

## The complaint

Mrs B has complained through her claims management company (CMC) about The Prudential Assurance Company Limited (Prudential) allowing a transfer of her pension fund to what she believes was an unregulated and fraudulent scheme.

## What happened

In September 2015 Mrs B requested a transfer from her personal pension fund held with Prudential to a Qualifying Recognised Overseas Pensions Scheme (QROPS) registered in Malta.

The CMC has told us that at the time the transfer was requested Mrs B was 54 years of age. She wasn't receiving a high income and wasn't a high net worth client or a sophisticated investor. It has explained she was "cold called" by an unregulated third party who told her pension fund with Prudential was underperforming and she could make more growth if she transferred it to the QROPS which the third party was recommending. It has said that Mrs B didn't know the scheme being recommended wasn't a UK scheme and had she known this she wouldn't have agreed to transfer. To date Mrs B hasn't received any valuations for the scheme and had been unable to contact it. The CMC has suggested that Mrs B has been the subject of some sort of pension fraud.

The transfer of Mrs B's pension fund (around £40,000) was completed in January 2016.

The CMC has said Prudential should have seen that the transfer was unsuitable for Mrs B based on the scheme being a QROPS and it didn't think Prudential carried out the necessary due diligence when authorising the transfer.

The complaint was assessed by one of our investigators who felt it couldn't be upheld. She was satisfied that Prudential had carried out all of the checks it was required to before authorising the transfer. She didn't think there was anything in Mrs B's circumstances regarding the request to transfer that should have caused Prudential to suspect a pension scam was underway. She saw Prudential had sent Mrs B the necessary warning insert to raise her awareness to potential pension fraud (the "Scorpion insert"). And she acknowledged that the terms of Mrs B's pension scheme with Prudential confirmed she had a contractual right to transfer providing the receiving scheme met all the stated requirements.

On behalf of Mrs B the CMC disagreed with the assessment and reiterated why it thought Prudential hadn't carried out the necessary checks. It also stated that as the transfer was advised by an unregulated business Prudential, at the very least, should have tried to make Mrs B fully aware of the risks involved.

I issued my provisional findings in November 2021 where I set out why I was of the view the complaint should not be upheld. An extract is below and forms part of this final decision:

*It is important to first point out that Prudential didn't give Mrs B advice in relation to the transfer of her pension to the QROPS. As the administrator of the scheme this wasn't its*

role. Therefore, while I appreciate the points the CMC has made in relation to the suitability of transferring into the QROPS, this was the responsibility of whichever party gave Mrs B advice (if indeed any advice was given).

### Relevant guidance

*The Pension Regulator's (TPR) "Scorpion" Guidance:*

*At the time of Mrs B's transfer, pension scams had become quite prevalent due to the recent pension reforms which allowed for greater flexibility and access to pension funds. In response to this The Pensions Regulator (TPR), as well as other industry bodies including the Financial Services Authority (FSA) (now the Financial Conduct Authority, the FCA), acted to educate and alert retirement savers, pension administrators and trustees to the risks involved in relation to their pensions. A campaign was launched, known as the "scorpion" campaign and TPR first released guidance on this issue (known as the scorpion guidance) on 14 February 2013 (this was subsequently updated several times over the next few years).*

*Briefly, the scorpion campaign involved providing 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.*

*The action pack provided a checklist schemes could use which suggested asking the member for copies of promotional materials, emails or letters about the scheme and for 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:*

- An 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 longer insert which gives more information, including 'real life' examples, about pension liberation. This was to be used in order to help raise awareness about pension liberation amongst pension scheme members.*

*The Pension Scams Industry Group (PSIG) Code of Good Practice:*

*The version of the scorpion action pack from the time of Mrs B's transfer also referred to a Code of Good Practice which had been developed by the Pension Liberation Industry Group (PLIG), subsequently renamed Pension Scams Industry Group (PSIG). This became effective from 16 March 2015 and set an industry standard for dealing with pension transfer requests from members to a UK registered pension scheme or a QROPS.*

*The Code was written by a group made up of stakeholders including trustee administrators, legal advisers and insurers and was reviewed by a wide group of industry bodies and organisations to ensure broad acceptance and encourage widespread adoption of its principles. It aimed to help trustees/providers ensure only a valid transfer was made as well*

*as helping to put the member in a position to make an informed choice in relation to a valid transfer where there were suspicious circumstances. Essentially the code set out a structure for the due diligence process to be carried out by trustees and administrators along with sample questions to ask the member throughout the transfer process to ensure the transfer was a valid one.*

