DRN-5400563

The complaint

Mr H has complained about a transfer of his personal pensions with Phoenix Life CA Limited (Phoenix Life) to a Qualifying Recognised Overseas Pension Scheme (QROPS) based in Malta in November 2014. Mr H's QROPS was subsequently used to invest in Dolphin Capital, now the German Property Group. Mr H says he's lost out financially as a result of transferring.

Mr H says Phoenix Life failed in its responsibilities when dealing with the transfer request. He says Phoenix Life should've 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 H 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've.

Mr H's pension policies were taken out with Lincoln National Corporation which was acquired by acquired by Sun Life Assurance Company of Canada (UK) Limited (SLOC), which later became part of Phoenix Life. For convenience, I've just referred below to Phoenix Life, references to which should be taken to include SLOC where the context so requires.

What happened

I issued a provisional decision on 28 February 2025. I've repeated here what I said about what had happened and my provisional findings.

'*A number of parties appear to have been involved:*

Global Partners Limited (GPL) – a financial adviser authorised and regulated by the Financial Services Commission in Gibraltar. The firm became Tourbillon Limited after June 2014 and appeared on the Financial Conduct Authority (FCA) register as having passporting rights to provide services within the UK.

Harbour Pensions Limited (HPL) – the administrator of the Harbour Retirement Scheme (the Scheme), a QROPS based in Malta, and authorised by the Malta Financial Services Authority (MFSA) as a retirement scheme administrator.

SEB Life (SEB) – the trading name of SEB Life International Assurance Company Limited, part of the SEB Group, a life assurance company incorporated and regulated in Ireland (by the Central Bank of Ireland) and engaging in the cross-border distribution of insurance based investment products.

Servatus Limited (Servatus) – an advisory firm based in Ireland and regulated by the Central Bank of Ireland and an approved introducer to the Scheme. Servatus appeared on the FCA register as a firm that was passported from Ireland to the UK.

Dolphin Capital/the German Property Group) (Dolphin) – a German based business involved in the renovation and development of residential property which offered high yielding loan *note investments.*

Portia Finance (Portia) – there's no exact match on the FCA's Register. There's a record for Portia Financial Services but this firm ceased to be authorised in 2007. There's also an entry for a Portia Financial Services Ltd and this firm was, for a while, an appointed representative of Quilter Financial Services Ltd (a firm regulated by the FCA). However, it ceased to be regulated as an appointed representative on 16 March 2011, well before the transfer in this case took place. A firm with a similar name was set up in November 2016, but that's after the events here. So, at the time of the events here, Portia was an unregulated entity and hadn't previously been authorised by the FCA.

Jackson Francis Limited (Jackson Francis) – an unregulated introducer company.

In 2013 Mr H had three personal pension policies with Phoenix Life. I've summarised below what happened, based on the documents I've seen. But I haven't referred to everything and some of the documents are missing. But I'm satisfied that I can fairly decide the complaint on the basis of what I have seen.

17 December 2013: Phoenix Life wrote to Mr H (in response to an enquiry he'd made which we haven't seen) with information about his policies and discharge forms. Amongst other things, Phoenix Life said Mr H should think about what he wanted to achieve by transferring and he should consider seeking financial advice. Details as to how he could find an adviser if he didn't have one were given.

6 March 2014: GPL wrote to Phoenix Life asking for a discharge pack and transfer values to be sent to a UK address with a letter of authority (LOA) signed by Mr H on 8 February 2014. It authorised the release of information to GPL and said they'd act as Mr H's independent financial advisers and they'd be undertaking a review of his pension. I think information was sent to GPL the same day but I haven't seen copies. Phoenix Life also says it wrote to Mr H about the information request but again I haven't seen a copy of any letter that was sent.

June 2014: Phoenix Life received an LOA from HPL. I think information was sent to HPL but I don't think we've seen copies, or a copy of any letter sent to Mr H at the same time.

16 June 2014: Mr H completed an application form for the Scheme. It said he wanted to take his pension commencement lump sum (PCLS) immediately but he didn't require any income. He named Servatus as his adviser.

