

The complaint

Mr C complains that The Prudential Assurance Company Limited allowed his pension transfer to proceed in 2013 without warning him about the risks of doing so. Mr C says that, as a regulated business, Prudential should have been aware of the risks and carried out thorough checks. He says Prudential didn't contact him or recommend he seek independent financial advice. Mr C believes he has lost his entire pension as a result of the transfer.

What happened

Mr C is represented and his representative says that in September 2012 Mr C was 'cold-called' several times by an unregulated introducer called MC Global Choice. It says that another unregulated firm called 'Pension Matters' may have been involved. Mr C was told that if he transferred his pension he would obtain better returns. He was told to invest in a hotel development. He was offered an incentive of £1,000 for transferring.

It is submitted that Mr C decided to go ahead and a written report was provided to him from a firm called Green & Global Limited. Mr C was put in touch with 5G Futures Administration or 5G Wealth Management Ltd to organise a transfer to the 5G Futures Pension Scheme (5G). Mr C's pension was then transferred to the 5G scheme in January 2013.

Prudential didn't uphold the complaint. It said it had received properly completed transfer paperwork to transfer Mr C's pension to the 5G scheme. The scheme had been registered with HMRC and it was not a newly registered scheme. It said there was no justification for it to refuse Mr C's request to transfer and there was no evidence of pension liberation. It was only in late 2013 that concerns were raised about the scheme. The transfer pre-dated The Pension Regulator's (TPR) 'Scorpion' publication in February 2013.

Mr C referred his complaint to the Financial Ombudsman Service and it was considered by an investigator. The investigator didn't uphold the complaint. In summary he said:

- He had considered whether Prudential had acted fairly and carried out appropriate checks before the pension transfer occurred.
- It should be noted that Mr C had a legal right to transfer his pension and the provider had a duty to process such a transfer in a timely manner.
- Prudential received an information request from an unregulated business in October 2012. There was no requirement for the business requesting such information to be regulated. Prudential subsequently supplied the information.
- Prudential received a request in December 2012 from the 5G pension scheme, requesting the transfer of Mr C's pension.
- Prudential received information that confirmed the scheme had been established in 2008 and was registered with HMRC. The new scheme could also accept transfers.
- Mr C authorised the transfer and so Prudential then sent the pension funds to the 5G pension scheme.
- Prudential undertook the required checks and there was no reason for it not to process the pension transfer based on what was provided to it.

Mr C's representative did not accept the adjudicator's assessment. In summary it said:

- There were clear warning signs that ought to have raised concern and if they had been raised with Mr C he would have been better placed to decide whether to transfer.
- The 2012 press release from TPR which gave an overview of pension liberation was widely distributed and was issued to raise awareness of pension liberation.
- As there were clear warning signs had any comprehensive checks taken place, Mr C would have been alerted and could have considered the situation further. The checks carried out by Prudential were substandard as there was no contact with Mr C.
- The issue of the guidance in 2013 about pension liberation shows this was a growing issue and more needed to be done to stop the transfers.
- Prudential had an overriding duty of care to Mr C. COBS 2.1.1 required it to "*act honestly, fairly and professionally in accordance with the best interests of its client*". It was Prudential's duty to act in Mr C's best interest so it should have contacted him directly.
- Prudential should have highlighted the risks to Mr C given he received unregulated advice. So it breached Principle 6 as set out in the Financial Conduct Authority's Handbook – which concerned paying due regard to the interests of its consumers.

Therefore the complaint has been passed to me for review.

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.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Prudential was operating in at the time with regards to transfer requests and pension liberation as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- The Pension 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.
- Personal pension providers, like Prudential are regulated by the Financial Conduct Authority (the FCA). Prior to April 2013, they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). There has never been any FSA/FCA rules that specify the checks providers need to do before someone can transfer from a personal pension.
- Prior to February 2013, and the launch of the scorpion campaign, personal pension providers often just checked that the receiving scheme was registered with HMRC and would only investigate further if it was apparent that the transfer was, in some way, suspicious. However, ahead of the scorpion campaign, it's evident the FSA, and other regulatory bodies such as TPR, were becoming increasingly concerned about the dangers of pension liberation schemes:
- On 10 June 2011 and 6 July 2011, the FSA warned consumers about the dangers of "pension unlocking". It referred to cold-calling and websites promoting transfers to schemes that invest money overseas (such as in property) to avoid paying UK tax

and/or result in cash being drawn from the pension ahead of retirement, including as a loan. Particular concerns related to the tax implications of these transactions, the fees charged and potential investment losses from scam activity. The FSA said it was working closely with HMRC and TPR to find out more information and encouraged affected consumers to contact FSA, HMRC or TPR helplines.

- TPR announced in December 2011 that it was working with HMRC and the FSA and had closed some schemes.
- In February 2012, TPR published a warning, and factsheet, about pension liberation. The FSA supported this campaign. It was designed to raise public awareness about pension liberation rather than introduce new steps for transferring schemes to follow. The warnings highlighted in the campaign related to websites and cold-callers that encouraged people to transfer in order to receive cash or access a loan.

TPR guidance

TPR launched its scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance on dealing with transfer requests in order to prevent liberation activity happening. Several bodies including the FSA supported this initiative, so I'm satisfied it was relevant to personal pension providers such as Prudential.

The campaign involved an 'action pack' that highlighted the warning signs present in a number of transfer examples, specifically: being cold-called, money being transferred overseas, incentives to transfer, inadequate information about investments and pressure to complete a transfer quickly.

