

The complaint

Mrs T has complained about a transfer of her Standard Life personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Gibraltar in September 2023. Standard Life is now part of Phoenix Life Limited, so I will refer to the business by its shortened form 'Phoenix Life' throughout this decision. Mrs T is represented by her solicitor in this complaint.

Mrs T's QROPS was subsequently used to invest in an investment known as Capitis Fora / CFH Property. The investment now appears to have little value. Mrs T says she has lost out financially as a result.

Mrs T says Phoenix Life failed in its responsibilities when dealing with the transfer request. She maintains 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 required of transferring schemes at the time. Mrs T 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

On 3 June 2013 Mrs T signed a form of authority for a company known as Victus Solutions UK to approach Phoenix Life for policy information. She says her interest in the transfer was prompted by recommendation from a previous work colleague/friend.

Victus wrote to Friends Life on 6 June 2013, stating that it had been instructed to provide a "transfer analysis" for Mrs T and asking it to complete a questionnaire and provide transfer documentation. On 25 June 2013 Phoenix Life responded to Mrs T saying that as Victus wasn't regulated and didn't appear on the Financial Services Register it wouldn't be responding to Victus *"in order to protect you and your data"*. Victus was dissolved in 2017.

Mrs T subsequently applied for the Equus Retirement Annuity Trust Scheme administered by Castle Trust & Management Services Limited, by signing a transfer-in application on 13 July 2013. This application left the section to record any independent adviser she was using for the purpose of a "pension review" blank. However, the "approved introducer / advising firm" was recorded as Clearly Considered Limited with the name of its director, an address in York and a UK telephone number given. This company wasn't authorised by the FCA either, had been incorporated in 2008 and has since been dissolved in 2024.

Also signed as part of Mrs T's application was a letter dated 13 July 2013 to Castle Trust. This explained, *"I have carefully undertaken my own investigations into the Suitability of a [QROPS]. I therefore consider it an appropriate request for you to arrange my UK Pension Transfers into a QROPS for my benefit at retirement. I am aware of the charges involved and any potential losses/risks, both financial and those in the form of additional benefits, that may be incurred as a result of my requesting this transfer of pension funds... I confirm that I am a Professionally Astute individual with many years' experience. I also confirm that on retirement the benefits paid from this scheme will not be my sole/main source of income. I consider this to be a medium to long-term investment."*

Mrs T set out in this letter that 80% of the funds transferred would be invested in the CFH [Capitis Fora] Property Portfolio, 10% in "London Premier Properties" and 10% left in cash. However, Phoenix Life wouldn't have seen any of these details of the application at the time.

On the same day as Mrs T signed the application form, Castle Trust wrote to her, saying it would *"require you and your named beneficiaries to sign a letter of indemnity in respect of investment in the CFH Property Portfolio opportunity. The reason for the indemnity is that a higher percentage proportion of your pension assets than usually would be allowed by the trustees will be invested in a single investment."* I assume this was emailed as Mrs T and her beneficiaries then signed it on the same day.

As part of the application Mrs T signed a letter of authority allowing Phoenix Life to provide information about her pension to Castle Trust. She did the same with a separate pension she held with Friends Life. Castle Trust & Management Services Limited was regulated by the Gibraltar Financial Services Commission (GFSC).

On 9 September 2013 Castle Trust returned the completed discharge paperwork (signed by Mrs T on 6 September and itself on 9 September) to Phoenix Life, along with completed HMRC QROPS forms and confirmation from HMRC that the receiving scheme had been recognised.

The package included a copy of Mrs T's passport that had been certified by a financial adviser local to Clearly Considered Ltd in York. (There is no suggestion that this adviser was involved in the transfer other than to certify documents as someone of suitable professional standing.)

Phoenix Life made a transfer of £20,202 on 13 September, which Castle Trust received on 16 September. Mrs T was already age 55 at that time. Three days later, Mrs T's second pension with Friends Life also transferred £25,483 into the QROPS.

£1,142 was immediately deducted from the QROPS to pay an "introducer fee" to Clearly Considered Limited. A further set up and annual fee totalling £1,941 was also collected. On 1 October 2013 the QROPS invested £36,548 into Capitis Fora. The rest of the QROPS remained uninvested and it doesn't appear the London Premier Properties investment was made. An annual fee of £342 continued. The QROPS then received "interest" from Capitis Fora of £3,837 on 29 January 2015 (subsequent interest payments were a lot smaller).