On the same date Mr H signed a Pension Review report (prepared by someone I'll call Mr W of Servatus), confirming he was satisfied with the recommendations made. In brief, Servatus said a QROPS was a suitable pension product for Mr H and that Servatus was an approved introducer to the Scheme, which was regulated by MFSA and listed with HMRC as a Recognised Overseas Pension Scheme (ROPS). Servatus added that Mr H had expressed interest in investing in Dolphin and gave some information about that. Including that it was for five years with an anticipated return of just over 10% pa which Servatus said would help bridge a gap between Mr H's existing pension funding and his retirement needs. To balance the fund and bring it in line with Mr H's attitude to risk, investment in funds with JP Morgan and Jupiter was also recommended. Servatus' covering letter said 'Thank you for meeting with Jackson Francis recently.' I hope you found the meeting with [Mr F] interesting.' Mr H also signed documentation for the Dolphin investment on the same date.

18 June 2014: Mr H signed Phoenix Life's Additional Information and Declaration forms – one for each policy. Amongst other things he was asked if he'd been offered a loan, savings advance, cash incentive or bonus for making the transfer or told he could take more than a quarter of his transfer value in cash. He ticked the 'no' boxes for both. And, as to whether the *transfer had been recommended by a financial adviser, he ticked 'yes' and put Mr W of Servatus. The form went on to ask if Mr H had received cold calls, unsolicited emails or text messages which had directly led to his transfer request and if he'd been encouraged to hurry it along. He ticked 'no' for both. In signing the declaration he said he'd read and understood the 'Predators stalk your pension leaflet' available on Phoenix Life's website, the address for which was given. He could contact Phoenix Life if he'd like a paper copy.*

23 June 2014: Mr H signed SEB's Asset Management Bond application form. At the section dealing with intermediaries Servatus was shown. Servatus' Mr W also signed the form confirming that the application had been given by him to the applicant (Mr H) in Malta and that the application from was subsequently completed in Malta. Mr W also confirmed he held the necessary authorisation to advise the applicant in their country of residence.

22 August 2014: HPL wrote to Phoenix Life with completed documentation for a transfer to the Scheme. The documents included the signed Additional Information and Declaration forms and HMRC's QROPS Member Information form which showed the Scheme's reference number.

28 August 2014: Phoenix Life emailed Mr H to say they'd been contacted by the Scheme in connection with a proposed transfer and, that to proceed, Mr H and the Scheme needed to complete and return the enclosed Overseas Transfer Out Authorisation and Discharge form. Mr H also needed to send signed and dated confirmation as to why he wanted to transfer to a scheme in Malta instead of a UK scheme. Phoenix Life also emailed HPL, saying confirmation the Scheme had been registered in the country it was trading in was required.

29 August 2014: HPL wrote to Phoenix Life enclosing a letter from MFSA confirming the Scheme had been registered in Malta on 19 February 2013.

19 September 2014: HPL wrote to Phoenix Life with the completed Overseas Transfer Out Authorisation and Discharge form signed by Mr H (on 1 September 2014) and the Scheme (on 19 September 2014).

9 October 2014: Phoenix Life wrote to Mr H saying the form had been received but it hadn't received confirmation of his reasons for transferring to Malta and not a UK scheme.

19 October 2014: Mr H wrote to Phoenix Life. He referred to a telephone conversation with Phoenix Life on 15 October 2014. I haven't seen any note of that. In his letter Mr H said:

'As requested during telephone conversation I would like to confirm that I wish to transfer my pension funds to Malta as opposed to a United Kingdom receiving scheme; As this is what the financial adviser from Portia Finance has informed me that they intend to do. This was approximately five months ago.

The financial adviser said this process would take approximately 2-3 weeks. And to be perfectly honest I am losing the will to live. Can someone please sort it out quickly?'

