The complaint

Mrs K, with the help of a professional representative, has complained about a transfer from her Phoenix Life Limited personal pension policies to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in Malta in October 2015. The QROPS was subsequently used to invest in, amongst other things, Core Strategy SICAV plc which invested in Dolphin Capital Loan Notes. The investment now appears to have little value.

Mrs K says Phoenix Life failed in its responsibilities when dealing with the transfer request. She says it should have done more to protect her and to warn her about the potential dangers of transferring her pension. Mrs K says as a consequence of Phoenix Life's failings, she proceeded with the transfer and says she has lost out financially as a result.

What happened

In the Spring of 2015, Mrs K says she received a cold call from a business offering her a free pension review. She says she agreed and was referred to a firm called Servatus[1] who arranged for an agent of Portia Financial Ltd[2] to meet with her at home. Mrs K says both firms advised her to transfer her pension and invest in overseas property which would make more money for her retirement. Mrs K says that another firm was also involved – European Financial Planning Group[3] (EFPG) – who too recommended the transfer and investment.

On 18 June 2015, Phoenix Life received a signed letter of authority from Servatus requesting information about Mrs K's pensions. It appears that because Servatus was on an internal watchlist, Phoenix Life wrote to Mrs K on 24 June 2015 asking her to confirm she was happy for information to be shared with Servatus. The letter enclosed a copy of the Scorpion leaflet, referring to its title as: 'predators stalk your pension.' I will discuss this in more detail below

On 14 July 2015, Mrs K phoned Phoenix Life to confirm she was happy for it to release information to Servatus. Phoenix Life's note records that Mrs K said she was aware there is a lot of fraud going around and she'd been caught before, so was just going to see what they had to say.

On 21 July 2015, Phoenix Life provided Servatus with the requested information.

On 16 September 2015, Mrs K applied to start a QROPS with Harbour Pensions. The membership form names EFPG as her professional adviser and that an initial fee of 1.25% would be taken for the advice. SEB[4] was recorded as the investment platform to be used.

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[1] Servatus was a financial adviser authorised in another EEA member state – it additionally held passporting rights to provide services within the UK.

[2] Portia Financial Ltd was not authorised by the Financial Conduct Authority (FCA).
[3] EFPG was a financial advice firm authorised in another EEA member state – it additionally held passporting rights to provide services within the UK.
[4] SEB is the trading name of SEB Life International Assurance Company Limited, part of the SEB Group, regulated by the Central Bank of Ireland. It is a life assurance company incorporated and

The SEB bond application records the asset selection – 75% in Core Strategy SICAV (dynamic fund), 15% Paragon SICAV (Apollo fund) and the remainder in a unit linked balanced fund with a mainstream provider.

On 25 September 2015, Phoenix Life received Mrs K's transfer papers from Harbour Pensions. Included in the transfer paperwork was a letter from HMRC confirming registration of the QROPS from 9 April 2013 and HMRC forms APSS263 and CA1890.

On 7 October 2015, Phoenix Life transferred an amount of just over £15,100 to the QROPS. Shortly after, and as part of the same advice, Mrs K also transferred to the QROPS the cash equivalent value of a Defined Benefit pension scheme she held. The transfer of another personal pension she held with a different provider, which was also under consideration, did not ultimately proceed.

The Core Strategy SICAV invested in Dolphin Capital. The investment was a loan note to the company. The loan was to be repaid with pre agreed interest from the profits made by the property company. Dolphin Capital later changed its name to the German Property Group (GPG). GPG went into administration having allegedly failed to use investors' money to develop properties. There is no secondary market for these loan notes and, where they have failed to realise the intended returns investors are unlikely to get their investments back. Mrs K has provided a QROPS statement showing a nil value for this fund.

In September 2021, Mrs K complained to Phoenix Life. Briefly her argument is that Phoenix Life ought to have carried out due diligence, spotted and told her about a number of warning signs or risks in relation to the transfer including dealing with unregulated businesses regarding a high-risk investment.

