

The complaint

Mr B has complained, with the help of a professional third party, about the transfer of his personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in September 2017. His personal pension was held with Phoenix Life Limited trading as Standard Life. To keep things simple, I'll just refer to 'Phoenix' throughout my decision.

Mr B says he has lost out financially as a result of the transfer due to high-risk investments made. He says Phoenix failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr B says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Phoenix had acted as it should have done.

In addition to the transfer of pension benefits from Phoenix, Mr B also transferred pension benefits from another provider to the QROPS at around the same time. He has raised a separate complaint about that transfer. The circumstances of that other transfer, from a business which I'll call 'Firm R', have relevance to his complaint about Phoenix and so I've referred to them below.

What happened

Phoenix has provided a copy of a letter to Mr B dated 13 April 2017 (a transfer pack) acknowledging his enquiry about potentially transferring his pension. At the start of the letter Phoenix said *"We strongly recommend you take independent advice from a financial adviser who is authorised and regulated by the Financial Conduct Authority."* And it provided a link to the Financial Conduct Authority ('FCA') register to enable Mr B to check the authorisation status of an adviser. It then noted that pension scams were on the increase and recommended Mr B read *"the pension scams information which is contained within the attached booklet from The Pensions Regulator"* as well as providing a link to The Pensions Regulator's ('TPR') website for further information. The booklet referred to here is commonly known as a Scorpion booklet because of the imagery on the front. The letter then went on to explain the information and forms that would be required to facilitate a transfer.

Firm R says it received a call from Mr B on 25 April 2017 requesting that it provide the relevant discharge forms to enable the transfer of the benefits he held with it.

Firm R wrote to Mr B on 1 May 2017 in response, providing transfer forms. The letter explained that certain protections and entitlements the existing pension may have offered Mr B would be lost on transfer. Firm R says TPR's Scorpion leaflet was also provided at that time.

Phoenix has provided another transfer pack, dated 9 May 2017, that was also sent to Mr B along with transfer forms and TPR's Scorpion booklet which were enclosed.

Mr B completed a letter of authority for Phoenix to provide information about his pension to Elmo Pensions Limited ('EPL').

Mr B also signed Phoenix's overseas transfer application form on 27 May 2017. On the first page of this document there was a section titled "Pension scams". This advised consumers considering a transfer to consider a set of questions, amongst which were *"Have you been motivated by a call, online advert or text out of the blue?"*, *"Have you been advised by unregulated advisers who are based overseas?"* and *"Are you transferring your pension savings to another country, while remaining resident in the UK?"*. And it said if the answer to any of the questions listed was yes, *"there's a chance your money could be at risk"*. There was then a further reference to information available on TPR's website, so consumers could know what to look out for.

Copies of ID documents for Mr B were certified by a person referred to as a solicitor working for 'BMD Law'. They were then also verified by a representative of 'Elmo Insurance Ltd'.

On 21 August 2017, EPL wrote to Phoenix. It said it was the scheme administrator for the Elmo International Retirement Plan – a QROPS based in Malta. It said it had received a request to transfer into the QROPS from Mr B and enclosed the completed transfer forms. EPL was not authorised or regulated by the FCA. In addition to the Phoenix overseas transfer application form, EPL also provided an HMRC QROPS member information form signed by Mr B and a confirmation letter from HMRC that the Elmo International Retirement Plan was recognised as a QROPS.

EPL also wrote to Firm R on the same day, requesting the transfer of Mr B's pension benefits held with it and providing completed transfer forms.

Firm R required Mr B to complete a transfer questionnaire which he signed on 4 September 2017. It says a Scorpion insert (which I've taken to be the same document as the leaflet referred to earlier) was again provided at the same time. The questionnaire said it was required as part of Firm R's due diligence. It was comprised of several questions that Mr B needed to either tick to confirm or leave blank and two questions for Mr B to provide answers in his own words. The questions included *"Have you received financial advice from a regulated adviser in relation to the transfer?"*. Mr B left the relevant box blank, indicating he hadn't received regulated advice. In response to the question *"How did you first become aware of the new pension scheme?"* Mr B wrote *"Research"*. And in response to a question about how the QROPS was to be invested, Mr B wrote *"Customised Portfolio commensurate to my risk profile"*.

Phoenix replied to EPL on 5 September 2017 acknowledging its request. It said before it could proceed it needed original ID documents for Mr B. EPL provided these the following day.