22 October 2014: Phoenix Life wrote to Mr H saying, before it could proceed with his transfer request, it needed confirmation that the Scheme was a qualifying overseas scheme. And that, on checking on HMRC's QROPS website, the Scheme wasn't listed. Phoenix Life asked Mr H to provide, on headed notepaper, confirmation whether his chosen receiving scheme was currently approved. I haven't seen what was provided to Phoenix Life.

14 November 2014: Phoenix Life transferred, in total, £42,976.67 to HPL.

20 November 2020: £29,437.62 was transferred to SEB. It was invested in a SEB Asset

Management Bond within which some £23,550 was invested in Dolphin loan notes. From what I've seen, that was the only investment made and the balance was held in cash.

27 November 2014: Mr H was paid his 25% tax free PCLS of £10,744.17.

12 February 2020: Mr H, through his representative, complained to Phoenix Life. He said Phoenix Life's handling of the transfer request fell short of guidance from The Pensions Regulator (TPR). 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: a number of unregulated introducers had been involved; Mr H had initially been contacted by cold call and offered a free pension review; his decision to transfer was based on advice from an unregulated firm; he was transferring to a QROPS, a complex pension arrangement and when there was no indication he intended to move abroad; there was a lack of regulated advice; and the proposed investment (which wasn't apparent from the transfer paperwork but would've been identified if Phoenix Life had contacted Mr H direct) was in unregulated, high risk and non diversified assets.

Phoenix Life didn't uphold the complaint. In summary Phoenix Life said appropriate due diligence had been undertaken before allowing the transfer and consistent with the regulatory guidelines.

Dolphin entered into insolvency proceedings in Germany in 2020. I understand that investors are very unlikely to get any of their money back.

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.

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 interest 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 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 (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.

<u>The 2014 update to the Scorpion campaign</u>

This update reiterated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from pension liberation specifically, to pension scams. The action pack for trustees and administrators was entitled "Pensions Scams" whereas the action pack from 2013 was entitled "Pension Liberation Fraud". And, on the front page of the 2014 insert that was to be sent to members, it said "Pension scams. Don't get stung". The 2014 update also made references throughout to "scammers" and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

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

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. 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.

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.

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

I've considered what we've been told about what happened and the contemporaneous documentation.

We've seen that in early 2014 GPL was involved and, with Mr H's authority, information and transfer forms were sent to GPL. Mr H's representative has said that forms were only sent to GPL so those that were later returned to Phoenix Life by HPL were the forms that had been sent to GPL, further forms not having been sent to HPL. So GPL did have some involvement in the transfer, if only to pass on the transfer forms.

I don't know exactly what might have happened. It's possible that GPL sent Mr H forms to complete which he retained and so they were used in connection with the transfer request made by HPL. But, whatever happened, I don't think anything really turns on this and when it's clear that the transfer request was made by HPL, not GPL.

When his complaint was made Mr H (through his representative) said he'd received a cold call offering him a free review of his pensions. He agreed and was referred to Servatus, based in Dublin, who weren't fully authorised or regulated by the FCA. He wasn't told that and he didn't understand its importance. The transfer and the subsequent investment of his *fund was on the advice of Servatus.*

Mr H was told his existing pensions weren't performing as well as they could and there were better alternatives available. He agreed to meet with an adviser and a meeting took place at Mr H's home. The adviser reiterated that returns would be better if Mr H transferred and invested as recommended – in athletic and football venues and Olympic stadiums – and that his investment would double in value by the time he came to retire. Mr H doesn't recall any of the associated risks being discussed with him. He was a low risk investor. He was an HGV driver earning about £32,000 pa with no savings or investments and living in rented accommodation. He had no plans to move abroad.

Our investigator also spoke to Mr H about what he could recall. Mr H explained he'd got divorced and couldn't afford to continue to contribute to his pension plans. He received a call from someone in Manchester who arranged to have someone come and discuss options to improve his pension. Mr H had seen a Facebook or similar advert for a pension review and the call was after he'd responded to the advert. Mr H thought the people who'd come to see him were from Portia Finance. They said he could transfer his pension to Malta and invest in sports centres and other property to grow his pension. The returns weren't guaranteed but should be good. Mr H said he signed everything in the first meeting but he then received paperwork from Malta and a company in Ireland who he hadn't heard of but was told they were the stockbrokers.

