

The complaint

Miss B has complained about a transfer of her Phoenix Life Limited pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in Malta in October 2014. Miss B's QROPS was intended to be used to invest in Dolphin Capital (which later became the German Property Group). Miss B's investment has in fact remained in cash. But with the erosion of fees, Miss B says she has lost out financially as a result.

Miss B says Phoenix Life failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Miss B says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Phoenix Life had acted as it should have done.

What happened

I issued my provisional decision of 21 January 2025 in which I said I was likely to not uphold this complaint. This set out the background and circumstances of the complaint as well as my reasons for reaching my conclusions. I've included the relevant extracts from my provisional decision below, which forms part of my final decision.

Copy of my provisional decision

What happened

Miss B says she received a cold call from a business wanting to discuss her pension arrangements. Miss B says she then agreed to meet at her home to discuss things further. Miss B signed a letter of authority with The Pension Reporter on 19 June 2014 to allow them to request details of her pension from Phoenix Life. The Pension Reporter was a trading name of a Financial Conduct Authority (FCA) registered appointed representative of an authorised firm.

Miss B says her details were then passed to Servatus Limited¹ who advised her to transfer her pension to a QROPS. She says investments were mentioned, but not in much detail. She says she was told the investment would make more money than leaving her pension where it was.

The Pension Reporter wrote to Phoenix Life requesting Miss B's pension information on 25 June 2014. And Phoenix Life provided the information on 17 July 2014 following receipt of updated proof of Miss B's identity.

In a letter dated the same day, Phoenix Life wrote to Miss B referring to The Pension Reporter's recent information request enclosing a copy of the transfer pack. The letter referred to its recommendation that Miss B seek advice before transferring and it

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

stressed the importance of having the necessary paperwork correctly completed to avoid transfer delays.

On 6 August 2014, Servatus provided Miss B with a recommendation report, which set out the advice to transfer in writing. The report recommended that Miss B transfer her pension to the Harbour Pensions QROPS and invest 50% of her pension funds in Dolphin with the balance invested in two investment funds with SEB².

On 7 August 2014, Miss B applied to start a QROPS with Harbour Pensions. The membership form names Servatus as the professional adviser.

On 4 September 2014, Phoenix Life received Miss B's transfer papers from Harbour Pensions. Included in the transfer papers were: Miss B's letter of authority; completed and signed transfer discharge forms; completed HMRC forms APSS263 and CA1890; a HMRC letter confirming registration of the QROPS from 9 April 2013; and Miss B's two forms of identification certified by Servatus.

On 10 September 2014, Phoenix Life wrote to Miss B to clarify a discrepancy in the paperwork. The letter also referred to the potential for an unauthorised payment charge due to the nature of the transfer request to a QROPS. It asked Miss B to confirm that she was a UK resident and that she was aware that a tax charge might apply.

On 15 September 2014, Miss B clarified the information Phoenix Life queried. Miss B did not confirm her residency status or that she understood the unauthorised payment tax charge.

On 25 September 2014, Phoenix Life wrote to Miss B again to say that it had not provided an overseas transfer pack and so it required completion of an enclosed plan holder instruction form. It also reminded her that she'd not confirmed her residency status and awareness of the potential tax charge as it had previously asked. It said it must have her confirmation before it could proceed. Phoenix Life sent a chaser on 29 September 2014. Miss B returned her completed planholder instruction form to Phoenix Life dated 1 October 2014. Miss B wrote her UK home address on the form and signed the declaration to confirm that, amongst other things, she understood she would be liable for any tax charge or penalty due as a result of the transfer of her benefits.

On 13 October 2014, Phoenix Life transferred Miss B's pension – an amount of around £9,700.

At the same time, Miss B said that a transfer of another pension she held with a different provider at the time was also under consideration as part of the same advice from Servatus.

Miss B told our investigator in a phone call that the provider wouldn't transfer her pension to the QROPS. I can see our investigator attempted to get more information about this from the other provider, but they didn't respond.

Miss B also told our investigator that, following the transfer she felt harassed by the scheme because they were telling her to invest her money, but when she didn't they suggested she seek professional advice to transfer her funds back to the UK. I understand the process was

² 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 regulated in Ireland, engaging in the cross-border distribution of insurance-based investment products.

started with Phoenix Life to establish a new pension plan to accept a transfer back, but this hasn't happened. As a result, Miss B's pension monies remain in cash in the QROPS. Miss B says the value of her pension has been eroded with the deduction of fees.