It suggested transferring schemes should "look out for" these issues, as well as receiving occupational schemes that were newly registered or were suddenly involved in multiple transfer requests. If any of the warning signs applied, the action pack provided a checklist schemes could use. This checklist suggested asking the member for copies of promotional materials, emails or letters about the scheme and asking for any further details about how they became aware of the receiving scheme and how it had been described to them. If those enquiries established the member had been advised, it went on to suggest checking whether the adviser had been registered with the FSA. Where transferring schemes had concerns, they were encouraged to consider delaying the transfer and to seek legal advice.

The 'Scorpion' campaign also included:

- A Pensions Advisory Service insert to issue to members when a transfer pack was requested. The insert warns about offers to cash-in pensions early, cash incentives, cold calling, being put under pressure to transfer and the potential tax consequences of accessing pensions early.
- A Pensions Advisory Service leaflet which gives more information, including 'real life' examples, about pension liberation.

FCA/FSA's Principles for Businesses (PRIN)

The FCA Handbook set out Principles and Rules that firms must adhere to when carrying out business; and firms must always apply the principles, even when specific rules and guidance from the FSA/FCA in a particular area are absent or evolving – as was the case with pension liberation/scams/fraud.

The 'PRIN' section of the FCA Handbook contains 11 principles and I consider the most relevant principles in relation to transfer requests and pension liberation to be the following:

- 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.

Did Prudential follow the relevant guidance and rules?

I have seen the following relevant documents:

- Confirmation from HMRC that the 5G Futures Pension has been registered as of 2008.
- An undated New Member Application for the 5G Futures Pension Scheme for Mr C.
- A letter dated 3 December 2012 from the 'Administrators for the 5G Futures Pension Scheme' confirming that the 5G pension scheme is a registered money purchase pension scheme.
- A 'Transfer Payment Authority and Declaration' in which Mr C has authorised the transfer of his Prudential pension to '5G Futures Pension'. Mr C has dated the form on 6 November 2012. A box has been 'ticked' to indicate the receiving scheme is an Individual personal pension scheme (SIPP).
- A Prudential 'Transfer Value Acceptance and Authority to pay' form for Mr C dated 21 December 2012. This requests a transfer to 'MC Global Choice Ltd'. This was signed by Mr C on 8 January 2013.
- A letter dated 18 January 2013 from Prudential to MC Global Choice Limited. This confirms a transfer of Mr C's pension has been made to an account called '5G Futures Pension'.
- A letter from Prudential to 'Pension Matters Associates Limited' dated 18 January 2013. This confirms that Mr C's pension policy was transferred to MC Global Choice Ltd.
- Confirmation that Mr C has made an investment in a hotel development.

Mr C's representative says there were several warning signs that should have been apparent to Prudential. These were that Mr C had received an incentive, that Mr C had been told that he could access his pension before the age of 55 or misled about the tax consequences of doing so, and there were conflicting references on the transfer documentation as to the nature of the pension scheme. On the basis that it was an occupational scheme, 5G Futures Ltd had been dormant since 2008 and had never traded. Mr C was also geographically distant from the pension scheme and the administrator of the scheme was not regulated. Mr C's representative also said that the receiving pension scheme was connected to an unregulated investment company, the proposed investments made by the 5G scheme were all risky and unregulated, Mr C was basing his decision on advice from an unregulated business, there was evidence of cold calling and Mr C had not received advice from a regulated party.

I have not seen evidence that Prudential was aware that Mr C had received an incentive, that he had been told he could access his pension before the age of 55, was aware he had been advised by an unregulated business or what the nature of the 5G investment was. In its role as a pension provider it did not need to know these things in order to carry out a pension transfer and was not required to be aware of them in order to facilitate a pension transfer of this nature. I have also not seen any evidence it was aware that Mr C had been 'cold-called'. And it is not for Prudential to check if Mr C had received regulated advice. Mr C did not need to have been given regulated advice to request a transfer of a money purchase pension at this time.

I agree that at the time and regardless of the fact that TPR's 'Scorpion' guidance on pension liberation had not been issued at this point, that Prudential had a duty to act professionally and in the best interests of Mr C. However I do not believe it breached those duties, based on the information it had.

There wasn't an overriding duty that Prudential directly contact Mr C at the time to discuss his transfer or the circumstances surrounding his transfer. There would be a reasonable expectation it would do so, or undertake further checks, if there was sufficient reason to suspect that there was something untoward about the transfer. But here I do not believe there was sufficient evidence that was apparent to Prudential that it should contact Mr C or make further checks before processing the transfer.

The contradictory information as to the nature of the scheme was a 'tick box' on one transfer form. Prudential say that if this had been picked up at the time it would have been corrected but that was not sufficient to take further action. I appreciate that the pension scheme's address was some distance from Mr C's residential address but I do not believe that sufficient or so unusual as to have triggered further action by Prudential. This is especially considering that the 'Scorpion' guidance which listed that as a factor had not been issued at the time this transfer occurred. There wasn't a requirement for a pension administrator to be regulated and I do not believe that should have indicated to Prudential that further action was required. As discussed, I have not seen that Prudential was aware of the other factors Mr C's representative describes as indicating consumer detriment might result.

Mr C's representative has confirmed that pension liberation did not occur insofar as any money was taken from Mr C's pension. This was only a situation where Mr C had transferred to another scheme and then invested subsequently in a way that has led to significant loss.

Prudential had received a request from Mr C to transfer his pension to a HMRC registered pension scheme and I believe it was reasonable to fulfill that request in the circumstances without taking further action.

My final decision

I do not uphold the complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 March 2022.

David Bird
Ombudsman