After a couple of years he didn't get the returns he was expecting so he contacted the company in Malta about getting the money back as he was seeing his funds diminish due tocharges and poor performance. He'd then tried to contact the adviser who said they'd call him back but they didn't and then they disappeared. He then tried to get the money out of the investments via the company in Malta but found out he'd been invested in Dolphin which had folded.

As to whether he'd been offered any incentives, Mr H said he was given the option to take 25% of his fund tax free. He'd had his 55th birthday earlier that year and so he was entitled to take his PCLS. He intended to retire at 60 and the figures he was given suggested a sufficient amount would be produced for income when he retired. He wasn't told anything about some transfers being scams or for liberation of pension funds. He thought he may have received a letter from Phoenix Life which may have contained some warnings. He said he hadn't seen the Scorpion insert before (which the investigator had sent in advance of the call). But he thought, if he'd have seen it at the time, it would've made him more aware of making sure all the parties were regulated and he'd have left his funds with Phoenix Life.

Some of what Mr H told the investigator isn't the same as what was said when the complaint was made. For example, Mr H says the call he received offering a free pensions review wasn't entirely out of the blue – he was interested in trying to get better returns and he'd been looking on line and that led to someone getting in contact and offering a review. And Mr H recalls the adviser who came to his home was from Portia, not Servatus. As I've noted above, Servatus referred to Mr H meeting with Jackson Francis and Mr F. I'm informed that Jackson Francis was an unregulated introducing company and Mr F was a representative of Jackson Francis. But Mr H's representative says the reference to Jackson Francis may have been an error and should've said Portia – Mr H hasn't mentioned Jackson Francis – his recollection is that the adviser was from Portia. I acknowledge that it's possible Servatus' covering letter should've referred instead to Portia.

So, looking at what we've been told, I appreciate that it was all some years ago and it's understandable if Mr H doesn't now recall everything that happened and, as there were a number of different parties involved, exactly who did what. But what I'm looking at is what happened in connection with the transfer that was actually made. And what information

Phoenix Life had about the transfer and what Phoenix Life should've made of it.

Mr H said, on Phoenix Life's Additional Information and Declaration forms, that his adviser was Servatus. Servatus is based in Ireland but it seems that a more local agent was used to visit Mr H and gather information with the report prepared later by Servatus. That agent could've been from a different firm, such as Portia, which is what Mr H recalls. We've seen in other cases that Portia undertook a fact finding exercise with the information passed on to Servatus who prepared a suitability report which Portia then presented to the client. And here Mr H's recollection that Portia was involved is supported by the fact that someone from Portia witnessed Mr H's signature on the deed of indemnity dated 18 June 2014 and also certified Mr H's council tax bill on 20 June 2014 and Mr H's driving licence on 29 July 2014 (albeit that was a different person from Portia). So Mr H clearly did have dealings with Portia.

But, regardless of Portia's or Jackson Francis' involvement, Servatus produced a suitability report which Mr H signed. And the report recommended what he actually did – transfer to a QROPS to invest in Dolphin (even if the proposed investments in the two other funds didn't go ahead). Servatus is also named on other documentation – the application form for the Scheme and SEB's Asset Management Bond application form. Phoenix Life won't have seen those documents (or, for that matter, Servatus' suitability report and covering letter). But it's still contemporaneous evidence of Servatus' involvement as Mr H's adviser.

I've considered below if Phoenix Life should've picked up on the fact that Portia had certified Mr H's documents and/or on what he'd said in his letter of 19 October 2014 which referred to the involvement of a financial adviser from Portia.

<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.