In July 2022, Miss B 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 being contacted by and dealing with an unregulated business regarding a high-risk investment.

Phoenix Life didn't uphold the complaint. In summary it said it checked the transfer request in line with its existing processes, and with no issues found it followed Miss B's instruction and made the transfer.

Miss B then referred her complaint to us. 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.

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.

Miss B'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 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 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.

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.

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, which is either registered with HMRC for tax purposes or is a QROPS. 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 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.

As I've said above, the Scorpion campaign was launched in February 2013 and the guidance was updated regularly over the next few years. Both the guidance published in 2013 and the 24 July 2014 update are relevant in this case – this is because from start to finish the transfer process covered both versions of the guidance. The 2014 update widened the focus from pension liberation specifically, to pension scams, which it said were on the increase. Transfers of money or investments overseas, were also highlighted as something to watch out for and it explained this was because the money would be harder to recover.

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 (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 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. 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.

2. 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.
3. 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 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.
4. These were additional requirements over and above what a ceding scheme would always have needed to 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.
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 – what does the evidence suggest happened?

Miss B says she received a cold call from a business wanting to discuss her pension arrangements. She says this prompted a meeting at her home to discuss things further. Miss B hasn’t said when this meeting took place or been clear who it was with. Miss B signed a letter of authority with The Pension Reporter, which might suggest it was this business she met with.

But I’ve seen a copy of a letter from Servatus, addressed to Miss B, dated 6 August 2014, which starts by thanking her for meeting with Portia. From experience of dealing with other similar cases to this one, this business was referred to as Portia Financial. So, it would seem likely that it was this business with whom Miss B met.

This letter went on to provide Miss B with what it described as a Financial Planning Report. This set out a recommendation that she transfer her existing personal pension to the Harbour Pensions QROPS in order to invest in both Dolphin and two investment funds with SEB.

So, it looks like there were a number of businesses or firms involved here and there was a meeting with a business called Portia Financial. But crucially I can see from the evidence that it was Servatus that advised Miss B. And that’s what’s key here for the reasons I will come on to below.

I'd add here that, Miss B referred to another pension she held with a different provider at the time which also formed part of the advice to transfer. Miss B said the provider didn't carry out the transfer. The provider failed to respond to our requests for more information about what happened and Miss B told our investigator that she couldn't remember any specific details about it. But in any event, I don't think this is important to the outcome of this complaint.

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.

I can see that Phoenix Life sent Miss B a copy of the transfer pack it sent to The Pension Reporter in a letter dated 17 July 2014. The covering letter said that it had provided some important information, which it advised Miss B to read before deciding to transfer, and it referred to an enclosed information sheet about how to find a financial adviser. But there is no specific reference to the Scorpion insert. The important information Phoenix Life referred to did not say it was 'enclosed', so I think this was referring to the information contained within the body of the letter. And the information sheet it said it had enclosed, only appears to have been about how to find an adviser.

So, I don't think Phoenix Life enclosed the Scorpion leaflet with this letter, which in my view was the opportunity for it to do so. And I've not seen any other evidence to indicate it sent it to Miss B in any other communication with her. So, on balance, I don't think Phoenix Life did provide Miss B with the Scorpion leaflet. I think it ought to have done, so Phoenix Life didn't do enough here.

That said, had Phoenix Life enclosed the leaflet with Miss B's copy of the transfer pack, as I think it should have, then it would have sent her the Scorpion insert that was in use at the time – the version published in February 2013. And this was focused on accessing pension benefits before the age of 55 – pension liberation. But Miss B wasn't planning to do this. So, I don't think the information contained here would've had much impact on Miss B on its own in any event – these things wouldn't have resonated with her.

So, even though I think Phoenix Life should have sent the Scorpion insert to Miss B, I don't think that it would have made any difference to what she went on to do. I don't think the content would have reasonably caused her to be concerned about the advice she'd received.

