DRN-5200072

The complaint

Mr R has complained about the actions of Phoenix Life Limited ("Phoenix") when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2014. The QROPS subsequently invested in an asset that now has a nil value meaning Mr R has suffered a significant financial loss.

Mr R says Phoenix failed in its responsibilities when dealing with his transfer request. He says that Phoenix 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 R says he wouldn't have transferred, and wouldn't have suffered financial losses, if Phoenix had acted as it should have done.

What happened

On 2 March 2014, Mr R signed a letter of authority allowing Global Partners Limited ("GPL") to obtain details on his Phoenix personal pension. GPL forwarded this on to Phoenix. Included in its covering letter was a request for an up-to-date transfer value and discharge forms to allow Mr R to transfer to a different pension scheme. Phoenix sent the requested information and documents to both GPL and Mr R on 17 March, 21 May and 30 July.

Mr R doesn't recall dealing with GPL but he does recall being cold called, being offered a free pension review and being advised by two businesses, Portia Financial Limited and Servatus Limited, to transfer to a QROPS in order to invest in Dolphin Capital.

On 19 September, Harbour Pensions Limited wrote to Phoenix requesting it transfer Mr R's pension to the Harbour Retirement Scheme ("the Harbour Scheme"), a QROPS based in Malta. Harbour Pensions Limited were the receiving scheme's administrators. Included in all the transfer documents was a letter from HMRC to Harbour Pensions Limited, dated 9 April 2013, which said it had accepted the Harbour Scheme as a QROPS.

On 3 October, Phoenix wrote to Mr R to say his transfer value would shortly be paid. On the same day, Phoenix wrote to Harbour Pensions Limited enclosing a cheque for the transfer value. The transfer value was approximately £10,000. Two months later, in December 2014, Mr R transferred a different pension to the Harbour Scheme. The transfer value for that pension was approximately £40,000.

Mr R was 59 at the time of the transfer. He wasn't planning on living overseas.

Mr R took tax-free cash from the pension the following month. Of the remaining funds, 40% was invested in a Dolphin Capital Loan Note. Dolphin Capital (now known as the German Property Group) is a German property venture which has gone into liquidation. The remainder of the transferred funds was put into an investment account managed by WH Ireland Limited. Mr R says this portfolio has been eroded by fees.

In 2021, Mr R (with the help of a claims management company) complained to Phoenix. Briefly, his argument is that Phoenix ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the involvement of unregulated introducers and advisers; he was offered a free pension review; he didn't have recourse to the Financial Ombudsman Service or the Financial Services Compensation Scheme ("FSCS") for the advice he received; a QROPS was a complex arrangement and not necessary for his situation, especially as he wasn't intending to move abroad; and he was transferring in order to invest in high risk, unregulated, assets.

Phoenix didn't think it had done anything wrong. It said, in brief, that it had conducted the checks required of it at the time and it hadn't found any reason to refuse Mr R's transfer request. It also said it sent the "Scorpion" warning leaflet, the contents of which I discuss later.

Mr R referred his complaint to us. Our investigator didn't uphold his complaint. Mr R asked for an ombudsman to make a 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.

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

Before I explain my reasoning, it will be useful to set out the environment Phoenix was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- 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. A member may also have a right to transfer under the terms of their pension. This 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. This came to be known as "pension liberation".

- The Pensions Regulator (TPR) launched the "Scorpion" campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Financial Services Authority ("FSA"), and the Financial Conduct Authority ("FCA") which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

- In late April 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

- Phoenix was subject to the 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:

  - 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.

- Also relevant here is that an overseas pension scheme is defined in HMRC regulations as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. To become a QROPS it must also be:

  - Recognised, meaning in short that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.

  - Qualifying, meaning it must notify HMRC that it is a recognised overseas pension scheme; provide appropriate evidence of this; undertake to adhere to HMRC's requirements; and not be otherwise excluded by HMRC from being a QROPS.

Overseas schemes that have notified HMRC that they qualify to be a QROPS are included in a published list on HMRC's website.

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013, and was initially focused on pension liberation. The guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the July 2014 Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.

- A longer booklet issued by The Pensions Advisory Service ("TPAS") which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. 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 a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and directing the member to Action Fraud or TPAS.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the content 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 transfer 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.

<u>What did personal pension providers need to do?</u>

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. 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:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam 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 scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance 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.

