

## **The complaint**

Mr L has complained, through his representative, that Standard Life undertook insufficient due diligence when transferring his personal pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in September 2014.

Mr L's QROPS - the Harbour Retirement Scheme ('Harbour') - was based in Malta. Funds from his Standard Life pension were subsequently used to invest half of his funds into loan notes on property in Germany through Dolphin Capital and the other half into balanced unit-linked funds. The Dolphin investment was recorded as having no value in 2020.

Phoenix Life Limited are responsible for responding to this complaint, so I'll be referring to PL throughout this decision for ease of reading.

## **What happened**

Mr L says he was contacted out of the blue by a firm called Portia Financial Limited ('Portia') who offered him a free pension review without any obligations. He says he was told he would see better returns by moving his pension abroad due to the different tax system and he was informed about the Dolphin overseas investment.

Mr L says he was then told he needed to speak to a financial adviser which is when Servatus Ltd got involved. Portia explained to him that they were an agent for Harbour and Servatus were the financial advisers.

Portia was an unregulated firm. Servatus was regulated by the Central Bank of Ireland. At the relevant time they also appeared on the FCA register as being authorised in the UK with passporting rights.

Mr L signed a letter of authority for a firm called Global Partners Limited in May 2014. Global Partners wrote to PL and requested pension information and the necessary forms to proceed with a transfer to a QROPS. Mr L says he has no recollections of Global Partners being involved.

Servatus wrote to Mr L in early July with a financial planning report providing advice on the transfer to a QROPS and the intended investments. Mr L completed the necessary forms later in July 2014 and in August 2014, PL received a transfer request from Harbour Pensions to transfer Mr L's pension to their QROPS. The transfer completed in September 2014.

Mr L complained to PL in 2022 that they should have done further due diligence and warned him about the transfer. PL rejected the complaint. They said they had checked all the documents provided by Harbour and none of the information gave cause for concern. They didn't know about the investments and it wasn't their responsibility to assess the suitability of the investments for Mr L.

Mr L referred his complaint to this service. One of our investigators rejected the complaint. He thought PL should have sent Mr L a Scorpion leaflet which warned about pension scams and they ought to have done more in terms of due diligence. However, further enquiries

would have shown that Mr L was being advised by Servatus, an EEA regulated firm with UK passporting rights which would have given them enough comfort that the scam risk was minimal. So no further warnings needed to be given. The investigator thought that even if PL had acted as they should have done, the transfer still likely would have gone ahead.

Mr L's representatives disagreed that PL could take comfort from Servatus's involvement. They say foreign advice would have been unusual and should have been seen as another red flag. Mr L also wouldn't have the same regulatory protections as from a UK adviser. PL should have informed Mr L about all of this.

They also disagreed that Mr L would have proceeded with a transfer if PL had asked more questions and sent him the Scorpion leaflet.

As the complaint couldn't be resolved, it was referred to me for an ombudsman decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, 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.

#### *What did PL do and was it enough?*

The investigator set out in detail the relevant rules and guidance in place at the time of the transfer and how they would apply. Both PL and Mr L's representatives are very familiar with this and so I'm not going to repeat this here again in detail. However, in short I consider the Principles of Business (PRIN), COBS 2.1.1 R and the Scorpion guidance in the version of 2014 to be relevant for this complaint.

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 rights. 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. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take.

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. I consider this is a reasonable expectation of personal pension providers dealing with transfer requests bearing in mind their duties under the regulator's Principles and COBS 2.1.1R.

#### Scorpion leaflet

My view is that since February 2013, when the Scorpion guidance was introduced by The Pensions Regulator (TPR), personal pension providers should, as a matter of course, have sent transferring members the Scorpion leaflet issued by TPR or given them substantially the same information when a transfer was requested. It warned consumers about signs of a

scam they should look out for. This was an easy and inexpensive step to take to help protect consumers from scams and one that wouldn't have got in the way of efficiently dealing with transfer requests. The Pensions Regulator had explained in 2013 that they wanted the inclusion of those leaflets in transfer packs to become best practice.

PL confirmed they didn't send the Scorpion warnings to Mr L. Looking at the timeline of the transfer I think the leaflet should have reasonably been sent to him in August 2014 when PL received the transfer request. The relevant version of the Scorpion insert Mr L should have received would have been the version issued in July 2014.

### Due diligence

Like the investigator I agree that PL also should have contacted Mr L as part of their 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 a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. PL satisfied themselves the QROPS was properly registered with HMRC, however I don't think this was enough.

