DRN-5036269

The complaint

Mrs J has complained, via her representatives, about a transfer of her Phoenix Life Limited ('Phoenix Life') personal pension to a small self-administered scheme ('SSAS') in May 2014. Mrs J's SSAS was subsequently used to invest in storage units provided by Store First Limited. The investment now appears to have little value. Mrs J says she has lost out financially as a result.

Mrs J says Phoenix Life failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs J says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Phoenix Life had acted as it should have done.

What happened

Mrs J says she was contacted by a company called Stratus offering her the opportunity to invest in storage units. Stratus referred her to United Compliance Limited ('United Compliance'), and they advised her to transfer her pension to a Rowanmoor SSAS and invest in storage units provided by Store First Limited. Neither Stratus nor United Compliance were authorised by the Financial Conduct Authority ('FCA').

Mrs J says she was attracted by the prospect of getting a significant guaranteed investment return on her pension that at the time she considered to be static.

In February 2014, a company was incorporated with Mrs J as director. I'll refer to this company as 'Business P'. At the same time, Mrs J signed documents to open a SSAS with Rowanmoor Group plc ('Rowanmoor'). Business P was recorded as the SSAS's principal employer.

On 26 February 2014, Rowanmoor requested information from Phoenix Life about Mrs J's pension to facilitate the transfer. Phoenix Life replied on 10 March 2014, explaining that it had sent the information to Mrs J because it didn't hold authority from her to provide the information to Rowanmoor.

On 14 April 2014, Mrs J's transfer papers were sent to Phoenix Life. These were sent in by Rowanmoor. Included in the transfer papers were: a transfer form completed with the details of the SSAS, and a letter from HM Revenue & Customs ('HMRC') confirming the SSAS had been registered on 24 February 2014.

Mrs J's pension was transferred on 22 May 2014. Her transfer value was around £65,100. She was 46 years old at the time of the transfer.

As I understand it, Mrs J went on to pay around £47,800 from her SSAS for the storage unit investment and the costs associated with the purchase. The investment did not go on to perform as expected and on 30 April 2019, the High Court ordered that Store First Limited and three other related companies be wound up. Investors were therefore unlikely to see a return on their investment and as such, Mrs J's investment has no realisable value.

In February 2023, Mrs J's representatives set out her complaint to Phoenix Life. Briefly, her argument is that Phoenix Life failed to carry out sufficient due diligence on the transfer. It ought to have established, and warned her, that the SSAS and storage unit investment were completely unsuitable for her.

Phoenix Life didn't uphold the complaint. It said it followed the correct process and abided by all the legal requirements on it at the time, and that none of the information it had about the transfer at the time gave it cause for concern.

Our Investigator was unable to resolve the dispute informally, so the matter was 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.

The events complained of occurred more than six years before Mrs J's complaint was made. However, Phoenix Life has consented to us considering her complaint. As such, I have not considered further the implications of the relevant time limits on our jurisdiction to consider Mrs J's complaint.

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

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 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, 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 leaflet 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 Pensions 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 2000 ('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 statutory 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.

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

Mrs J told our Investigator she was contacted by Stratus, and they asked her if she was interested in investing her pension in storage units. She said her Phoenix Life pension wasn't going anywhere and Stratus made the investment sound very attractive. And her nephew worked for Stratus and at the time he thought the investment would be a good thing to do. She explained Stratus put her in touch with a financial adviser at United Compliance who she dealt with entirely over the phone. She said the financial adviser worked closely with Stratus to arrange the transfer and she believed what they told her about the investment. She said she was told she would get a guaranteed return of 7% or 10% in the first year, and she thought she would be able to sell the investment back to Store First Limited after a year.

Mrs J explained she felt under pressure to proceed with the transfer as it went on. She said Stratus and the adviser from United Compliance frequently called her early in the morning. She said she was worried her nephew would lose his job if she didn't proceed and she thought she had to go through with it having gone that far. Mrs J mentioned her nephew had spoken to other members of their family about the investment, but they ultimately decided not to go ahead with it following her own experience.

It's not entirely clear from what Mrs J told our Investigator if events began with an unsolicited call from Stratus, or if the call followed conversations she had with her nephew. The fact her nephew spoke to other members of their family, and was working for Stratus and so had an interest in generating business for it, leads me to think Mrs J was approached by her nephew about the investment. I accept Mrs J's recollection that Stratus referred her to United Compliance. Business P and United Compliance shared the same registered company address. I see no other reason for this than United Compliance playing an instrumental role in the arrangements that brought about the transfer. So, I've found events began with Mrs J's nephew approaching her about investing in storage units which led to Stratus contacting her and then referring her to United Compliance.