It wasn't until 11 August 2015 that £9,205 was invested with Beaufort Securities Ltd, a discretionary fund manager (DFM) regulated by the FCA in the UK. This followed Mrs T's completion of an investment instruction stating *"I have undertaken my own enquiries and believe that the appointment of the DFM would be a benefit to my pension portfolio."* Nevertheless it appears that another introducer may have been involved as their name (Pension Matters Associates Ltd) – also now a dissolved firm – appears on the Beaufort application form.

Within a year £2,628 was disinvested from that portfolio to fund a partial payment of Mrs T's tax-free cash sum on 28 June 2016 (£2,305). Mrs T received the rest of her tax-free cash (£6,194) on 20 August 2019 after another withdrawal from Beaufort Securities. Her solicitor says the remaining investments (which appear to be Capitis Fora) have failed and led her to suffer a significant financial loss.

No recent valuation was provided as part of the complaint, but I assume the Beaufort Securities portfolio was liquidated in its entirety to meet the tax-free cash payment and/or the remainder of that portfolio had no value. That means the valuation of the total QROPS (at least on paper) had been at least £34,000 in the period up to 2019. And I therefore take it

that Mrs T is having difficulty accessing the value of the Capitis Fora investment – although no evidence has been provided of the extent of her, or her representative's, attempts to enquire about this.

From what I can see the interest payments from Capitis Fora were erratic: it produced £813 in May 2017 and £862 in December 2023 (meaning it still appeared to be a going concern at that point), but nothing inbetween.

In October 2024, Mrs T complained to Phoenix Life alleging that it failed to act in line with industry standards when processing her pension transfer request. Including that it failed to enquire about her reasons for transferring (including whether she was moving abroad), to warn her of the consequences of making the transfer, and of the importance of seeking UK regulated advice. She denied that Phoenix Life had sent her a warning leaflet (the 'Scorpion leaflet') which industry guidance expected it to send before transferring.

Mrs T added that Phoenix Life failed to identify warning signs which were the involvement of an unregulated introducer; and her acting on a cold call offering pension transfer reviews following a recommendation made by a previous colleague/friend. She argued that had she been alerted to the risk of pension scams or advised to seek proper advice, she would have done the same and any prudent advisor would not have advised the transfer as suitable.

Phoenix Life didn't uphold the complaint. It highlighted that it had alerted Mrs T to the fact that Victus wasn't a regulated firm. It also considered that it had carried out an appropriate level of due diligence for the time, noting that the Equus scheme had been recognised as a QROPS for four years, and being over age 55 Mrs T was unlikely to be a candidate for pension liberation.

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

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.

Phoenix Life has consented to our investigating this complaint despite the six- and three-year time limit rules, so I won't explain these in any further detail.

The relevant rules and guidance

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

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

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 the first concern that was developing in the industry at that time of pension liberation: the "Scorpion" guidance.

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

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

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with

information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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

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

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

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

What did personal pension providers need to do?

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

1. 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 I emphasise here that the focus of the guidance at that time was on pension liberation), 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. The existing 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 the sort of pension liberation scam 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?

Mrs T's solicitor says that she had retired by 2013 (she was 55 years of age, above the minimum pension age), and had no financial services experience or knowledge. The Equus application stated she was unemployed. I accept that the relatively modest size of the two pension arrangements she held is not demonstrative of Mrs T having significant financial experience (notwithstanding a statement she signed to the contrary). Although Phoenix Life didn't provide full details of the Standard Life policy at the time of the transfer, her Friends Life policy was invested in a single fund, the Stewardship fund.

In early 2013 Mrs T recalls agreeing to accept a call from a company in respect of a pension review service, having been recommended this company by a previous work colleague/friend. They seemed very professional and having no great knowledge of financial services Mrs T was unaware of the importance of seeking advice from an FCA regulated adviser. Although she had a low to no-risk investment appetite so far as her pension fund was concerned, she didn't have cause for concern about the Equus scheme being appropriately regulated in Gibraltar.

Although Mrs T can't recall which company called her, given that she signed a form of authority for Victus Solutions UK on 3 June 2013, I think that's likely to have been the one. However, the paper (and fee) trail also suggests that Victus was probably working in consort with Clearly Consolidated Limited: both were firms located in the north of England, Clearly Consolidated benefited financially from the transfer and Mrs T may indeed have become aware of their involvement as a result of them being named on the QROPS application form.