It's not apparent Phoenix took any further steps until it processed the transfer of Mr B's benefits to the QROPS later in September 2017. Mr B was 47 at the time.

Firm R confirmed to EPL on 5 October 2017 that it had also authorised payment to the QROPS, representing Mr B's pension benefits held with it.

Mr B complained to Phoenix in 2021. He said he'd originally been contacted by Vanguard Marketing Consultants LLP ('VMC'), a business not regulated or authorised by the FCA, and offered a pension review. He agreed to a review regarding investment in the QROPS and says VMC promoted a transfer. His representative said Mr B had been advised to transfer by VMC and that Phoenix hadn't provided him with any warnings, including TPR's Scorpion leaflet and hadn't undertaken appropriate due diligence.

Phoenix didn't uphold the complaint. It said it had provided warnings to Mr B, including the Scorpion booklet and a recommendation to seek regulated advice. It also noted that it was

not required to provide advice to Mr B, as this wasn't its role in the transaction. And it explained that transfers to a QROPS were permitted, and such schemes would not be FCA regulated, whether or not a scheme was high risk would be dependent on the investments made which Mr B had provided no details about and Mr B wasn't *required* to take regulated advice to request this transfer.

The complaint was referred to the Financial Ombudsman Service. I issued a provisional decision in November 2024 explaining that I didn't intend to uphold Mr B's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such Phoenix was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses ('PRIN') and to the Conduct of Business Sourcebook ('COBS'). There have never been any specific FSA/FCA rules governing how personal pension providers deal with 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.*

In February 2013, TPR issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance 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 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. So, the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 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.

The materials in the Scorpion campaign comprised an insert / leaflet to be included in transfer packs providing warnings to readers about the dangers of pension scams and some of the warning signs to look out for, a longer booklet giving more information and example scenarios and an 'action pack' for scheme administrators.

The Scorpion guidance was updated several times between it being introduced in 2013 and Mr B's transfer from Phoenix.

- In July 2014 the update widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from “too good to be true” investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.*
- In March 2015, the guidance referenced the potential dangers posed by “pension freedoms” (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. The action pack also began suggesting businesses use the checklist within it whenever they received a transfer request. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.*
- In March 2016, the guidance for businesses said to signpost consumers to the government's Pension Wise website. It reiterated the recommendation for businesses to use TPR's checklist and carry out due diligence on all transfer requests. And it said businesses should communicate any suspicions to consumers, record these and direct consumers to TPAS to discuss the implications of a transfer. The leaflet and booklet for consumers were restructured setting out ten steps to protect their pensions and avoid being the next victim of a scam. Amongst these steps were to check the FCA register, to make sure advisers were registered, and the FCA's list of known scams.*
- In March 2017, the shorter insert / leaflet for consumers was restructured again, into five tips to protect yourself from scammers and a separate section on what to look out for. By July of that year, TPR's longer booklet appears to have fallen out of use and the shorter insert / leaflet was now referred to as a 'booklet'. The contents of TPR's action pack were now hosted online. The content covered was largely the same as in the March 2016 version.*

The Scorpion guidance

From the March 2015 update to the Scorpion guidance, schemes were asked to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the two-page insert (which was later termed a booklet when updated in March 2017) to be sent when someone requested a transfer pack.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I’ve made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn’t necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn’t necessarily be a breach of the regulator’s Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion “materials” in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: “A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.” This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person’s pension.*
- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.*
- Under the PSIG Code, an ‘initial analysis’ stage allows transferring schemes to fast-track a transfer without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2017 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*
- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSAs and QROPS. The 2017 Scorpion*

guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. 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 either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

Mr B has said that he was looking at his options for his pensions, including options such as self-administered schemes, and then he came across the QROPS being promoted online. He followed the advert which led to him being in contact with VMC. Mr B says he had several phone calls with VMC as well as email correspondence – and he has provided copies of the correspondence he holds. Mr B said he was assured the transfer was legitimate and legal, that the QROPS was all above board and that an independent financial adviser ('IFA') would be involved. He thought the promotion was all very plausible.

