

## **The complaint**

Mr M has complained about the transfer of his The Phoenix Life trading as Standard Life personal pension to a small self-administered scheme ("SSAS") in June 2014. Mr M's SSAS was subsequently used to invest in a commercial overseas property investment called The Resort Group (TRG). The investment now appears to have little value. Mr M says he has lost out financially as a result.

Mr M says Phoenix Life 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 M says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Phoenix Life had acted as it should have done.

## **What happened**

I set out the background to this complaint in my provisional decision which is attached at the end of this document and forms part of this decision.

In response to my provisional decision, Mr M's representatives questioned why his other similar complaint against a different provider (dealt with under a separate reference) was upheld, yet this one wasn't. When both the transfer requests were made within a few days of each other – with the circumstances of the transfer requests very similar.

It pointed out in this case I had said Phoenix Life didn't make an error in not doing more checks before processing the transfer. Yet in the other I said the business should've done more and had they done so it would've uncovered more information about the nature of the advice and investment – and this information would've likely changed Mr M's mind about transferring.

## **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.

And having done so I see no reason to depart from the outcome and reasoning I set out in my provisional decision.

Mr M's representative's have asked why the outcome differs on his two similar cases. First and foremost each case is considered on its own merits, but I appreciate that there is a lot of cross-over on the two cases. However, as it should be aware, there was a step-change in the focus of the relevant guidance in July 2014. Before the change, the focus of the guidance was on liberation but after the update, pension scams were brought into focus.

Whilst Mr M's transfer requests were both made at a similar time, the transfer relevant to this decision was completed before the updated guidance. And so as I explained in my provisional decision, as there was already sufficient information to conclude pension

liberation likely wasn't a risk, it didn't need to delay matters doing further checks. Whereas, in Mr M's other case the transfer process was slower and didn't complete until after the updated guidance had come into place. So, there are fundamental differences between the two cases.

### *Conclusion*

For the reasons I've explained in my provisional decision, I think there was enough information for Phoenix Life to discount the risk of pension liberation in the transfer request it received. So I don't think it would be fair or reasonable in these circumstances to suggest that Phoenix Life ought to have delayed the transfer process to conduct additional checks simply to further safeguard against an outcome type that it should already have discounted.

### **My final decision**

For the reasons explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 January 2025.



Simon Hollingshead  
**Ombudsman**

## **Provisional decision**

### **The complaint**

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### **What happened**

Mr M says he was cold called offering a free pension review. He had previously given his authority to a number of firms that we know were facilitating investment in TRG, Your Choice Pensions, Preferred Client and Consumer Money Matters. All of which weren't regulated to provide advice on transferring pensions. Mr M is unable to say which, but a representative from one of these firms came to his house and advised him to transfer his personal pension into a SSAS and invest in TRG. However, evidence on a similar transfer that Mr M made from another provider suggests it would've been Consumer Money Matters that met with Mr M.

On 23 September 2013, a company was incorporated with Mr M as director. I'll refer to this company as B LTD SSAS.

On 2 June 2014 Mr M's transfer papers were sent to Phoenix Life. These were sent in by Cantwell Grove. Included in the transfer papers were: the completed transfer paperwork signed by Mr M, a copy of the scheme's trust and deeds, a copy of the HMRC registration, a Key Scheme details Q&A which included the proposed investment in TRG and that investment advice to the SSAS would be given by a regulated business. And confirmation from Cantwell Grove that it had warned Mr M about pension liberation and provided him with a copy of a leaflet (referred to as the "Scorpion leaflet") produced by The Pensions Regulator (TPR) which warned about pension liberation. It also included a signed letter from Mr M saying:

- Cantwell Grove had explained pension liberation to his and the risks of transferring his pension
- Confirmation from Mr M that he hadn't been offered any cash incentive to transfer nor was he trying to access his retirement benefits before the age of 55
- Confirmation from Mr M that he'd understood the warning about pension liberation.

Mr M's pension was transferred on 18 June 2014. His transfer value was around £20,000. He was 59 years old at the time of the transfer.

In June 2014 Mr M received advice in his role as trustee of the SSAS to invest in The Resort Group (TRG) by Broadwood Assets. This said the TRG investment was a legitimate, credible and substantive arrangement that didn't facilitate pension liberation and was suitable to be held in a SSAS. But it also warned Mr M that the investment was risky and suitable only for more adventurous investors, pointing out that if he preferred advice on the suitability of the investment for him personally, he should seek regulated financial advice from an independent financial adviser.

Mr M invested the majority of his transfer value into TRG and he now has no access to this

capital, and he cannot sell it either. It is likely to have nil value.

In March 2020, Mr M complained to Phoenix Life. Briefly, his argument is that Phoenix Life 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 SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Phoenix Life didn't uphold the complaint. It said none of the information it had about the transfer at the time gave it cause for concern. Mr M had signed forms to say he was aware of the risk of liberation. It said it was satisfied that the appropriate level of diligence applicable at the time was exercised in processing the transfer. While it recognised that practices have changed since June 2014, it would not be appropriate to apply current approach to a past situation.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

### **What I've provisionally decided – and why**

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

#### The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Phoenix Life was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had formal guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by The Pensions Regulator (TPR). It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

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

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the 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 2000 (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's legal rights.