So it appears that Victus may have introduced Mrs T to Clearly Consolidated who then played more of a role in facilitating the Capitis Fora investment. Only the section on the

Equus application form for an introducer was completed, so it doesn't appear that either of these firms were formally appointed to act in the capacity of adviser to Mrs T (or at least were prepared to disclose at the time that they were). I say this as I find it less likely that Castle Trust would have been giving Mrs T warnings about the fraction of her pension she would be investing in Capitis Fora if it knew that someone else was accepting responsibility for advising her.

That is not to say that the company Mrs T spoke to, which seems to be Victus, wouldn't have strayed away from its formal role of acting as an introducer to give advice, or at least made value judgements on what she should do that were tantamount to advice.

Mrs T's recollection was that Victus collected some information from her and recommended she transfer her pension to facilitate an investment that promised good returns. I take this testimony at face value; it's not implausible that Victus might have influenced Mrs T's decision to transfer. Not least because there would likely have been some benefit to it in ensuring that she was passed on to Clearly Consolidated and subsequently made the investment. (Potentially some of the fee Clearly Consolidated received was subsequently shared and/or either firm had further links to the Capitis Fora investment.)

So whilst I accept that Mrs T recalls being advised to transfer, the issue for this case is the extent to which that would have been apparent and therefore a warning sign to Phoenix Life, given that Victus wasn't authorised by the FCA and would need to have been in order to provide such advice.

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.

As a matter of fact, Phoenix Life declined to respond directly to Victus when policy information was requested in this case. But it didn't provide the information requested – essentially, a transfer pack – to Mrs T either. As no transfer pack was issued, the requirement under the TPR guidance to include the Scorpion insert wasn't engaged. Nonetheless as I've explained above, where no transfer pack was involved and even where there were no outward signs of pension liberation I would expect the ceding scheme to provide substantially the same broad warnings as would have been contained in that insert, before the transfer went ahead.

The letter Phoenix Life sent to Mrs T did highlight that Victus wasn't regulated or appearing on the Financial Services Register. It suggested that this was an issue for the security of Mrs T's personal data. Although it didn't pose this directly in terms of the risk of her becoming the victim of a pension liberation scam, I think it would have been possible for Mrs T to draw that inference. Namely, that it was expected that firms who were involved in investigating her pension arrangements should be regulated "*or otherwise legally authorised*" – and Victus wasn't one of those firms, so potentially all of her dealings with Victus were at risk.

Nevertheless, I don't think Phoenix Life's warning would have carried as much gravity in general as the message in the Scorpion insert itself, which gave information about the features of a pension liberation scam to look out for. Indeed it's disappointing that having recognised the risk of Mrs T using an unauthorised intermediary, Phoenix Life didn't capitalise on that opportunity by sending her supporting information produced in conjunction

with TPR on that subject. I'll consider the impact this may have had on Mrs T at the end of this decision.

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.

Phoenix Life has provided evidence to this service that it checked and printed off HMRC's QROPS list dated 1 September 2013. The Equus scheme was showing on that list – and from the copy of the HMRC approval letter provided, Phoenix Life would have had reason to conclude it had remained a recognised scheme for about the past four years. Phoenix Life was also satisfied that the scheme was appropriately regulated by the FSC in Gibraltar (and this would have been a condition of HMRC recognising the scheme in the first place).

These steps ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mrs T's statutory right, and potentially other legal rights, to transfer.

I'm aware that Mrs T considers that one of the case study examples used in the 2013 version of the Scorpion action pack, mentioning 'transfers overseas', applies to her case. As it happens, this feature wasn't included in a bulleted list of *'things to look out for'* at the start of the action pack; each represented by an exclamation mark graphic. But I agree that Phoenix Life should have considered things in the round (including, for example, the case studies in the action pack) to decide if there was a material risk of liberation presenting itself in a transfer request.

Page 8 of the action pack used the same exclamation mark graphic (denoting a 'warning sign') in the example of an individual who transferred to a pension scheme which, after paying her a cash incentive, invested the rest of the funds overseas. The warning sign was shown as:

"Transfers overseas

One technique that pension fraudsters use is to send a large portion of the pension transfer overseas. This makes the funds harder to trace and retrieve when the arrangement is closed down."

At that time, liberation activity had mainly been confined to 'sham' multi-member occupational schemes registered in the UK. So my understanding of this warning was that where an UK occupational scheme transferred large amounts of its assets overseas, this was being highlighted by TPR as a potential warning sign of pension liberation activity. Many such liberation schemes that I'm aware of have employed that strategy. It was often accompanied by promises that the member would also be able to access a part of their funds – so-called "early release" pension liberation.