These were additional requirements over and above what a ceding scheme would always have needed to do when processing a QROPS transfer. Those requirements included checking whether the QROPS was on HMRC's published list, and ensuring the necessary HMRC forms were completed.

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

Mr R says the transfer process started when he was contacted by someone who offered him a free review of his pensions. I can see from Mr R's Harbour Scheme application form that he had pensions from three different providers, including his Phoenix pension which is the subject of this complaint and a defined benefit pension. Mr R says he was interested in a review because he wanted to consolidate his pensions.

Mr R says he was then put in touch with Servatus Limited and a "field representative" of a different business, Portia Financial Limited, who visited him at his home. I can see from the submissions Mr R provided in relation to a different complaint that he was sent an advice report by Servatus in relation to his defined benefit pension. The covering letter to that report referred to an earlier meeting between Portia and Mr R. So Mr R's recollections are supported by the documentary evidence: he did deal with both Portia and Servatus.

The documentary evidence also points to the involvement of GPL, which is the business that requested information on Mr R's policies in March 2014. Mr R can't remember dealing with GPL. But he must have dealt with it at some point because he signed a letter of authority giving it permission to seek information on his Phoenix pension. So it would seem likely that the initial cold call came from GPL – hence the signed letter of authority early on in the process – before Mr R was then referred on to Portia and Servatus.

Mr R says he was advised by both Portia and Servatus. The Servatus advice report referred to above was quite extensive, covering areas such as Mr R's current financial position, attitude to risk and the returns he would need to achieve in his new scheme in order to match the benefits he was giving up from his defined benefit scheme. Although Mr R's representatives didn't provide a similar report that covered his Phoenix pension, I've no reason to think Servatus didn't advise on this pension too. The covering letter referred to above suggests Servatus was looking at both pensions but in separate reports, Mr R's comments indicate Servatus advised him on his Phoenix pension and the 0.5% "IFA fee" that was taken from Mr R's QROPS and paid to Servatus was based on the combined transfer value of his Phoenix and defined benefit pensions.

No written reports or recommendations from Portia have been provided. I can't see an adviser fee was agreed with, or paid to, Portia. And, as discussed above, the involvement of Servatus came *after* Mr R's meeting with Portia. Therefore, whilst I don't doubt Mr R met with Portia in the run-up to the transfer, with all the above in mind I'm satisfied it was Servatus that ultimately advised Mr R.

Mr R transferred two pensions – his Phoenix pension and the larger, defined benefit, pension. Mr R took tax-free cash shortly afterwards but he was already over the age of 55 by this point. So the motivation behind the transfer wasn't the prospect of accessing a pension early or to receive any other form of unauthorised payment from it. Mr R transferred because he thought he would generate better returns and because it allowed him to consolidate his pensions. He didn't necessarily have to transfer to a QROPS in order to achieve those goals.

Mr R was unemployed and without significant other long term savings other than the pensions he transferred.

<u>What did Phoenix do and was it enough?</u>

Due diligence:

Mr R's transfer paperwork was sent to Phoenix in September 2014. The paperwork included a letter from HMRC dated 9 April 2013 that showed it had accepted the Harbour Scheme as a QROPS. The Harbour Scheme was still on HMRC's published list at the time of Mr R's transfer request – and I can see Phoenix checked this. This ensured the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr R's statutory right, and potentially other legal rights, to transfer.

In light of the Scorpion guidance, I think firms also ought to have been on the look-out for the tell-tale signs of a pension scam and would have needed to undertake further due diligence, and take appropriate action, if it was apparent their customer might be at risk.

Given the information Phoenix had at the time, one feature of Mr R's transfer would have been a potential warning sign of a scam under the relevant (July 2014) Scorpion action pack – there was a transfer of money overseas. Phoenix should therefore have followed up on that to find out if other signs of a scam were present. I think it would have been fair and reasonable – and good practice – for Phoenix to have turned to the check list in the action pack to do this.

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 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 a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr R's transfer request, and the relatively limited information it had about the transfer, I think in this case Phoenix should have addressed all three parts of the check list and contacted Mr R as part of its due diligence.

There were a number of parallels between Mr R's transfer and the warning signs identified by the check list, including the unsolicited contact that prompted Mr R's initial interest in transferring and the investment that lay behind his decision to transfer which was overseas and could, potentially, be described as being "unusual" or "creative". Mr R was also transferring to a QROPS even though he was resident in the UK and didn't appear to be contemplating a move overseas. Whilst the action pack didn't specifically address such a scenario, it's reasonable to say this should have appeared unusual to Phoenix.