Mr H says he didn't see the Scorpion insert. Phoenix Life says its practice was to send the insert with all transfer requests. I haven't seen anything which demonstrates that. For example, the letter sent to Mr H on 17 December 2013 doesn't say it's included. In any event, I'm not sure if Phoenix Life is saying it would've been sent to the consumer direct. It would've defeated the purpose of the insert if, instead of sending it to the customer, the provider sent it to the customer's representative in the hope that it would be shared with the customer.

But, regardless of whether it had been sent to Mr H earlier, in signing the Additional Information and Declaration forms (on 18 June 2014), he confirmed he'd read the 'Predators stalk your pension' leaflet on Phoenix Life's website, a paper copy of which he could ask for. I'm not sure if it would've been the insert or the longer booklet on the website. But, even assuming it was the shorter insert, Phoenix Life did direct Mr H to that. And I assume he did read it, given he confirmed he had.

But I don't see he'd have thought the insert was particularly relevant to him – its focus was on pension liberation which I'm satisfied Mr H wasn't doing. So I don't think the warnings in the insert would've resonated with him.

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 pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Because Mr H was transferring to a QROPS, an overseas pension scheme, Phoenix Life would've known that overseas investments were very likely to be involved. The updated July 2014 guidance had shifted the focus away from just pension liberation to pension scams in general. And given more prominence to overseas investments. And the potential for a QROPS to facilitate investments which were at risk of a scam in that wider sense, rather than liberating funds back to the member, was greater. Mr H's transfer request was made in August 2014 and the transfer wasn't completed until mid November 2014, by which time the updated guidance had been in place for about four months. Phoenix Life should've processed the transfer in line with the updated guidance.

In this case, because Mr H was planning to transfer his pension overseas, Phoenix Life did ask for more information, including if Mr H had received any cold calls or unsolicited emails or text messages, if he'd been hurried into making the transfer or been offered any incentive and if he'd received advice in connection with the transfer. Those enquiries were in line with some of the warning signs set out in the checklist in the updated action pack, even if they didn't cover everything. But I don't think it would always have been necessary to follow the checklist in its entirety. And here a number of warning signs could be eliminated from the information Mr H gave on the Additional Information and Declaration forms – he hadn't been offered any incentives and he hadn't been cold called or encouraged to hurry the transfer along. Further, and importantly, he said the transfer had been recommended by a financial adviser – Mr W of Servatus.

Mr H's representative has referred to Servatus as being unregulated. I don't agree. Servatus was shown on the FCA's register as a firm that was passported from Ireland to the UK. 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. If Servatus, as an authorised person, was advising Mr H, it wouldn't have been unreasonable for Phoenix Life to conclude the transfer was unlikely to be a scam. It wouldn't have appeared that Mr H was being led through a process by another party acting in an unlawful way – such as an unregulated entity purporting to give regulated advice. Instead Mr H was acting on advice from a regulated adviser.

Further, Mr H would have some regulatory protections if the transfer turned out to be a scam or was, for some other reason, inappropriate. Albeit not via the UK's complaints and investor protection institutions, this service or the FSCS, but through Servatus' own regulator, The Republic of Ireland, which also has a complaints system and compensation arrangements, which EU countries are required to have under the EU's Investor Compensation Directive. 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've been held to a high standard, mandated throughout the EU, by its own regulator. And, as an authorised firm, Servatus would've had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would've had to meet certain required standards in all of its dealings and was subject to regulation and investor recourse under the Irish system.

In my view, Phoenix Life would've been reassured by Servatus' involvement – a regulated firm, passported from Ireland into the UK. Phoenix Life could've reasonably assumed that a regulated adviser would act in the best interest of its client, Mr H, and make him aware of the relevant risks and issues. But Mr H's representative has pointed to the checklists Phoenix Life used to assess the transfer request and to the information Phoenix Life recorded and what, if anything, Phoenix Life did with what it found out about the transfer *request.*

It seems two checklists were used. On the first, headed 'TRP CHECKLIST', in the main, the boxes ticked indicated that the relevant information had been given and the appropriate forms completed. 'No' had been ticked in response to the question whether the transfer form had been fully completed by the receiving scheme. But I think that issue could've been fairly easily resolved.