Due diligence:

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

Phoenix Life said in its final response letter that it checked the transfer request in line with its existing processes and it found no issues. It's not entirely clear what those existing processes were. I can see that it wrote to Miss B on 10 September 2014 following receipt of the transfer request in which it noted that Miss B's home address was in the UK but she'd asked to transfer her pension benefits to an overseas scheme. It said that because of this, the potential existed for an unauthorised payment charge to be levied. It asked Miss B to confirm that she was a permanent UK resident and that she was aware a tax charge might apply.

When Miss B didn't respond to Phoenix Life's request, it sent a reminder and said that it required her to confirm this information before it would make the transfer. And while Miss B did not send Phoenix Life a letter confirming this information, she did return a planholder instruction form and declaration, which Phoenix Life asked for because it hadn't issued the correct one with the transfer pack. And here Miss B hand wrote her UK address in the relevant section and she signed a declaration, which amongst other things, confirmed that she was aware she would be liable for any tax charge as a result of the transfer. I think it was reasonable for Phoenix Life to have accepted this as confirmation of Miss B's residency status and her awareness of the tax charge.

I can also see that in one of the pieces of evidence provided, which Miss B's representative has referred to, Phoenix Life says that Miss B's transfer wasn't put through the correct checking process at the time. This was identified a few months after the event when it discovered HMRC form APSS262 hadn't been issued to HMRC. It's not clear this checking process refers to the due diligence carried out on Miss B's transfer – but in any event, I don't think Phoenix Life's due diligence went far enough.

This is because Phoenix Life knew that Miss B wanted to transfer her pension into an overseas pension scheme – a QROPS based in Malta – and that this very likely involved overseas investments.

The 2014 Scorpion Action Pack, which is relevant here gave more prominence to overseas investments. And the potential for a QROPS to facilitate investments, which were at risk of a scam in the wider sense (the guidance shifted the focus away from just pension liberation to pension scams more broadly) was greater.

Overall, I think that in exercising reasonable due diligence in line with its obligations under PRIN and COBS, Phoenix Life should've followed up on the warning sign apparent to it at this time – namely that Miss B was planning to transfer her pension overseas, which was a common theme of pension scams – to understand more about the transfer (not only to ask Miss B to confirm her UK residency status and her awareness of a potential tax charge.) And the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

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 Companies House and 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 recognised by HMRC, 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 Miss B's transfer request, and the relatively limited information it had about the transfer, I think in this case Phoenix Life should have addressed all three parts of the check list and contacted Miss B as part of its due diligence.

What would Phoenix Life reasonably have discovered?

From a few simple questions, Phoenix Life would have discovered a number of facts about the transfer from Miss B. I think it would've likely found that the prompt for Miss B to transfer her pension to the QROPS was a cold call.

I also think it's likely Phoenix Life would have learned from Miss B that she'd been told she would make more money by transferring – i.e. she could expect higher annual returns from an overseas property investment.

In addition to this, under the third section of the checklist, I think Phoenix Life would've discovered that Miss B had been advised to transfer her pension.

So, it would've been reasonable for Phoenix Life to have asked Miss B who gave the advice. While Miss B didn't name Portia as the business she met with in her complaint submission, given what the written recommendation report said, I think it's likely (had she been asked at the time) Miss B would've named both Portia Financial and Servatus as being involved in the process. It's apparent that Miss B had dealt with both firms, so it's not unreasonable that she would've thought both were connected to the advice she'd received.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA's online register of authorised firms. Phoenix Life should have taken that step, which is not difficult.

Had it done so it would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

With this information I think Phoenix Life could've reasonably assumed that the advice would've come from only one of the firms and that was most likely Servatus. Portia Financial had referred to Servatus for regulated advice and Servatus was the firm who then issued a suitability report. It wouldn't seem unusual for an unregulated party to introduce consumers to a regulated party for advice.

So, I think it is reasonable to assume that, if Phoenix Life had made these inquiries, the presence of Servatus, as an authorised person advising Miss B, would've suggested that the transfer was unlikely to be a scam and that Miss B 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 Republic of Ireland which 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. 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 Servatus' regulatory standing) have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

What should Phoenix Life have done with this information?

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 Scorpion Action Pack – e.g. Miss B had been cold called and she was contemplating investing in overseas investments – I think the knowledge Miss B 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 responsibility to question or scrutinise that advice.