However it doesn't seem to me that TPR was referring at that time to the type of transfer Mrs T was making: to a QROPS which by its very nature (and not in a concealed way) was a) properly established overseas, b) appropriately regulated by the overseas equivalent to the FCA (in another EEA jurisdiction of broadly comparable regulatory strength), and c) had evidently not allowed members early/unauthorised access to pension funds for a significant length of time already (by virtue of continuing to be recognised on the QROPS list).

The reference in TPR's example to a 'portion' of the funds being transferred overseas makes clear, in my view, that it's referring to a UK pension scheme making overseas investments –

i.e. the entire transfer from the ceding scheme isn't directly to an overseas arrangement. The case study goes on to indicate beyond doubt that it was a UK occupational scheme, as it says the scheme was subsequently closed down after both HMRC and TPR took action. (TPR doesn't regulate privately held arrangements either in the UK or overseas.)

This case study also describes someone who transferred in order to take cash from their pension – the other hallmark of pension liberation – and who was likely unaware a large part of their funds would be transferred overseas in the process. Not someone who transferred with the intention of investing in a specific way, like Mrs T seems to have been encouraged to do, as opposed to having the benefit of an immediate cash incentive.

So in conclusion, QROPS evidently weren't the focus of TPR's concerns at the time the 2013 action pack was issued. I'm satisfied that the purpose of the action pack at that time was to direct efforts on preventing early release pension liberation, rather than anything else. Not only was Mrs T already beyond the age of 55, meaning she didn't need to employ pension liberation to access her funds if she wanted to, a recognised QROPS provider of several years' standing was highly unlikely to facilitate this.

That also meant that one of the key features prompting a ceding scheme to do further due diligence under the Scorpion guidance (a recently registered, or in this case recognised) scheme also wasn't present in this case.

In my view it wasn't until TPR's 24 July 2014 update to the Scorpion guidance that the focus shifted away from just pension liberation to pension scams in general. This gave a new prominence to overseas investments: once critically examined they were comparatively more susceptible to being scams operated by bad actors – whether or not liberation was also involved. Again once given due consideration, without knowing what a QROPS provider's criteria were for allowing particular investments on its platform, the potential for it to facilitate investments which were at risk of a scam in that wider sense would have been seen as greater. So when those investigations were expected after July 2014, ceding schemes would reasonably have become more concerned about QROPS transfers too.

Mrs T seems to be saying that Phoenix Life should have spotted these issues in a transfer she made before July 2014. But these weren't the things Phoenix Life was being asked to look out for at that time, so it wouldn't be fair or reasonable to expect a ceding scheme to go further than what the 2013 version of TPR's guidance was asking it to.

I appreciate that a technical definition of liberation could include a high-risk investment being used to re-route pension funds into the hands of a fraudster, without the member benefiting directly in any way. But to reiterate, I still think the classic form of early-release liberation, where in many cases the member was told they would obtain funds from their pension, was what TPR's Scorpion campaign was focusing on at the time of Mrs T's transfer. I say this as the main message given both in the action pack for businesses and the Scorpion leaflet at that time was of consumers receiving upfront offers of cash. Consequently I don't think it would be fair and reasonable for me to expect a ceding scheme to have thought TPR wanted it to be on the lookout for an entirely different type of pension transfer.

Nevertheless this only speaks to what TPR was encouraging schemes to do at the time. I did say at the outset that a personal pension provider would be in breach of its obligations to the FCA if it had good reason to think the transferring member would become the victim of another type of scam.

There was always a possibility that some consumers might suffer losses from making inappropriate investments as a result of transferring to a QROPS, and indeed that some of those investments might turn out to be outright scams. However, that might also happen where a consumer transferred to some UK schemes, such as SIPP's. So it doesn't to my

mind mean it would have been a proportionate response to place *all* QROPS transfers under suspicion as soon as the February 2013 Scorpion campaign gave ceding schemes a new role to carry out due diligence.

As I mentioned, Phoenix Life's role was to balance out the risk of inadvertently facilitating pension liberation with the risk of unfairly holding up legitimate pension transfers that were not for the purposes of liberation. In weighing up its responsibilities I think it was appropriate for Phoenix Life to concentrate on which transfers (including some which may have been to QROPS) were at greater risk of liberation.