The 2014 Scorpion Action pack listed overseas investments as a possible warning sign of a scam. Given Mr L was transferring his pension overseas I think it would have been fair and reasonable – and good practice – for PL to have looked into the proposed transfer and asked Mr L more questions about how the transfer had come about and whether he was receiving advice.

Other than Mr L's testimony there isn't any other evidence that Portia was involved. However, from what we have seen in other cases QROPS structures and investments in Dolphin Capital often have been promoted through cold calls by unregulated parties. So it's plausible that this has happened here.

From a few simple questions I think PL would have found out that Mr L had been cold called by Portia and subsequently received advice from Servatus. Mr L was aware that Servatus were the advisers as Portia had explained this to him. Servatus was the firm who issued a planning report and they were the firm recorded as the advisers on all application forms. PL might also have found out about Mr L having been offered guaranteed returns and about the investment into Dolphin Capital. It's also likely they would have found out that he hadn't been offered early access to his pension or any cash incentives.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA's online register of authorised firms. PL should have taken that step, which is not difficult. Had they done so, they would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

### *What should PL have told Mr L?*

There were some potential warning signs of scam present here. However, I think the knowledge Mr L was being advised by a properly authorised adviser in this case reasonably would have given PL comfort the transfer was unlikely to be a scam or unauthorised pension withdrawal. A ceding pension scheme is not expected to act as a general pension adviser to a member who tells them they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high-risk

investments. So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with their member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mr L's transfer, viewed overall in that way and if PL had taken the steps they should, I don't consider that would have been the case.

Mr L's representatives say PL should have warned him he wouldn't have the same regulatory protections than from a UK adviser. It is correct that Servatus didn't have a branch in the UK and so Mr L wouldn't have had any recourse via UK's complaints and investor protection institutions, like the Financial Ombudsman Service or the FSCS, as opposed to their Irish equivalents. The Republic of Ireland also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive.

Servatus was passported from Ireland to the UK and so for the period of this transfer Servatus was an authorised person under FSMA 2000. The right to passport financial services from one EU country to another is a feature of the EU's internal market, which applied to the UK at the time. The right was underpinned by the introduction of EU wide standards of investor protection and harmonised conduct of business rules. So, the UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under the FSMA 2000, and I think that, in the present case, that could have provided sufficient comfort for PL's purposes.

As a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by their own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct their practice in accordance with those standards. Their operations would have been under some oversight by their regulator to ensure they were acting in the best interest of their client.

They therefore would have had to meet certain required standards in all of their dealings and be subject to regulation and to investor recourse under the Irish system. So, in my view, PL could have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

Overall, I don't think if PL had made further enquiries that this would have resulted in specific warnings to Mr L that he was at risk of a scam.

*Would further questions from PL and the provision of the Scorpion insert made a difference to Mr L's decision to transfer?*

The investigator showed the Scorpion leaflet to Mr L. He says if PL had provided him with this he would have certainly called one of the numbers provided before proceeding with the transfer of his pension (the leaflet contained telephone numbers for The Pension Advisory Service and Action Fraud). Mr L said it was highly likely that he wouldn't have gone through with the transfer, as several factors mentioned in the leaflet were relevant to his situation at the time and would have raised red flags when he was initially approached.

I don't doubt that this is what he genuinely believes with the benefit of hindsight and it's true that the leaflet warned about cold calls and free pension reviews as well as scammers trying to lure people in with so called one-off investment opportunities. So I agree that some of these warning signs might have reasonably resonated with Mr L.

However, whilst the guidance had broadened in July 2014 to also look at broader scams, a significant focus in the Scorpion leaflet at the time and on TPR's website was still about the

risk of accessing pension benefits early or receiving loans or cash incentives. The key advice when contacting The Pension Advisory Service or Action Fraud would have likely been to seek regulated advice.

Mr L said he had no doubts about the transfer. He had looked into Harbour and they seemed like “the real deal” and Portia came across as very professional. Even if the Scorpion insert had raised some concerns with Mr L I think on the balance of probabilities he likely, just like PL, would have taken comfort from the fact he was receiving regulated advice from Servatus and that he hadn’t been offered cash incentives or early access to his pension..

In summary I don’t think PL did enough in terms of due diligence. However, if they had done everything they should have, on balance I still think Mr L would have transferred his pension and so he would be in the same position he is in now. So I don’t think PL has caused the investment losses he has suffered.

I sympathise with Mr L’s situation. He has lost a significant part of his pension by investing into investments which were unlikely suitable for him. And I understand that the situation is worrying and stressful. However, for the reasons explained above I don’t think it would be fair or reasonable to hold PL responsible here.

### **My final decision**

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 11 February 2025.

Nina Walter  
**Ombudsman**