So, even if Phoenix Life had done more thorough due diligence in line with the Scorpion Action Pack as it ought to have done here, the end result of any such due diligence wouldn't have resulted in any warnings being given to Miss B.

And I don't think the mere act of contacting her and asking questions about the transfer would have prompted a change of heart. The majority of the responses Miss B would likely have provided would not have given rise to concerns.

It therefore follows that I think Miss B would not have stopped the transfer and would still have gone ahead even if things had happened as they should have.

I can see in Miss B's complaint submission, she referred to her circumstances at the time and that she was not in a position to make such an important financial decision. But as I said above, in the knowledge that a regulated adviser was involved in the transfer advice Miss B received, it would be reasonable for Phoenix Life to have assumed they were acting in her best interests. And crucially here, it was not Phoenix Life's role to question or interfere with

that advice.

Finally, I can see that Miss B has referred to events after the transfer, which resulted in her pension monies not being invested as recommended and the paperwork process started with Phoenix Life to accept a transfer back into a new pension policy. It's not entirely clear from the evidence I've seen what went on here, but given the events took place after the transfer I don't think this is relevant or important to the outcome of this complaint.

So, while I understand Miss B has lost out financially as a result of the transfer of her pension, in the circumstances and for the reasons I have set out above, I don't think it is fair and reasonable for Phoenix Life to put right those losses.

End of provisional decision

Responses to my provisional decision

Phoenix Life said it agreed with my provisional decision and had nothing further to add.

Miss B's representative replied on her behalf. They disagreed with my provisional decision and raised a number of points in response. In summary they said:

- There is no reference in my decision to the fact Miss B was the victim of a pension scam.
- They disagree that, if Phoenix Life had done what it ought to have, it would've been reassured by Servatus' involvement and that there was no need for any further enquiries or warnings. There was a complex advisory matrix of wholly unregulated companies and companies regulated in another jurisdiction but relying on passporting rights.
- Phoenix Life was aware of the involvement of two different EEA firms, knowledge that a cold call started the process, and there was nothing in Miss B's circumstances it had been made aware of which explained the rationale for an overseas transfer – so it says this doesn't sit comfortably with my conclusion that Phoenix Life could take comfort from Servatus' involvement.
- I hadn't addressed the point that Miss B should have been provided with the updated July 2014 version of the Scorpion leaflet which addressed pension scam risks, but wasn't.
- I'd concluded that when using the checklist from the July 2014 action pack, an answer to any single question suggestive of a scam didn't need to be treated as a likely scam, yet I'd also concluded that Phoenix Life were entitled to rely on one single factor – i.e. the presence of an EEA authorised adviser – and conclude the transfer was unlikely to be a scam and there was no need for further warnings. They asked me to explain why.
- I'd not dealt with causation adequately because Miss B ought to have been sent the 2014 updated Scorpion leaflet and the conversation Phoenix Life would've had with Miss B as part of the due diligence exercise would've explored things in more detail than I'd concluded – Phoenix Life would've had to explain why it was contacting Miss B and the types of question it would've asked her, including the rationale for the overseas transfer, would have prompted most consumers to question whether they were doing the right thing.

- There is supporting evidence that Miss B stopped another transfer from her other pension provider and asked for her pension monies to be returned to Phoenix Life in 2015 when she faced pressure to make the Dolphin investment. This shows Miss B was receptive to being informed about warning signs and was prepared to act on them, and change her mind.
- Ombudsman decisions have been issued upholding complaints for unsuitable transfer advice against IFA's based in the UK who provided essentially the same advice as Servatus. Had Miss B 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.

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.

Having done so and carefully considered Miss B's representative's response to my provisional decision, I've not been persuaded to change my mind – I've reached the same conclusions and for the same reasons as set out in my provisional decision.

I'll now address what I consider to be the key points in Miss B's representative's response.

It looks like there were a number of businesses or firms involved here during Miss B's transfer process. And as I said in my provisional decision, the evidence indicates Miss B likely met with Portia Financial who were not regulated. Because Miss B was transferring to a QROPS, I don't think it was unusual that overseas parties were involved in the process. But what I think is key here and ultimately what lies at the heart of this complaint, is that it was Servatus – an authorised person under FSMA – who provided the transfer advice to Miss B. And as I explained in my provisional decision, which I will repeat again below, it is the presence of an authorised person advising Miss B that I think would've reasonably indicated to Phoenix Life that the transfer was unlikely to be a scam.