However, in aggregate, I'm satisfied Phoenix wouldn't have thought Mr R was likely falling victim to a scam. I say this because investigations into who had advised him would have revealed the presence of Servatus, which was an advisory firm regulated by the Central Bank of Ireland. Importantly, at that time Servatus was also shown on the FCA's register as authorised in the UK with passporting rights. This means that for UK purposes 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.

The presence of Servatus as an authorised person advising Mr R would have indicated to Phoenix that the transfer was unlikely to be a scam and that Mr R would likely enjoy some regulatory protections in the event it turned out to be one. This wouldn't have been via the UK's complaints and investor protection institutions, the Financial Ombudsman Service or the FSCS. But 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.

Furthermore, 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 its own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system. So in light of this it isn't unreasonable that, had it checked up on its regulatory standing, Phoenix could have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under UK law.

As outlined previously, firms needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's rights. I'm satisfied the fact that Mr R was being advised by a properly authorised adviser would reasonably have given Phoenix comfort the transfer was unlikely to be a scam. With that in mind, there wouldn't have been a need, and it wouldn't have been proportionate, for Phoenix to have given Mr R any warnings beyond the warnings contained in the Scorpion insert (which I discuss below). As such, I see no reason why Mr R would have changed his mind about the transfer even if Phoenix had conducted further due diligence.

In coming to that conclusion, I have considered whether the act of contacting Mr R and asking questions about his transfer – which Phoenix should have done – would have prompted him to change his mind. Those questions would, for instance, have reminded Mr R of the fact that a significant financial decision had been set in train by a cold call and that he was moving his pension outside of his country of residence – both of which may have seemed less judicious on questioning and therefore potential prompts, in themselves, for further thought. But, like Phoenix, I'm satisfied Mr R would, ultimately, have taken comfort from the fact that he had been advised by a regulated adviser.

I recognise it's possible Mr R would have told Phoenix about Portia, an unregulated business, in addition to Servatus. But I can't fairly say Phoenix should have become concerned about this. It wouldn't have seemed unusual for an unregulated party to introduce someone to a regulated party for advice. And that's how it would have looked here. Servatus issued an advice report and Mr R agreed to pay it a 0.5% adviser fee. Similar claims cannot be made for Portia – Mr R doesn't appear to have agreed a fee with Portia and didn't receive a written recommendation from it. Furthermore, the involvement of Servatus came after Mr R's meeting with Portia. So I'm satisfied that Phoenix would have considered Portia as having introduced Mr R to Servatus and that it was Servatus that went on to advise Mr R.

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. There were three obvious opportunities when Phoenix should have sent Mr R the Scorpion insert: when it sent transfer packs to Mr R and GPL on 17 March, 21 May and 30 July.

In its response to Mr R's complaint, Phoenix said it had been sending the Scorpion warning materials in its transfer packs as a matter of course from 2013 onwards. However, there isn't any compelling corroborating evidence for this, nor is there any indication from Mr R's transfer packs that the Scorpion warning materials had been enclosed. Our investigator therefore considered the impact of *not* sending the Scorpion insert would have had. As Phoenix didn't respond on that point with further arguments or evidence, I'll continue in the same way. I note here that Mr R doesn't recall receiving the Scorpion insert and I haven't seen anything to show that it was sent during the transfer from Mr R's other pension provider which happened around the same time.

The version of the insert that was in use when transfer packs were sent in March and May 2014 was the February 2013 version. It was focussed on the threat posed by offers to access pensions before the age of 55. As Mr R wasn't intending to access his pension early, I'm satisfied the insert wouldn't have caused him alarm. In that respect, Phoenix's failure to send the insert was immaterial on these two occasions – it wouldn't have prompted him to question what he was doing or made a difference to his decision to transfer.

By the time Phoenix sent a transfer pack to Mr R and GPL on 30 July, the Scorpion insert had been updated. This version covered more than just the threat posed by early-release pension liberation. Even so, I don't think it would have made a difference to Mr R's thinking either. The insert highlighted the following warning signs for someone to look out for:

- claims that a pension pot can be accessed before age 55;
- being approached out of the blue over the phone, via text message or in person door-to-door;
- being enticed by upfront cash; and
- being offered a free 'pension review' or being lured by 'one off' investment opportunities.