Phoenix Life didn't uphold the complaint. In summary it said Mrs K had a legal right to transfer and it had carried out appropriate due diligence at the time to satisfy that the transfer could go ahead.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. Mrs K's representative raised a number of points in response to the investigator's assessment that the complaint shouldn't be upheld. I have read and considered its response in full, I will only refer to and address those points which I think are relevant and key to this complaint.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time.
Where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

Mrs K's representative raised a number of points in response to the investigator's assessment that the complaint should not be upheld. Where I deem it necessary to do so, I will specifically refer to and address those points below. But I won't address each and every

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regulated in Ireland, engaging in the cross-border distribution of insurance-based investment products.

issue raised – instead, I'll focus on what I believe are the key issues at the heart of this complaint.

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 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 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, The Pensions Regulator (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 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 Scorpion guidance was updated in July 2014. It 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.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which were 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. 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.

<u>The March 2015 Scorpion guidance</u>

The March 2015 update to the Scorpion guidance asked schemes 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 shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

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.

<u>The PSIG Code of Good Practice</u>

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 request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 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, SSASs and QROPS. The 2015 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.

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

Mrs K says that she received a cold call from a business offering her a pension review. She says she was then referred to Servatus who in turn arranged for an agent of Portia to meet with her at home. Mrs K says both businesses advised or recommended she transfer her pension and invest in an overseas property investment. Mrs K says she was told she would make more money this way for her retirement than leaving things in her existing fund – she said she was told she could expect 30-40% return to go into her pension by age 60. She says that following the strong recommendation, she was persuaded by what they said and agreed to go ahead. Mrs K has also said that EFPG were involved in the process and they too recommended the transfer and the investment.

Mrs K hasn't said who cold called her. But I have no reason to doubt what she says that it was an unsolicited approach which started the process. Mrs K's circumstances do not describe someone who had the requisite skill, knowledge or investment experience to have initiated this type of pension transfer enquiry.

Mrs K has referred to meeting with Portia at her home. There is no documentary evidence to show Portia's involvement – but based on cases of a similar nature, Portia was often referred to in written recommendation or suitability reports as being the business consumers met with. So, it is entirely plausible that Portia was involved here as Mrs K says.

Equally Mrs K says Servatus provided her with advice. Again there is no documentary evidence to show Servatus gave Mrs K advice. But they were involved at some stage in the process because Mrs K signed a letter of authority with them.

Mrs K also refers to the involvement of EFPG in the process and says that they too advised her to transfer. And the Harbour Pension application form records EFPG as Mrs K's professional adviser and that it was this firm she paid an advice fee to.

So, while it looks like there were a number of businesses involved at various stages of the process, what's key here – the reasons for which I will come on to below – is that the evidence points to EFPG as the firm who gave advice to Mrs K to transfer.

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

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.

Mrs K says she doesn't remember receiving the Scorpion leaflet and says that there is no document from Phoenix to show that it sent it to her or otherwise referred her to it.

Phoenix Life's letter to Mrs K of 24 June 2015, in which it asked for her confirmation to share information with Servatus, referred to two enclosures – one of which was the Scorpion leaflet. The letter referred to this as the 'predators stalk your pension' leaflet. This was the title of the version from 2013. But by the time of Phoenix Life's letter in June 2015, the leaflet had been updated twice. The latest version and the one Phoenix Life should have enclosed was from March 2015 called 'Scamproof your savings.'

It strikes me as a little odd that Phoenix Life would still be sending out a version of the Scorpion leaflet in 2015 that had been out of date for more than two years. It's possible that the wording of the 'enclosures' at the bottom of Phoenix Life's letter was standard wording – a template if you like – which hadn't been updated and it did send Mrs K the correct version of the Scorpion insert. But it's not impossible that it was an outdated version given the title of the leaflet Phoenix Life's letter referred to, so I can't say it's more likely than not Mrs K received the most up to date leaflet. So, it appears Phoenix Life didn't do enough here.

But I'm mindful that, as part of the same advice to transfer her Phoenix Life pension, Mrs K intended to transfer a personal pension with another provider. And Mrs K has provided copies of some letters she received from them – one of which is dated November 2015. And this refers to Mrs K having already been provided with the 'Pension Regulator's leaflet' – i.e. the Scorpion leaflet. With no outdated leaflet title referred to in this letter, I've no reason to doubt this was the current version applicable at the time – i.e. the 2015 version.

The letter referred to Mrs K having already received it. The most appropriate time for the provider to send it, which the guidance referred to, was when the provider received the request for information about Mrs K's pension. And this would likely have been around the same time as Phoenix Life received it – around June / July 2015. So, I think Mrs K more likely than not was in a possession of the correct version of the Scorpion leaflet prior to the Phoenix Life transfer in October 2015.