I think it is important for me to highlight again that, Phoenix Life needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. I accept Phoenix Life would likely have (had it carried out the appropriate due diligence) found there to be some of the pension scam warning signs indicated in the Scorpion action pack.

But there was also things to indicate a scam wasn't taking place – the scheme wasn't recently registered/recognised and Miss B was being advised by a properly authorised adviser providing Miss B with some regulatory protections. So, there wasn't one single factor at play here outweighing or overriding the scam warning signs.

But overall, I think the knowledge Miss B was being advised by a properly authorised adviser in this case carried some weight and reasonably would've given Phoenix Life comfort the transfer was unlikely to be a scam. I think it was reasonable for Phoenix Life to hold the view that the regulated adviser was likely acting in Miss B's best interests. So, as a result, I think it would have been proportionate for it to undertake no further due diligence. And I think Phoenix Life had no reason to provide Miss B with any explicit warning or delay the transfer further.

Miss B's representative has said that Phoenix Life should have sent Miss B the updated version of the Scorpion leaflet after the July 2014 update. It also says I haven't considered

causation appropriately because I hadn't considered this point (as well as the level of detail Phoenix Life would have explored its concerns with Miss B in its conversation with her.) But for the avoidance of doubt, while Phoenix Life should have taken the updated 2014 guidance into account when processing the transfer request, there was no requirement for a provider to send the updated Scorpion leaflet if the transfer process encompassed the period the guidance / leaflet was updated. As I said in my provisional decision, Phoenix Life didn't send Miss B the Scorpion leaflet at what I consider was the appropriate opportunity to do so, but had it done so, the version applicable at the time was the February 2013 version. And as I have explained, in any event I don't think this would've been impactful on its own given it was warning about things Miss B wasn't planning to do.

Miss B's representative's point that things would have been explored with her in a more detailed conversation with Phoenix Life than I had suggested would have been the case – they thought where I said “the mere act of contacting her and asking questions” was an unreasonable summary of what a due diligence conversation with Miss B would have consisted of – and that this would have been impactful in getting across to Miss B Phoenix Life's concerns, presupposes that Phoenix Life would have contacted Miss B by phone.

But it wasn't a requirement for Phoenix Life to conduct its due diligence with a member by phone. It could, and in my view would most likely have carried things out in writing or by email. So, the opportunity for a conversation about things and for Phoenix Life to explore the transfer introduction and advisory process with Miss B in the level of detail her representative is arguing, would in all likelihood have been limited.

Had Phoenix Life carried out the required due diligence here, it would have explained to Miss B why it was asking the questions to provide her with the context. But having considered Miss B's individual circumstances, I maintain the view that the act of asking her the questions in line with the action pack would not have prompted her to question what she was doing or raise concerns. As I've said, the answers to the questions overall would not have given rise to concerns and so prompted Phoenix Life to provide Miss B with any warnings.

So, I don't think Miss B would've had reason to question what she was doing or therefore been prompted to contact TPAS or a UK based IFA as her representative says would've been the case. But if Miss B had referred to the Scorpion leaflet she should've received and / or looked at the consumer section of TPAS' website at the time, both would have recommended to seek advice from a regulated adviser.

And if Miss B had checked, she would have seen that Servatus was. So, I think just like Phoenix Life, she would have taken comfort from that fact.

It is not disputed that the intended destination for Miss B's pension monies were high-risk investments, which were likely unsuitable for her. But the suitability of the advice Miss B 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. But if it had, the end result wouldn't have resulted in any warnings being given to Miss B. So while Miss B might have been receptive to being given warnings and acted upon them, as I've said, I don't think there was a reason for Phoenix Life to give Miss B any.

So, I'm satisfied for the reasons I've explained, that Miss B would not have stopped the transfer even if things had happened as they should have. So, I don't think it is fair and reasonable for Phoenix Life to put right those losses.

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 Miss B to accept or reject my decision before 3 March 2025.

Paul Featherstone
Ombudsman