He said he'd had to send documents to a business called 'A-Z Admin' but otherwise had only dealt with VMC. Mr B assumed the IFA would be suitably qualified and that a transfer was dependent on this, although he didn't see any accreditation. Mr B said he'd been told about a loophole and that he could access money following the transfer, before age 55, through an interest free loan, which persuaded him to transfer. But no payment was forthcoming. Mr B said he'd been told the investment would be across a wide portfolio, including a hedge fund. And the charge for arranging the transfer would be 15% of the value of the pension. Mr B didn't have any recollection of seeing the Scorpion information before he made a complaint.

Mr B has provided copies of emails from VMC. And I note the person that signed the emails was named as a director of VMC on Companies House. These refer to them operating a "very specialist process" and that they provided advice on bespoke Trust Arrangements. It said this followed "regulated advice guidelines for pension transfer advice and subsequent HMRC and statutory laws" which was to ensure their process was safe and legal. It went on to say that this was different to other schemes purporting to allow pension access before age 55 which were normally very high risk and resulted in people losing money. VMC said under its proposed arrangement Mr B could have a maximum of 75% of the transfer value made available to him. It talked about the option of purchasing a holiday property, to enjoy now

and receive rental income, or leaving funds invested for future growth. It also suggested that the charge of 15% that its service would cost would be offset by the gains Mr B could make. VMC said “we are ‘navigators’ to help you on this journey” and that Mr B should only embark on it if he felt comfortable.

VMC sent Mr B its ‘client process guide’. This said that he would need to obtain a current valuation from his existing pension provider. A fact-find would then be completed and “submitted to one of our panel of Regulated Independent Financial Advisers” who would conduct a review and prepare a report. If Mr B was happy, he’d be sent forms to apply to join the QROPS and would need to ask his existing provider for the relevant transfer forms. VMC also said that QROPS had been available for many years and while initially intended for people intending to emigrate there was no requirement to move. After the transfer, investment would happen via a trading platform, which VMC stated had been independently reviewed by another IFA. And that funds would “embark on trading with a registered trust”. It said funds would be released and that VMC was able to shelter these, plus other investments held, so they were protected from taxation. There was also some information about potential investment, with VMC saying it had seen particular success in the “Dolphin Property Investment Scheme” and “Managed Forex”.

VMC also provided Mr B a copy of its ‘legal integrity and due diligence process’. Amongst other things this said its process operated under necessary HMRC rules. It explained that a regulated QROPS was used to facilitate the bespoke Discretionary Trust, based in the USA, and again said initial transfer advice would be from a registered UK IFA. It also stated that the QROPS would be based in the Isle of Man and that the Isle of Man had performed due diligence on the discretionary fund managers based in the USA. It said the discretionary fund manager was one of the oldest privately held investment firms in the USA, but did not name them. It then said funds would be ‘wrapped inside’ a bespoke Discretionary Trust and that the trust was established in 2012.

A copy of the application form for the QROPS, which Mr B has provided, refers to ‘DJB Financial’ as being the ‘introducer’. And I can see one of the emails from VMC to Mr B refers to DJB Financial as being a professional introducer to VMC. DJB Financial, like VMC, was not authorised or regulated by the FCA.

I think, on balance, the documentary evidence supports what Mr B has said. He has explained he was looking at options for his pension and that it was a promotion of the QROPS online that led to his contact with VMC. Given how VMC described DJB Financial, it seems likely that this business introduced Mr B to VMC. Although this may have happened without direct contact between DJB Financial and Mr B. And given the documentation it looks like VMC was the party that Mr B primarily dealt with.

While Mr B has said he was considering options for his pensions, he doesn’t appear to have had any prior connection with the QROPS. And he hasn’t said that he had any intention of moving overseas. So, in the circumstances I think it is likely it was the advertisement he mentioned and the correspondence he had with VMC that led him to consider this. And, as he told our Investigator, I think it was the promise of accessing his pension fund that ultimately persuaded him to transfer.

The emails between VMC and Mr B show that it talked up its process over others purporting to allow access to funds before age 55. So, it seems to have been aware that this was something that interested him. But I’m conscious that VMC described its role as helping Mr B navigate the transfer. And the documents I’ve seen refer to advice on the transfer being provided by a different regulated adviser. Which is something Mr B has said he understood was part of the transfer process.

I haven't seen evidence of advice being provided by another business. The documents VMC sent Mr B suggested this would be part of the process and that a comparison report would be prepared for Mr B. But I haven't seen a copy of this. And, when completing the questionnaire Firm R sent him about the transfer, Mr B didn't indicate he had received regulated advice.