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

#### What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.
2. When TPR launched the Scorpion guidance in February 2013, its press release said the

*Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to “become best practice”. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn’t have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.*

- 3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator’s Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn’t involve the sending of transfer packs.*
- 4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs of pension liberation that 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.*

#### *The circumstances surrounding the transfer and Mr M’s recollections*

*Mr M explains that he was cold called and offered a free review of his pension by a firm. Mr M said this led to a meeting at his home with someone prior to the transfer who convinced him to go ahead. The evidence suggests that the person he met with was a representative of Consumer Money Matters*

*I am satisfied Mr M set up the SSAS and transferred due to the involvement of an unregulated firm and this was most likely Consumer Money Matters. Mr M says he thinks he had seen a copy of the Scorpion Leaflet but admits he likely didn’t give it his full attention as he’d seen and signed a lot of forms, but he didn’t read them fully.*

*The information that Phoenix Life received from Cantwell Grove Limited was quite comprehensive. In addition to the transfer request it provided a cover letter explaining that it had already provided Scorpion materials to Mr M. The transfer pack included a letter that was signed by Mr M. This letter very much appears to have been pre-prepared for Mr M to sign. Nonetheless, it is a single page and starts by explaining that Mr M was aware of the risks of pension liberation and was not intending to access his pension before age 55. I think that the signing of this letter provided corroboration that Mr M had already been made aware of the risks of pension liberation fraud in some way. The letter goes on to express a desire for the transfer to be processed quickly.*

#### *What did Phoenix Life do and was it enough?*

*The Scorpion insert:*

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

*Phoenix Life explain that it was reassured by the fact that Cantwell Grove Ltd sent Mr M the Scorpion information. And the transfer information included a letter that was signed by Mr M that explained that he was aware of the dangers of pension liberation fraud.*

*Phoenix Life has also provided evidence it also sent directly to Mr M a copy of the scorpion leaflet in a letter dated 28 April 2014 as part of its response to the transfer request made.*

*I understand that Mr M doesn't recall receiving the Scorpion insert from Phoenix Life. In any event, I cannot ignore the fact that he signed a letter, part of which declared that he understood the risks of liberation and was not seeking to release pension funds before age 55, he was 59 in any event. And I think it's more likely than not that he would have seen and read the content of the letter he signed. Therefore, in this case, even if Phoenix Life hadn't sent the Scorpion insert, I don't think that it would have made a material difference. This is because the evidence suggests that Mr M was, more likely than not, already aware of the very risks that the Scorpion insert was intended to warn him of.*

*Due diligence:*

*In light of the Scorpion guidance that was in force at the time of the transfer, firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk of pension liberation. This was based on the guidance introduced in February 2013 referred to earlier and before the guidance was given a broader scope to cover scams more generally. In this case however, I think that the information that Phoenix Life had received from Cantwell Grove would have correctly reassured it that Mr M was not at risk of a pension liberation scam.*

*Phoenix Life had the letter signed by him that confirmed that he understood pension liberation fraud and was not intending to access his benefits early. The SSAS administrator Cantwell Grove Ltd – had set out its position in relation to the Scorpion guidance. And provided information for Phoenix Life to make its assessment of whether Mr M was likely to be at risk of that type of fraud.*

*Other than checking the information that it was sent and providing the Scorpion leaflet to Mr M, Phoenix Life didn't undertake any further due diligence. So I've considered whether that was reasonable.*

*I've considered the fact that, given the information Phoenix Life had at the time, two features of Mr M's transfer would have been seen as potential warning signs of liberation activity as identified by the Scorpion action pack: Mr M's SSAS had only been registered in September 2013 and there appeared to be urgency to carry out the transfer quickly. But I am not persuaded that, in the context of "looking out for pension liberation fraud" (which was the heading under which these warning signs were listed) that it's fair or reasonable to say that Phoenix Life ought to have weighed these more heavily than documentary evidence that suggested Mr M was aware of and not about to become a victim of pension liberation fraud.*

*I am aware that the Action Pack included a check list that could be used if the warning statements applied. It was optional and I need to be convinced that, faced with the information Phoenix Life had, it should have been taking the next steps. And I'm not persuaded that moving to the check list should have been a necessary step in this case. I think that investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. Once that threat was reasonably discounted then I think it reasonable for ceding schemes to consider the risk of pension liberation as being minimal and process the transfer as normal.*

*I also see no persuasive reason why a ceding scheme needed to share with its members the liberation warnings signs it found – but discounted – during its due diligence process or its reasons why it might have thought at some point liberation was a possibility. As I've said previously, a firm needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer).*

*Summary*

*I understand that Mr M has suffered a loss as a result of what happened after this transfer so will be disappointed with this provisional decision. But the guidance that TPR had put in place at the time that Mr M's transfer request was made was focussed on the risk of consumers falling victim to a pension's liberation scam. And for the reasons I've explained above, I think there was enough information for Phoenix Life to discount the risk of that in the transfer request it received. So I don't think it would be fair or reasonable in these circumstances to suggest that Phoenix Life ought to have delayed the transfer process to conduct further checks simply to further safeguard against an outcome type that it should already have discounted.*

***My provisional decision***

*For the reasons given above, I'm minded not to uphold this complaint.*

Simon Hollingshead  
**Ombudsman**