I consider Mrs J's motivation to transfer her pension was two-fold in the circumstances: to generate a significant return on her pension that she considered to be static, and to help her nephew by making an investment his employer was promoting. Notwithstanding, the arrangement Mrs J transferred to was complex and unusual, so I think it's unlikely she would have decided to enter into that arrangement without some form of advice or recommendation to do so. Mrs J's recollection is that she dealt with a financial adviser from United Compliance and what she was told about the storage unit investment amounted to a recommendation to transfer her pension to invest in it. As such, I've found Mrs J was likely advised by United Compliance to transfer her pension and invest in storage units.

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.

It's not clear from the evidence provided to me if Phoenix Life sent the Scorpion insert to Mrs J. Phoenix Life says the Scorpion leaflet was enclosed with a transfer pack it sent Mrs J in March 2014. It hasn't provided us with evidence of the correspondence it sent to her on that date, and Mrs J told our Investigator she doesn't recall seeing the Scorpion leaflet. But for the reasons I'll explain below, my decision does not turn on if Phoenix Life sent the Scorpion leaflet to Mrs J. As such, I make no finding on this point.

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 and take appropriate action if it was apparent their customer might be at risk. Other than checking the information it received from Rowanmoor, Phoenix Life didn't undertake any further due diligence.

Given the information Phoenix Life had at the time, one feature of Mrs J's transfer would have been a potential warning sign of liberation activity as identified by the Scorpion action pack: Mrs J's SSAS was recently registered. 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 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 liberation was a realistic threat. Given the warning sign that should have been apparent when dealing with Mrs J'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 check list and contacted Mrs J as part of its due diligence.

<u>What should Phoenix Life have found out?</u>

Phoenix Life would reasonably have known from the information Rowanmoor sent in the transfer request that Business P was the sponsoring employer of the SSAS. A simple search of the Companies House register would have revealed to Phoenix Life that Business P was dormant and newly registered at an address that was distant from Mrs J's personal address. If Phoenix Life had asked Mrs J questions under part one of the checklist, it would have found out Mrs J wasn't employed by Business P and was employed elsewhere. Those discoveries should have caused Phoenix Life concern about the nature of the receiving scheme.

Investigations under part three of the checklist would also have caused Phoenix Life concern. Had Phoenix Life asked Mrs J how the transfer had come about, it would have found out she had been approached by Stratus and then referred to United Compliance, who she considered to be her financial adviser in the matter. And after initially being persuaded to transfer by the prospect of a significant investment return, she had felt pressured to proceed with it.

The check list recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should "*check whether advisers are registered with the FSA at www.fsa.gov.uk/fsaregister*". In other words, they should consult the FSA/FCA's online register of authorised firms. Phoenix Life should have taken that step, which is not difficult, and it would quickly have discovered that Mrs J's adviser was indeed unauthorised.

Being *advised* by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point.

My view is that Phoenix Life should have been concerned by United Compliance's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

What should Phoenix Life have told Mrs J – and would it have made a difference?

I think Phoenix Life's failure to uncover this risk of illegal advice and then warn Mrs J about it meant it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for Phoenix Life to have informed Mrs J that the firm she had been advised by was unregulated and could put her pension at risk. Phoenix Life should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections.

I'm satisfied any messages along these lines would have changed Mrs J's mind about the transfer. The messages would have followed conversations with Mrs J so would have seemed to her (and indeed would have been) specific to her individual circumstances and would have been given in the context of Phoenix Life raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mrs J aware that there were serious risks in using an unregulated adviser even if she was not liberating her pension. I think the gravity of any messages along these lines would prompt most reasonable people to change their mind. I've seen no persuasive reason why Mrs J would have been any different.

I recognise those messages would have gone against Mrs J's desire to help her nephew and her feeling that she was obliged to continue with the transfer. But I'm not persuaded the strength of those feelings would have outweighed warnings about the risk of falling victim to illegal activity. Such a warning would have seemed to Mrs J, and indeed was, a very serious warning with potentially serious implications for the safety of her pension. So, I consider that if Phoenix Life had acted as it should, Mrs J wouldn't have proceeded with the transfer out of her personal pension or suffered the investment losses that followed.

I acknowledge here that if I had found Phoenix Life sent the Scorpion leaflet to Mrs J, there's an argument that warnings from Phoenix Life would not have deterred her from transferring because, in that scenario, Mrs J would have pressed on with the transfer despite having already received some warnings. It's not an argument I agree with. The Scorpion leaflet was focussed on the threat of pension liberation activity. The warnings it listed were set out in the context of warning about transfer arrangements involving some form of payment in connection with it. But Mrs J's motivation to transfer wasn't to receive such a payment. So while some of the warning signs listed in the leaflet - *"being approached out of the blue"* and *"pushy advisers"* – were present in Mrs J's transfer, I don't think the leaflet would have resonated with her. In particular I don't think she would have attached any significance to the warning of being approached out of the blue given she was initially approached by her nephew. Consequently I don't consider the Scorpion leaflet would have carried any significant weight with her even if she did receive it.