It was clear that TPR thought that the greatest risk lay with schemes including those that had only recently been registered/recognised by HMRC, and/or where the member was given an unsolicited offer of early access to cash. That's for good reason, because a scheme which had remained on HMRC's QROPS list for a longer time without issue was less likely to be involved in this sort of activity.

That was consistent in my view with TPR's approach to transfers to SIPP's in the 2013 action pack checklist. Not all SIPP's were under suspicion – only those claiming to be a SIPP but which were not authorised by the FCA. Those would rightly be seen as at greater risk of liberation. A QROPS in another EU country will generally be authorised by the equivalent regulator to the FCA in its country of establishment, in order to qualify for that definition.

Mrs T's solicitor points out that the initial contact Phoenix Life received was from Victus, which was not a regulated firm. However, it wasn't a breach of any regulations for Victus to request information about Mrs T's policy. It had her authority to do so. Phoenix Life simply decided that it was under no obligation to release the information to that firm and explained to Mrs T how she could go about obtaining the information herself. She could still then have passed that on to Victus if she wanted to do so.

In the event, it seems to have been possible for Castle Trust to request the transfer without anyone apparently obtaining transfer forms from Standard Life. Potentially this was because those forms were not prefilled with policy information and could have been completed by hand from any template Castle Trust or Mrs T's introducers already held.

Mrs T suggests that the request to transfer had come from an unregulated entity, but the transfer request came from Castle Trust, not Victus. And in my view it wouldn't have been clear that only Victus was involved in advising Mrs T.

I appreciate that Victus' request was similar to that which a regulated financial adviser might make in order to obtain the information necessary to provide advice – and Victus actually said in the request that it had been instructed to carry out a transfer analysis. But I think it would be too much to expect Phoenix Life to have inferred from this that Victus was advising Mrs T on whether or not she should transfer out of her Phoenix Life personal pension. This wasn't the reason it gave at the time for declining to provide information to Victus, which was to protect Mrs T's personal information.

As I've said above, Victus was entitled to request this information even if Phoenix Life made a judgement that it would prefer to provide any details, where needed, to Mrs T directly. A plausible reason for Victus doing so was that it was gathering data that would assist another (potentially regulated) firm to provide advice to Mrs T. Or that its "analysis" would be factual without any element of advice. Put simply, there wasn't enough from the content of this request – and without the benefit of hindsight – to draw the conclusion that Victus *must* be advising Mrs T or arranging a transfer that it did not, itself, request from Phoenix Life – and therefore, as an unregulated firm, was doing either of these things in breach of the Financial Services and Markets Act 2000.

Such a check would in any event have become necessary if any of the “things to look out for” earlier in TPR’s action pack had been triggered. Enquiries into who was advising Mrs T and whether they were regulated were stipulated in the checklist which schemes were asked to follow if they suspected a transfer at risk of pension liberation. Unregulated advisers were not otherwise listed in the action pack as something to look out for.

So the overriding point here is that Phoenix Life had no existing reason to be suspicious as the result of how this transfer request presented itself overall. It would have been applying the 2013 TPR guidance back to front to begin its due diligence with questions about who had advised Mrs T. If the TPR guidance provided a basis for triaging transfer requests in a different way, I can’t fairly fault Phoenix Life if it didn’t think it should concern itself with who was advising Mrs T when it first received the transfer request.

I have however given consideration to Mrs T’s argument that getting the Scorpion leaflet (or materially the same information, which I think should have been given) would have changed her mind about transferring. I’m mindful that this brief insert, designed to be inserted into transfer packs, was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular.

The prominent Scorpion graphic on the first side was followed by the sentence, “*Companies are singling out savers like you and claiming that they can help you cash in your pension early*”. The beginning of the second side referred to getting loans or cash incentives from the pension. None of this was what Mrs T was doing. The insert then directly refers to pension liberation, something Equus as her QROPS provider was prevented by its regulator (and as a condition of remaining a QROPS) from doing. It suggested this was a particular issue when funds were being accessed before the age of 55, which again Mrs T was not doing.

Mrs T would have had to receive all of these warnings and remain concerned that her transfer was at risk, to reach a list of four things to watch out for. Only one of these four (referring to cold-calling) has a tenuous link to what she was doing. I say tenuous because although Mrs T was contacted by someone she hadn’t spoken to before, she says that she had been put in touch by that person by a friend/colleague.