There were other businesses mentioned in the documentation. I've seen a copy of a risk profile questionnaire Mr B completed with a business called Gravitas Finance LLC on 17 November 2017. VMC also refers to 'Gravitas' in an email to Mr B explaining the fee breakdown. Gravitas Finance LLC is however based in Mauritius and again was not regulated or authorised by the FCA. And its involvement came after the transfer of funds.

A-Z Admin, who Mr B says he sent documents to during the application, was incorporated in July 2017 and dissolved in November 2018. It briefly, went by the name Elmo Admin. Which suggests it may have had some connection to the QROPS. Companies House shows the director of A-Z Admin was the same person that verified Mr B's ID documents as a solicitor, working for BMD Law (although BMD Law doesn't appear to have been registered with Companies House until 2020). I can't see that the involvement of this business though went beyond verifying documents.

Overall, it isn't clear therefore if Mr B received the advice he was expecting to receive, on whether to transfer his pension to the QROPS. But what I can say is that the information available doesn't indicate that an FCA regulated business was involved.

Phoenix doesn't appear to have been provided any of the documents I've discussed above. It appears to have provided the transfer pack directly to Mr B – which VMC's process documents indicate was what would be required as they talked about him requesting this information directly. And the only business that appears to have contacted Phoenix was EPL.

What did Phoenix do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the two-page Scorpion document or given them substantially the same information.

The covering letter for the transfer pack dated April 2017 that Phoenix sent directly to Mr B refers to a booklet from TPR being attached, as well as providing links to information on TPR's website. Phoenix has also provided a copy of the booklet that this letter referred to. This was the longer booklet version of the consumer guidance from March 2016 (the last update to that material prior to the transfer). I'm satisfied therefore that Phoenix did share Scorpion guidance with Mr B.

It is true that the shorter insert had been updated in March 2017. But the longer booklet Phoenix sent provided further information, including a case study, for Mr B to think about. And it also included largely the same information that the shorter insert from 2017 did – just structured differently. In addition, it appears that Firm R sent Mr B the shorter Scorpion insert, the 2017 version, in response to his request to it for transfer information. So, on balance, I'm satisfied that he was provided with the relevant Scorpion warnings before he transferred his Phoenix pension.

And, although he may no longer remember doing so, I think it is likely that Mr B did read this information. The covering letter from Phoenix prominently recommended that Mr B review

this. And the booklet formed half of the total pages in the transfer pack. So, I think it unlikely that Mr B missed this.

Due diligence:

Firstly, bearing in mind some of the things expressed by Mr B's representative when lodging the complaint, it is worth noting that Phoenix's responsibilities did not extend to advising Mr B. It was also not a requirement that a receiving pension scheme be registered with the FCA – as consumers had a statutory right to transfer their pension benefits to a number of different types of schemes, not all of which were FCA regulated. Clearly as a QROPS, the Elmo International Retirement Plan was recognised by HMRC and so satisfied that requirement. And at the time of Mr B's transfer, unless a transfer involved guaranteed benefits with a cash equivalent transfer value exceeding £30,000, consumers were not required to take regulated advice. And I understand Mr B's personal pension with Phoenix was a money purchase pension and didn't have guaranteed benefits.

Phoenix did though have to carry out appropriate and proportionate due diligence. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr B's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Phoenix's actions using the Scorpion guidance as a benchmark instead.

Phoenix has said that, due to an administrative oversight, Mr B's transfer was processed without following its due diligence process. So, it doesn't appear that any checks were undertaken. Phoenix has said though, based on the available evidence, it is satisfied that it would still have processed the transfer.

Based on the PSIG Code I think Phoenix ought to have been prompted to ask Mr B further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least three of them would have been answered "yes":

- Will you be receiving any cash payment, bonus, commission or loan from the receiving scheme or its administrators, as a result of transferring your benefits?*
- Have you been told that you can access any part of your pension fund under the receiving scheme before age 55, other than on the grounds of ill-health?*
- Have you been informed of an overseas investment opportunity?*

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a

transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a “wide range” of issues to establish whether a scam was a realistic threat.

What should Phoenix have found out – and would it have made a difference?