Phoenix Life has also pointed to the fact the other members of Mrs J's family who considered the storage unit investment did not proceed with it. It appears to me though that Mrs J's family members decided not to proceed after she had already transferred, as it seems their decision was primarily based on Mrs J's experience in the matter.

The cause of Mrs J's loss

I bear in mind that this complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give someone the information or advice to which they were entitled. In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

So, it's important I bear in mind that the Scorpion guidance was directed towards protecting people from the risk of pension liberation and that doesn't appear to have happened here. The loss was suffered because Mrs J accepted unsuitable advice from an introducer who wasn't authorised to act as a financial adviser at all, and it wasn't (as far as can be established taking into account what Mrs J has said) a case of seeking to cash in a pension in an unauthorised way.

Nonetheless, the circumstances that gave rise to this complaint were very similar to those of a pension liberation scam: the transfer involved the setting up of a new pension scheme to house an investment and the involvement of recently established businesses. The Scorpion action pack and insert both recommend checking that financial advice comes only from an authorised person by checking the FSA/FCA register. And Phoenix Life's obligations under the Principles and COBS were of general application and went well beyond just protecting its customers from pension liberation. In the circumstances, even though this doesn't appear to be a case of pension liberation, I'm satisfied there is sufficient connection between the harm Mrs J wants to be compensated for and the risk that Phoenix Life had a duty to guard against. So I do consider it fair and reasonable for Phoenix Life to compensate Mrs J for her losses.

Summary

The information Phoenix Life received about Mrs J's transfer should have led it to undertake further due diligence on Mrs J's transfer. That would have led it to discover Mrs J had been advised to transfer by an unauthorised firm acting illegally. If it had warned Mrs J of the risk she faced of falling victim to this illegal activity, as it should have done with all its obligations in mind, Mrs J would not have proceeded to transfer. Therefore, I've concluded Mrs J's complaint should be upheld.

Putting things right

My aim is that Mrs J should be put as closely as possible into the position she would probably now be in if Phoenix Life had treated her fairly.

The SSAS only seems to have been used in order for Mrs J to make an investment that I don't think she would have made from the proceeds of this pension transfer, but for Phoenix Life's actions. So I think that Mrs J would have remained in her pension plan with Phoenix Life and wouldn't have transferred to the SSAS.

To compensate Mrs J fairly, Phoenix Life must subtract the actual value of the SSAS from the notional value if the funds had remained with Phoenix Life. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the SSAS value at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mrs J may be asked to give Phoenix Life her authority to enable it to obtain this information to assist in assessing her loss, in which case I expect her to provide it promptly.

My aim is to return Mrs J to the position she would have been in but for the actions of Phoenix Life. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): storage units. This is because there is no secondary market for it. Therefore as part of calculating compensation:

- Phoenix Life should seek to agree an amount with the SSAS as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the SSAS plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything Phoenix Life has paid to the SSAS for illiquid investment(s).

- Alternatively, if it is unable to buy them from the SSAS, Phoenix Life must give the illiquid investment(s) a nil value as part of determining the actual value. In return Phoenix Life may ask Mrs J to provide an undertaking, to account to it for the net proceeds she may receive from those investments in future on withdrawing them from the SSAS. Phoenix Life will need to meet any costs in drawing up the undertaking. If Phoenix Life asks Mrs J to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mrs J should not be disadvantaged while she is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Phoenix Life must pay an upfront sum to Mrs J equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

This is the value of Mrs J's funds had she remained invested with Phoenix Life up to the date of my Final Decision.

Phoenix Life should ensure that any pension commencement lump sum or gross income payments Mrs J received from the SSAS are treated as notional withdrawals from Phoenix Life on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the SSAS given Mrs J's dissatisfaction with the outcome of the investment it facilitated.

Phoenix Life should reinstate Mrs J's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mrs J was invested in).

Phoenix Life shouldn't reinstate Mrs J's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Phoenix Life to determine whether this is possible.

If Phoenix Life is unable to reinstate Mrs J's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mrs J's original pension.

If Phoenix Life considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mrs J is entitled based on her annual allowance and income tax position. However, Phoenix Life's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mrs J doesn't incur an annual allowance charge. If Phoenix Life cannot do this, then it shouldn't set up a new plan for Mrs J.

If it's not possible to set up a new pension plan, Phoenix Life must pay the amount of any loss direct to Mrs J. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mrs J is retired. (This is an adjustment to ensure that Mrs J isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mrs J is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mrs J was yet to take her 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mrs J had already taken her 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

If payment of compensation is not made within 28 days of Phoenix Life receiving Mrs J's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If Phoenix Life deducts income tax from the interest, it should tell Mrs J how much has been taken off. Phoenix Life should give Mrs J a tax deduction certificate in respect of interest if Mrs J asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Phoenix Life is reinstating Mrs J's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mrs J was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mrs J in a clear, simple format.

My final decision

For the reasons given above, I uphold Mrs J complaint. Phoenix Life Limited must now put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 3 April 2025.

Asa Burnett
Ombudsman