However, 'yes' was ticked to say Mr H was transferring to a scheme in a country different to where he lives. There's a note which says: 'If YES: refer to the procedure for process. Please ensure the email you send to Technical states the Transfer Value'. I'm not sure if there was a referral to Phoenix Life's technical department. But Phoenix Life did pick up on the fact that Mr H was transferring to a scheme in another country although he lived in the UK and Phoenix Life did ask him about that. I've mentioned that further below.

There were also ID or proof of address requirements. And, the note says, if the documents in support were certified copies, then the certifier needs to be verified. As I've said, Mr H's ID and address were verified by copies of a utility bill and his driving licence, both certified by (different) representatives of Portia. I think that's an issue, given what I go on to say below about Portia being on a caution list.

On the other checklist, 'yes' is ticked in response to the question whether the scheme (correctly identified at the top of the form as the Scheme) is on the caution list. The checklist also notes that Mr H lives in the UK but the Scheme is registered in Malta. In response to the question 'Was the transfer recommended by an authorised financial adviser?' Mr W of Servatus is shown. But there's an update which was later added (on 7 November 2014) and which refers to Mr H's letter of 19 October 2014 and that he now says he was advised by someone at Portia and that Portia was on the caution list. The note adds that there was a LOA dated March 2014 from GPL who are also on the caution list.

It's unclear exactly what further checks Phoenix Life carried out before going ahead with the transfer later in November 2014. As I've mentioned above, Phoenix Life did query with Mr H if the Scheme was registered with HMRC. I'm not sure what prompted that query and why Phoenix Life asked Mr H about that, rather than making enquiries direct with HMRC or with the Scheme itself or HPL. Nor have I seen what the outcome of Phoenix Life's query was – I assume Phoenix Life was satisfied as to the position as it processed the transfer. And I'm unaware of any issues regarding HMRC's registration of the Scheme. As I've said, the Scheme had been set up in February 2013, so it wasn't a newly registered scheme. I don't have access to all the historical ROPS lists published by HMRC. But those published on 1 June 2014 and 1 and 16 July 2014 did include the Scheme, as did the list published on 1 December 2014. And, when Phoenix Life actually came to make the transfer, it was on HMRC's list anyway. And the Scheme remains on HMRC's ROPS list today (it's now the STM Harbour Retirement Scheme).

I'm not sure if the Scheme was on the caution list because there was a question mark about the Scheme's registration or if there was some other reason. But, and leaving aside any issue about the Scheme itself, the transfer went ahead even though Portia (who'd certified Mr H's documents and was mentioned in Mr H's letter of 19 October 2014) was on the caution list and when Mr H had had dealings with GPL, who was also on the caution list. So Phoenix Life's own systems and processes identified there were 'red flags' which Phoenix Life seemingly failed to act on. But, even where there are due diligence failings, that doesn't automatically mean the complaint will be upheld. I also have to consider what the likely outcome would've been if Phoenix Life had acted as it should've.

As to GPL's involvement, as I've said above, I don't see that Phoenix Life should've picked *up on any question as to how the forms sent to GPL then came to be passed on to HPL so as to connect GPL to the transfer request HPL had made. So, when Phoenix Life received the transfer request from HPL, GPL's earlier involvement wouldn't have been apparent. And I don't think the situation would've appeared to Phoenix Life that Mr H was dealing with two firms, both of which were on the caution list. That said, and as evidenced by the checklist, Phoenix Life) did later pick up on GPL's earlier involvement. But, had Phoenix Life considered that further, I think it would've most likely seemed that Mr H had progressed from dealing with one firm on that list (GPL) to another firm also on the list (Portia).*