It isn't clear what steps Phoenix took to establish the legitimacy of the QROPS, although a letter from HMRC was included in the transfer application. But I have seen evidence that Firm R checked that the QROPS was showing on HMRC's relevant list, in respect of Mr B's other transfer. So, Phoenix would have found the same information. Phoenix didn't though address Mr B's rationale for transferring.

Mr B has indicated to our Service that accessing money from his pension, through the arrangement VMC described, had motivated him to transfer. As part of the application he completed to Firm R, there was a section of the form asking him for feedback which asked why he was transferring. Mr B selected 'no specific reason'. But this was from a list of options, none of which referred to accessing funds. And if Phoenix had asked Mr B about this – which it should have done, using the framework outlined above – I think he'd have said that it was because he'd been told he could access funds from his pension. Phoenix would also have learned that he was transferring to a type of arrangement more commonly used by people living overseas even though he wasn't intending to do that.

Mr B has been clear that he was looking at options for his pension and followed an advertisement. So, he wasn't contacted unsolicited, and I believe would've said as much to Phoenix if asked. As I've explained, Mr B seems to have primarily been in contact with VMC about the transfer. And VMC was not authorised by the FCA. But he's also been clear that he believed that VMC was working with a regulated IFA – something the VMC documentation indicated would happen.

In response to the questionnaire Firm R sent Mr B, when asked if he'd taken regulated advice, he didn't tick to say that he had. And again, I haven't seen evidence that he was provided written advice. But again, he's been clear that he understood a regulated adviser was working with VMC and that he thought the transfer was dependent on the regulated adviser's involvement. So, if Phoenix had asked about this, I think it is likely Mr B would have told it that he understood a regulated adviser was involved. However, I can't see that he would have been able to name them in a way that would have reassured Phoenix that his transfer was less likely to be a scam. If Mr B was getting regulated advice and this was all above board, I think Phoenix would reasonably expect that to have been given prior to the transfer and for Mr B to be aware of who was advising him.

Based on this I think Phoenix would've become aware of there being some warning signs present in Mr B's transfer that the Scorpion guidance warned about. But it had already provided Mr B with the longer form Scorpion booklet with its transfer pack and directed him to the information on TPR's website.

The Scorpion booklet was titled “Scammed out of his retirement. Don't be next” and in my view gave stark warnings about falling victim to a scam. After setting out an example scenario the booklet had a section titled “How not to be next” which listed ten steps to protect your pension. These included to check everything for yourself – something that was relevant to Mr B given he'd followed an advert, was relying on information from a business he didn't know and has said that he made assumptions that other parties were involved and

were regulated. To that end, another thing on the list was to make sure that his adviser was on the FCA register – with a link to access this online. VMC was not on the register. And given Mr B said he understood a regulated business was involved, he could have asked VMC for their details and verified this. The Scorpion insert also said not to be drawn in by overseas investments. And while Mr B has said he understood his money would be invested in a personalised portfolio, it involved a transfer overseas to the QROPS and the information he'd been provided by VMC pointed to the funds subsequently being managed by investment businesses overseas. Amongst the other steps suggested was to review the FCA's list of known scams and talk to Pension Wise or TPAS. And it said not to fall for professional looking websites or brochures.

There was then a further section of the booklet "what can you do with your pension pot?" which prominently stated that, if under age 55, while the pension could be transferred "You can't release or 'cash in' your pension (unless you are too ill to work)". And this warning was at odds with what VMC had said about 75% of the pension being made available.

In addition to the Scorpion booklet, Phoenix's overseas transfer application form – which Mr B signed – also included a section about pension scams. This said if the answer was yes to questions including "have you been motivated by an online advert?" and "Are you transferring your pension savings to another country, while remaining resident in the UK?", then there was a chance Mr B's money might be at risk. Both of these resembled the circumstances of Mr B's transfer.

The warning and directions in the Scorpion materials were clear and easy to read. And several highlighted things to be wary of that were directly relevant to Mr B's transfer. So, Phoenix had provided him with warnings that addressed the concerns it would have had if it had done further due diligence, albeit not expressed specifically in relation to what it had learned about his transfer. But Mr B had continued with the transfer.