Although the Scorpion leaflet includes a warning that “*Any financial advisers should be registered with the Financial Conduct Authority (FCA)*”, it’s Mrs T’s testimony that she was being advised by Victus – the firm which Phoenix Life had already told her wasn’t regulated. So in this respect, Phoenix Life actually went further than the Scorpion insert itself and looked up Victus’ regulatory status for her.

That doesn’t give me a strong basis for concluding that receiving any of the other information – generally about a type of scam that wasn’t happening in her case – would have changed Mrs T’s mind about transferring. I say this in particular because Mrs T had been put in touch with Victus on the recommendation of her friend/colleague in the first place. And also because Mrs T has admitted in her testimony that the fact that the QROPS was regulated in Gibraltar did not give her cause for concern.

Overall, the number of signs of pension liberation that were listed in the insert that *did not* echo with what Mrs T was doing significantly outweighed the brief reference to cold calling. Notably, the insert provided by TPR at the time didn’t refer, in the way Mrs T’s solicitor considers the action pack did, to transfers overseas being a key warning sign.

I understand the point being made that Mrs T couldn’t afford to put her pension at risk, and would have been particularly at pains to check out any warnings being given to her. However, I have to take into account that there was a warning about the risk she was taking – and this wasn’t from the person she considers was giving her advice but from the QROPS

provider. It said that she was allocating a higher percentage of her pension assets to a single investment than usually would be allowed by the trustees.

Mrs T was also asked to sign statements that she had considerably more investment experience than she actually had. So for the very reason her solicitor has given I would expect Mrs T, who by her own admission couldn't afford to take such risks, to have asked questions and reconsidered what she was doing in light of what she had read. But I can find no evidence that she did so.

Therefore, taking all of this in the round, I'm not persuaded it is more likely than not that receipt of the Scorpion insert (or materially the same information) would have fundamentally changed Mrs T's inclination to proceed with the recommendation she received to transfer to the QROPS. As has been said, Mrs T didn't have much financial experience – so I don't think it likely that she would have happened upon other articles in the financial press or warnings the FCA had issued to financial advisers about not getting involved with unregulated entities, which her solicitor has referred me to.

Mrs T's solicitor has made a number of references to other decisions this service has issued where a QROPS transfer took place after July 2014. For the reasons I've already given above, the outcome of those complaints is not really comparable given the greater focus on scams (of any nature) and the greater likelihood that a QROPS could be employed in such scams.

They also ask why Phoenix Life wasn't concerned as to whether Mrs T intended to move abroad – i.e. what her motives were for transferring to a QROPS. Phoenix Life did note that Mrs T didn't have an overseas address as part of its due diligence process, but I understand that to be part of its money laundering checks. Indeed it would have been clear from the HMRC QROPS forms that Mrs T had not (yet) moved overseas.

However other than being able to ensure it still had a way of contacting her, where Mrs T resided would concern matters of suitability that weren't part of Phoenix Life's role at the time of this transfer: it wasn't providing her with advice. There were already a number of warnings on the HMRC forms Mrs T was required to complete that there could be adverse tax consequences from transferring to a QROPS, as this depended on its continuing recognition by HMRC.

Phoenix Life was not tasked with finding out if, in light of these tax implications, Mrs T had a strong enough reason for nonetheless preferring a QROPS. At a time when QROPS were not particularly implicated in known scams, I think Phoenix Life was entitled to expect that Mrs T had her reasons for preferring this type of pension arrangement (which of course may include that she already had other financial affairs overseas).

Without a reason to suspect that the transfer was in some way connected to pension liberation – the threat Phoenix Life was tasked with identifying at the time of Mrs T's transfer – I don't think it had sufficient reason to question what her reasons were for establishing the QROPS. It was only in later years of the TPR guidance, and particularly when this was supplemented with a later industry code from the Pension Scams Industry Group (PSIG) in 2015, that further enquiries were expected into this.

To reiterate, when it received this transfer request in 2013 I don't think there would have been a purpose to Phoenix Life attempting to piece together the very limited information it had about who might have advised Mrs T and why she was transferring to a QROPS in particular. The action pack set out a framework under which it would have got to the bottom of that matter by asking Mrs T directly, but only if the circumstances warranted it (because

the transfer had been deemed at heightened risk of liberation activity). And in this case, the circumstances didn't warrant such enquiries of Mrs T.

I think these arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme were a means to an end: to establish the risk of liberation. Once that threat was discounted then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 26 September 2025.

Gideon Moore
Ombudsman