It went on to say that if someone thought they were being targeted by scammers, they should not be rushed or pressured into a decision and that they should call TPAS before signing anything – or Action Fraud if an offer had already been accepted.

Mr R wasn't attempting to access his pension before the age of 55 and he wasn't receiving upfront cash. So two of the four bulleted warning signs listed above *didn't* apply to Mr R. But Mr R was cold called and offered a free pension review. And whilst it's unclear whether the Dolphin investment was presented as a one-off opportunity, the overall tenor of the insert was to be cautious about "too good to be true" claims about various investments. So this also had parallels with Mr R's situation. And this version of the Scorpion insert warned about scams in a more general sense rather than the narrower warning about pension liberation. So that too may have put Mr R more on guard than he otherwise would have been had he just received the earlier version of the Scorpion insert.

However, on balance, I don't think the July 2014 insert would have changed Mr R's mind. Even if the insert had prompted him to review things, it strikes me as doubtful that he would have just aborted the transfer without further research. I consider it likely that further research would have led to Mr R taking comfort from the fact that a regulated adviser had advised him. Indeed, the TPAS website extract Mr R's representatives have provided us directs the reader to checking the FCA register and the receiving scheme's HMRC registration, neither of which would have caused concern for the reasons given previously.

Mr R has pointed out that the Scorpion insert wouldn't have been sent without a covering letter because it wouldn't have made sense to have sent it without explanation. That covering letter should, in Mr R's view, have drawn his attention to why it was relevant to his situation which would, in turn, have given him more of a prompt to take on board its contents.

At face value, this is a misreading of what firms had to do with regards to the Scorpion insert.

It was intended to be included with transfer packs so, by definition, a firm wouldn't have been in a position to send it with a bespoke covering letter of the type Mr R would have liked to have seen because the firm wouldn't have known any details about the transfer at that point. All a firm needed to do was include the Scorpion insert in its transfer packs.

It's possible Mr R's argument is that Phoenix could have sent a covering letter with the Scorpion insert once a transfer request had been made and it had gathered some details about it. As I've said above, Phoenix ought to have conducted due diligence into the transfer. So, in that scenario, the Scorpion insert could have been sent once the due diligence process was concluded along with a bespoke letter directing Mr R to the insert's most relevant points. If that is what Mr R is arguing, then that too is a misreading of what was expected of firms. A firm didn't have to enclose the Scorpion insert, or the longer booklet, as a matter of course once it concluded its due diligence – and there would have been no compelling reason for it to have done so here given the scam threat could, reasonably, have been discounted by Phoenix.

That said, I've considered whether sending the Scorpion insert would have primed Mr R to have been more concerned by the due diligence questions Phoenix should have asked. In other words, I've considered the likely *cumulative* impact of everything Phoenix should have done and not just the impact the Scorpion insert, and a due diligence process, would have had in isolation. But I return to what I said before which is that Mr R was being advised by a regulated adviser so I'm satisfied he would, ultimately, have taken comfort from that.

I've also considered everything Mr R has said about his character at the time which, to summarise, was cautious and prudent and why that, along with his relatively limited financial resources and ill health, meant he wasn't minded to, and wasn't in a position to, take risks with his pension. He says this meant he wouldn't have proceeded with the transfer had he been given the appropriate warnings.

I don't disagree with the characterisation of Mr R as being relatively cautious. I note here that on his Harbour Scheme application form, Mr R was recorded as "low risk" – the second most cautious of five ratings. And his investment objectives were the second most risk-averse out of four categories, the description for which was:

"I am willing to accept a small amount of risk to provide for potential growth over the medium to long term."

So I accept the overall point that he had neither the appetite nor the financial means to take too much risk and that context needs to be taken into account when considering his likely reaction to the Scorpion insert. My disagreement is with what this would have meant for Mr R had he been sent the July 2014 Scorpion insert. I don't think Mr R would have had any misgivings as a result of the insert because he would have been under the impression (or would have found out) that he had been advised by a regulated firm. I think that would have neutralised the fact that the insert contained *some* messages that were relevant to his situation.

It follows that I am not upholding Mr R's complaint.

My final decision

For the reasons given above, my final decision is to not uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 2 April 2025.

Christian Wood
Ombudsman