It's possible this is why Mrs K is recorded as telling Phoenix Life in her phone call with it in July 2015 that she was aware that pension fraud was going around and was aware of the dangers of being cold called – these were the things the leaflet referred to. But it's also recorded she said she'd been caught out before. So, either way, it appears Mrs K was alive to the types of issues the Scorpion leaflet was warning about.

Due diligence:

Phoenix Life received the following information from Harbour Pensions with the transfer request: transfer discharge forms; HMRC forms APSS263 and CA1890 and confirmation that HMRC recognised the QROPS in April 2013. This step ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mrs K's statutory right, and potentially other legal rights, to transfer. This appears to have satisfied Phoenix Life and it carried out the transfer.

But as explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs K's transfer in that light. I can see the investigator considered things using the 2015 Scorpion guidance as a benchmark instead. But I don't think this matters – I'm satisfied the outcome is the same. I've simply chosen to consider things using what I consider to be the more detailed guidance at the time.

So, the initial triage process should have led to Phoenix Life asking Mrs K 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":

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?

- Have you been promised a specific/guaranteed rate of return?

- 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. With that in mind, I think in this case Phoenix Life should have addressed all four areas of concern and contacted Mrs K in order to help with this.

<u>What should Phoenix Life have found out – and would it have made a difference?</u>

As I said above, Phoenix Life did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mrs K's rationale for transferring. If it had asked her about this – which it should have done, using the framework outlined above – it would have found out she was transferring her pension following an unsolicited approach and that she was transferring to a type of arrangement more commonly used by people living overseas even though she wasn't intending to do that – certainly not immediately. Mrs K told her other pension provider when it asked her the question that she might live overseas in the future, so she would likely have told Phoenix Life the same thing.

Phoenix Life would also have found out that the reason for transferring overseas was to invest, in part, in Dolphin – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code. Although the investment was a collective investment scheme, I think from what Mrs K told us, she would've referred to the overseas nature of the investment she'd been told about.

In addition Phoenix Life would have established from Mrs K that she had been advised to transfer her pension. In her complaint submission Mrs K has referred to the involvement of three businesses or firms (all referred to above) and said they all recommended she transfer her pension. But when Mrs K's other pension provider asked her who advised her, she told them she'd been advised by EFPG.

This is supported by the documentary evidence in this case which records EFPG as her professional adviser and that it was this firm Mrs K paid a fee to.
So, in light of this and given it was all one piece of advice, I think Mrs K would also have told Phoenix Life it was EFPG who advised her.

Phoenix Life should then have consulted the FCA's online register of authorised firms, which is not difficult, to establish the status of EFPG. Had it done so, it would have discovered that EFPG appeared on the FCA register as a firm that was passported from Gibraltar to the United Kingdom. This means that for UK purposes throughout the period of this transfer EFPG was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

Phoenix Life would therefore have had to weigh up what it found out and decide what, if any action it should take. On the one hand, it would've identified some of the warning signs referred to in the Code and the Scorpion guidance. But on the other hand, the QROPS was recognised and had been since April 2013, and there was a regulated adviser involved providing Mrs K with advice. Overall, I think it would've been reasonable for Phoenix Life to have taken the view that the presence of a properly authorised adviser would've indicated the transfer was unlikely to be a scam. And that Mrs K would enjoy some regulatory protections in the unlikely event it turned out to be one.

I accept the regulatory protections would not come via UK's complaints and investor protection institutions, the FOS or the FSCS. But instead through its own regulator. The EU's Investor Compensation Directive requires EU countries to have certain investor protection type schemes in place. Furthermore, as a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that EFPG would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, EFPG 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. So, it would've had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system.

In light of this, I don't think it's unreasonable that Phoenix Life could (and would if it had checked up on EFPG's regulatory standing) have been reassured that it was regulated to EU standards that were accepted for the purpose of authorisation under UK law.