And, although Mr H didn't mention Portia as his adviser until his letter of 19 October 2014, Portia did certify Mr H's address and identity. If Phoenix Life had followed the checklist properly and checked out who'd certified Mr H's documents, Phoenix Life would've seen that Mr H had had some dealings with Portia. But, as to what the result of doing these checks properly likely would've been, Phoenix Life might've simply have rejected the documents and asked HPL for documents certified by another party. I don't think it would've necessarily resulted in Portia's involvement in the process and in any advice that had been given to Mr H coming to light at that stage. I also note here there's an entry on the TRP 'Trigger Points for ID' section which indicates that a 'CallML' was done. I'm not sure exactly what that was but I assume it involved a telephone call, perhaps to Mr H, and suggests that Phoenix Life did undertake some further ID checks. But, and regardless of whether Portia's involvement should've come to light earlier, when Mr H's letter of 19 October 2014 was received, Phoenix Life saw that he may have been advised by Portia. So, I think it boils down to the same issue – what Mr H actually told Phoenix Life about Portia's role in the matter and whether Phoenix Life should've been concerned by that.

I think, if Phoenix Life had queried the discrepancy as to who his adviser was, Mr H would've said that it had been representatives from Portia who'd visited him at home and spoken to him about his pension. The discussions may have included the possibility of Mr H transferring to the Scheme and investing in Dolphin. But, if Phoenix Life had pointed out that, on the Additional Information and Declaration forms Mr H had signed, he'd named Mr W of Servatus as his adviser, I think Mr H would've said that formal written advice had been given by Servatus. I think Mr H understood, much as we've been told, that Portia was, in effect, acting on behalf of Servatus and it was Servatus who'd given the written recommendation. So, I think Mr H would've confirmed, as he'd told Phoenix Life earlier, that Servatus was his adviser.

In saying that I note what Mr H says about never having heard of Servatus and that he thought they were stockbrokers. But I'm not convinced by that. He signed Servatus' report on 16 June 2014 to confirm he was satisfied with its recommendations. I'd assume he read the report before signing it. I think it was clear that it was an advisory or suitability report and that Servatus was advising him that a QROPS was suitable for him and he'd be able to invest in Dolphin – which would, if successful, help him to bridge a shortfall in his existing pension funding.

I maintain that Phoenix Life would've been reassured by Servatus' involvement. I do acknowledge that Portia's involvement, albeit not in a direct advisory capacity, might've been of concern. But I think that would've been cleared up. And the situation wouldn't have been that Mr H would've said that Portia was the only firm that was advising him – he'd had written advice from Servatus. There may have been question marks over the quality of the advice Servatus gave. But I don't think it was for Phoenix Life to try to second guess Servatus' advice. For the reasons I've explained, it was enough for Phoenix Life's purposes to know that Mr H's decisions followed advice from Servatus, a regulated adviser by virtue of being passported into the UK.

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).*

Also, Mr H wouldn't have given the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. And I haven't seen anything that Phoenix Life would, reasonably, have been aware of that should have alerted it to the potential of Mr H being misled in this way. He was entitled to establish an employer for the purposes of being able to act as trustee of his own pension scheme and, on its own, a non-trading employer isn't cause for concern. It's an important point that goes to the heart of this case: Mr H's actions would've appeared (and indeed were) self-directed and a business could, reasonably, have taken comfort from that – especially when one considers the threat of pension liberation would also have appeared minimal. In the circumstances, I'm satisfied Phoenix Life wouldn't, reasonably, have thought a scam was in progress.

Seeking advice from a regulated adviser was recommended in the Scorpion campaign materials – and Mr H had done that. So, in much the same way as Phoenix Life would've been reassured by the involvement of a regulated adviser, Mr H would've also taken comfort from that and that he was doing the right thing by relying on regulated advice.'

I said I wasn't upholding the complaint and I wasn't making any award.

Phoenix Life hasn't responded to my provisional decision. Mr H's representative confirmed it had no further comments.

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.

In the absence of any further information, evidence or comments from Mr H or Phoenix Life, my views remain as set out in my provisional decision. I've repeated what I said there in full above and it forms part of this decision.

For the reasons I've given I'm not upholding the complaint.

My final decision

I don't uphold the complaint and I don't make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 April 2025.

Lesley Stead
Ombudsman