In summary, Phoenix has acknowledged that it didn't follow its due diligence process – which it should have done. And if it had done so, it would've become aware of warning signs, including Mr B likely not being able to identify a regulated adviser being involved. But Mr B had evidently ignored the warnings he'd already been given and the suggestion to take additional steps himself to look into the proposed transfer. So, given Mr B didn't heed or act on strong, easy to understand and relevant warnings about the scam risk he was potentially facing, I also don't think it would be reasonable to say a further warning from Phoenix would have prompted Mr B to reconsider his transfer. The contemporaneous evidence doesn't, in my view, support that argument. So, although Phoenix ought to have done more here, I don't think that would have led to Mr B being in a different position.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Phoenix said it had no further comments to make.

Mr B did not agree with my provisional findings. He confirmed his primary reason for transferring was accessing his pension funds, but he said he was not aware of the significant risks of doing so before age 55. He said it was his understanding he couldn't have gone ahead with the transfer without advice from an IFA and I hadn't sufficiently taken into account the actions of the adviser here. Mr B said it was clear VMC operated a sophisticated and convincing model, and he was coached and reassured throughout the process by it. This had given him a sense of confidence (albeit misplaced) and hindered his objectivity and impacted his ability to assess the warnings he received. But he said if Phoenix had done

more and discussed the transfer with him, the warnings would have carried greater weight.

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 on board what Mr B has said about the role VMC played here and that the presentation of the transfer to him by it, EPL and the other parties involved was convincing and persuasive. And I have thought about this when making my decision, just as I did when reaching my provisional findings. But I think it is important to reiterate that my decision is about Phoenix.

As I said in my provisional findings, I'm satisfied that Phoenix didn't do everything that I would have expected it to. But what I have to decide is whether any failings by Phoenix have led to Mr B being in a different position, and incurring a loss, that he wouldn't otherwise have.

Phoenix could and should have carried out additional due diligence here. And I think that would have highlighted several warning signs about the proposed transfer. But it had already provided warnings to Mr B which addressed the areas that would have been of concern.

I'm satisfied that Phoenix and Firm R provided Mr B with the Scorpion information. The warnings and directions within those documents were clear and easy to read and understand. And there were several with particular relevance to Mr B's circumstances.

Amongst this information was confirmation that consumers could not release or cash in their pension if they were under age 55 – as Mr B was here. Mr B has said accessing his pension was the motivation for transferring but he was not aware of the significant risks associated with this course of action. However, the Scorpion information said this was something he couldn't do – which I think ought to have made him wary of a business telling him otherwise. The section of the Scorpion leaflet warning against this also explained there were potentially significant tax implications, including potential tax penalties of 55% from HMRC. And the section about this concluded by saying, in bold, that *"People like you have lost their life savings after falling for a scam. Don't be next."*

There was clear direction in the Scorpion leaflets about not being drawn in by overseas investments. The information Mr B has provided from VMC referred to transferring overseas, the use of a QROPS and his fund being managed by a business based abroad. And the importance of checking the regulatory status of any adviser was highlighted. But Mr B has said he didn't think a transfer could go ahead without a regulated adviser being involved so assumed there was a regulated party involved, rather than verifying this.

In addition, Phoenix's overseas transfer form presented questions that, if the answer was yes, could indicate that Mr B's money was at risk. And, when considering his transfer, the answer to several of these questions would have been yes.

These were stark warnings for Mr B to consider, repeated over several documents. But these didn't deter him from transferring.

Mr B has said that VMC significantly influenced him and that their reassurance gave him confidence in the transaction and meant that he didn't consider the warnings objectively. Phoenix isn't responsible for VMC's actions though. And one of the things the Scorpion information, which Phoenix provided to Mr B, highlighted as a step to help avoid becoming a victim of a scam was not to fall for professional looking websites or brochures and to

“question everything, however credible it sounds or looks”.

That notwithstanding though, Mr B has been clear that he was guided and influenced by VMC. He acknowledges that his confidence in VMC and the transfer was misplaced. But that is with the benefit of hindsight. I'm looking at what I think, on balance of probabilities, would've happened at the time. And given the stark warnings that he was provided which didn't lead him to reconsider, I don't think I can reasonably say, in the specific circumstances of this complaint, that any further warnings from Phoenix – which would've been largely along the lines of those it had already provided - would've led him to act differently, given the confidence he had in VMC and his motivations for looking into transferring in the first place.

So, while I know Mr B has said he doesn't agree, I don't think I can reasonably say further action from Phoenix would've led to him being in a different position.

My final decision

For the reasons I've explained, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 December 2024.

Ben Stoker
Ombudsman