Phoenix Life needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. So, while I accept Phoenix Life would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the guidance (e.g. Mrs K had been cold called, she was contemplating investing in overseas investments and didn't intend to move abroad at this stage) I think overall, the knowledge Mrs K was being advised by a properly authorised adviser in this case reasonably would've given Phoenix Life comfort the transfer was unlikely to be a scam. And that as her regulated adviser, they were likely acting in her best interests and would've made her aware of the relevant risks and issues. It wasn't Phoenix Life's role to question or scrutinise that advice.

So, even if Phoenix Life had done more thorough due diligence in line with the Code as it ought to have done here, I'm satisfied the end result of any such due diligence wouldn't have resulted in any warnings being given to Mrs K.

I've considered Mrs K's particular circumstances and whether the act of asking questions about the transfer would have likely prompted a change of heart.
But I don't think it would, based on what I've seen. Mrs K has provided evidence to show that her other pension provider asked her similar questions to the ones I think Phoenix Life ought to have asked as part of their due diligence exercise. Mrs K provided them with written answers and she was not put off by them asking. The transfer didn't ultimately go ahead, but Mrs K did not change her mind at this stage and abandon the transfer – she confirmed she wanted to proceed at this stage. So I see no reason why Mrs K would have been put off by Phoenix Life questioning her about the transfer – in my view the evidence does not support that finding.

Furthermore, as I referred to earlier on, Mrs K appears to have been alive to pension fraud issues, so I think she would've understood the context and why she was being questioned about the transfer. Ultimately the majority of the responses Mrs K would likely have provided Phoenix Life would not have given rise to concerns. So, it follows that I'm satisfied Mrs K wouldn't have stopped the transfer even if things had happened as they should have.

I can see that Mrs K has referred to her other provider who did go on to provide her with warnings and set out their concerns with the transfer. And ultimately the transfer didn't go ahead. But in this case I've explained that, while Phoenix Life didn't carry out the due diligence that was expected of it at the time, had it done so, I think it was reasonable for it to conclude that no warnings were necessary.

Mrs K has also made reference to the number of different firms involved in the transfer process, which Phoenix Life knew about – she'd met a 'field agent' purporting to be from one or the other of these firms and there was involvement of two different advice firms based in different countries. She says these scam features were something Phoenix Life ought to have taken into account in it when conducting its due diligence.

Because Mrs K was transferring to a QROPS, I don't think it was unusual that overseas parties were involved in the process. Also I don't think it is that unusual or uncommon for firms to refer their customers to other firms, which can happen for a number of reasons – e.g. differing expertise, regulatory permissions or perhaps time constraints. And the two firms in question here – Servatus and EFPG – were both properly authorised.

As I've said, I acknowledge Mrs K's transfer did have some pension scam warning signs. But I've also said there were things to indicate a scam wasn't taking place. And overall, I think the knowledge Mrs K was being advised by a properly authorised adviser in this case carried weight and would've reasonably given Phoenix Life comfort the transfer was unlikely to be a scam. I think it would've been reasonable for Phoenix Life to hold the view that the regulated adviser was likely acting in Mrs K's best interests. So, as a result, I think it would have been proportionate for it to undertake no further due diligence. And in the circumstances I think Phoenix Life had no reason to provide Mrs K with any explicit warnings or delay the transfer further.

Finally, Mrs K has referred to Ombudsman decisions upholding complaints for unsuitable transfer advice against IFA's based in the UK who provided essentially the same advice as EFPG. She says if she'd been prompted to either liaise with TPAS or any UK regulated firm as part of looking into things in more detail after the due diligence conversation with Phoenix Life, it must be concluded that TPAS would have identified scam concerns and an IFA would've advised against the transfer.

It is not disputed that Mrs K has lost out financially by investing in high-risk investments, which were likely unsuitable for her. But the suitability of the advice Mrs K received wasn't Phoenix Life's responsibility. Its role was to look-out for the tell-tale signs of pension liberation and scams and undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

In this case I've concluded Phoenix Life didn't do all that it should reasonably have done in carrying out its due diligence exercise. But if it had, the end result wouldn't have resulted in any warnings being given to Mrs K. So there would have been no reason for Phoenix Life to have prompted Mrs K to seek guidance or further advice elsewhere as she argues.

Overall, I'm satisfied for the reasons I've explained, that Mrs K would not have stopped the transfer even if things had happened as they should have. So, I don't uphold this complaint.

My final decision

For the reasons above, I've decided to not uphold this complaint.

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

Paul Featherstone
Ombudsman