't the case of an unregulated adviser or introducer almost randomly contacting members of the public and enticing them with the offer of a free pension review (which was a common feature of pension liberation or scams). Instead the insolvency practitioner was aware of Mr C's recent bankruptcy and offered his services in connection with that. Mr C said this happened shortly after his bankruptcy, which was in late 2012. Phoenix Life didn't receive the transfer request until May 2013, which would have been the first time it could have sent him the Scorpion insert. In the meantime Mr C had apparently been convinced by the advisers' professionalism and clearly believed a transfer was in his best interests. So I'm not persuaded that being presented with the Scorpion image would have influenced Mr C to change a course of action he thought was right for his circumstances and his future.

The insert was focused on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular. That wasn't Mr C's intention. He was transferring for different reasons. And the insert advises consumers to follow five steps if they have concerns. And I think it's more likely than not that, given his circumstances and the apparent faith he'd put into the advisers' professionalism, he would most likely have dismissed the Scorpion insert as not applying to his situation.

Alternatively, at the very least, prior to giving up the transfer process he'd got as far as setting up a SSAS for and which he believed was right for him, he'd have followed the five

steps to avoid becoming a victim the insert sets out. I've set out below each of those steps in turn and why I don't believe Mr C reading those would have changed the outcome for him:

Do not give out personal information to a cold caller.

Mr C was a long way past that stage of Mr W introducing himself at the point Mr C would have received the Scorpion insert. And in any event, Mr W had contacted Mr C at a specific juncture in his life when he'd just been declared bankrupt. As I understand it Mr W offered his services as an insolvency practitioner, rather than as a pension expert. So I don't think this step would have resonated with Mr C by May 2013.

Find out about the company's background through information online. Any financial advisers should be registered with the Financial Conduct Authority (FCA).

Mr C said he did do this. He said he'd looked Mr W up and his credentials did 'check out'. Further there was someone of Mr W's name who was registered with the FCA. So if Mr C had looked Mr W up on the FCA register I think he'd have been further convinced by Mr W's authenticity. In the interests of completeness I'll say that, as far as I can see, Mr W's FCA registration did not go as far as authorising him to advise on pension transfers, which needs a specific level of qualification. So, while Mr W would have appeared to hold FCA authorisation, in fact he didn't hold the actual authority required to advise on pension transfers. But there was nothing within the Scorpion guidance to advise consumers or pension providers to check for this or indeed how to do that.

Ask for a statement showing how your pension will be paid at retirement, and question who will look after your money until then

Mr C has been consistent that the advisers were professionals and came armed with laptops and spreadsheets etc that were convincing. The advisers had told him he could access his pension from age 55 onwards taking a maximum of 25% tax free cash. That was in line with the pensions regulations which applied. The advisers hadn't offered him any other form of incentive. And their recommended investments, according to Mr C, appeared above board, safe and sound. So I think Mr C would have remained satisfied that this wasn't something he needed to look out for.

Speak to an adviser that is not associated with the proposal you've received, for unbiased advice

I can't possibly know what would have happened if Mr C had taken this step as the advice he received would have depended on the information imparted. However, professional and regulated financial advisers don't often give their advice for free. And, Mr C believed he'd already taken advice from an appropriately registered and authorised individual. So I think it's unlikely he would have then paid a fee to another adviser.

Never be rushed into agreeing to a pension transfer.

Mr C said that the advisers didn't rush him into agreeing to making the transfer. Mr C also told us that, had he received the insert he may have called Phoenix Life and asked for advice. But Phoenix Life's role was not to give Mr C advice about the suitability of a transfer or his chosen investments. Its role in doing due diligence would principally have been to ensure Mr C was transferring to an appropriately registered scheme (he was) and to give him the warnings associated with pension liberation and transfer risks. However, Mr C would almost certainly have told Phoenix Life that he was already receiving advice from an FCA authorised adviser, whom Mr C had himself checked out. Mr C would also have been clear that he wasn't intending to attempt to access his pension early or in an unauthorised way,

nor was he being offered an incentive to transfer. So I think it would be extremely unlikely, where Phoenix Life believed that Mr C was being advised by an appropriately authorised adviser, that it would have told Mr C that he might be putting his pension at risk if he followed that advice.

Summary

Phoenix Life didn't do everything it should have done. But on the balance of probabilities, as already explained, I don't think the outcome for Mr C would have been any different if it had."

Developments

Mr C didn't agree with my provisional findings. Through his representatives he noted that I agreed that Phoenix Life didn't do all that it should have done. He said that as a result of those failings he wasn't aware of the risks involved or potential outcomes. He said that if Phoenix Life had done everything it should have done he was 100% certain he would not have made the decisions that he had. So Mr C believes that Phoenix Life's failure to do its 'duty' has caused his losses.

Phoenix Life didn't provide any further comment.

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.

In response to my provisional decision Mr C clearly believes that if Phoenix Life had done all that it should have done he wouldn't have transferred and so wouldn't have lost his pension funds. But, as I said in my provisional findings, I think he's reached that position with the benefit of hindsight and the knowledge of what actually happened.

I explained previously why I think it's more likely than not that Mr C would have dismissed the warnings given in the Scorpion leaflet as not appropriate to his situation and so receiving that wouldn't have changed his decision making. I also set out what I thought would, on the balance of probabilities, most likely have happened if Phoenix Life had done further due diligence. And I concluded that would not have resulted in Phoenix Life giving any further warnings to Mr C that would have persuaded him to think again. And other than saying that he believes he would have made different decisions had Phoenix Life taken further action, he hasn't provided any convincing rationale or evidence demonstrating why my conclusions in the provisional decision were incorrect.

It follows that I remain of the opinion that, while Phoenix Life didn't do everything it should have, I don't think Mr C is in a different position now than if it had.

My final decision

For the reasons given above I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 September 2024.

Joe Scott
Ombudsman