*In my view, the scorpion guidance and the PSIG code worked together. It wasn't a case of administrators following one or the other. TPR expected all trustees and administrators to follow the Scorpion guidance. It was also endorsed by FSA, which meant FSA-regulated firms ought to have given it similar attention as they would to other guidance issued by FSA. Furthermore, the scorpion insert also referred to the PSIG Code of Good Practice, which was "welcomed" by TPR, so while there is no explicit instruction as such to use the PSIG code I think it would have been good industry practice to do so.*

*I therefore consider it's fair and reasonable for Prudential to have followed both these guidance documents as they represented good industry practice for transferring personal pension schemes.*

*Did Prudential follow the guidance outlined above?*

*Prudential has confirmed, and I have seen, that it sent Mrs B the scorpion scams insert in her transfer pack, as it was required to do. Similar to the action pack mentioned above sent to administrators, the insert for members clearly set out what members wanting to transfer their pension had to look out for:*

- Claims a pension could be accessed before the age of 55;*
- Being approached out of the blue over the phone via text message or in person.*
- Being enticed with upfront cash.*
- Was she offered a free pension review or was she lured with so called one off investment opportunities.*
- Convincing marketing materials that promise returns of over 8% on the investment.*
- Paperwork delivered to the door by courier that requires immediate signature.*
- Overseas transfers of the funds.*
- A proposal to put the money in a single investment.*
- It also stated that the member should always check the facts and never be pressured into or rushed into making a decision.*

*Mrs B signed and dated this insert and returned it to Prudential thereby confirming that she had read and understood it. I am satisfied this insert contained clear and accurate information about potential scams and I am also satisfied Prudential sent the insert with enough time for Mrs B to raise any concerns with Prudential that she may have had from reading it before confirming the pension transfer.*

*The CMC has said Mrs B didn't understand the scorpion insert but I think this was something for Mrs B to have mentioned if Prudential was to help her any further. I have also considered that the insert was prepared by the Regulator in conjunction with other industry groups precisely with individuals such as Mrs B as its target audience, so I think it's likely it was something Mrs B could have understood without any problems.*

*As well as sending the scorpion insert Prudential also confirmed with HMRC that the QROPS met the requirements to be a QROPS under section 169(2) of the Finance Act 2004.*

*However, Prudential has confirmed to me that it didn't follow or employ the PSIG code. It*

*didn't make any specific enquiries of Mrs B to find out more about the transfer. Instead, it relied on the warnings provided in the scorpion factsheet. In my view, this was a failing. For the reasons explained above, the PSIG code and the scorpion guidance should've been followed together. The Code would have assisted Prudential in how to go about checking whether Mrs B was at risk of a scam, which is what the Scorpion guidance was strongly encouraging it to do. This would have been good practice and in line with FCA Principles to pay due regard to the interests of customers and treat them fairly. Furthermore, the fact Mrs B was transferring her pension overseas should have raised a red flag for Prudential, especially as Mrs B wasn't moving abroad herself.*

#### *Would this have made a difference*

*However, despite this failing, if Prudential had done all it was required to do I think Mrs B would not have taken any different action. I think it more likely than not she would still have insisted the transfer to the QROPS go ahead.*

*As part of our investigation, we asked to speak directly to Mrs B, to get a sense of what she was thinking at the time of requesting the transfer, what she thought about the transfer and to discuss the events leading up to the transfer. Each time we called her she told us she wasn't available to talk. We also emailed her with the questions but to date she has not responded. Without her first-hand thoughts and comments about the whole transfer process and clarity of what she actually understood about it at the time, I can only base my conclusions on the facts in front of me. And they are that Mrs B received and signed the scorpion guidance insert confirming she had read and understood it. An overseas transfer was highlighted in this insert as being a warning sign of a potential scam, but this didn't raise any concerns for Mrs B. And she signed all the transfer forms which all clearly set out the address of the scheme being in Malta.*

*Therefore, in light of this information, and without being able to speak with Mrs B I am not persuaded that she didn't know the scheme to which she was transferring her pension was abroad and I am not persuaded that this was something she was unhappy with. It also follows that had Prudential followed the PSIG code and asked Mrs B directly about the transfer abroad, as it would have been directed to do, I don't think it would have led to a different outcome. In other words, I think it's likely Mrs B would have still gone ahead with the transfer to the QROPS because she had all the details in front of her to make her aware the transfer was overseas.*

*I've noted that the scheme appears to still be registered with HMRC and the CMC has confirmed it hasn't contacted the QROPS or the Maltese regulators to find out anything further about the scheme. So there is no direct evidence that fraudulent activity was, or has ever been, present. As well as this, it may be the case that Mrs B was advised to place unsuitable investments within the QROPS, but as I mentioned at the beginning Prudential's role wasn't to ensure the suitability of those investments.*

#### *Other matters*

*The CMC has stated that as the third party which contacted Mrs B initially was not regulated this should have alerted Prudential to a potential scam/fraudulent activity. It's true the Scorpion guidance 'action pack' suggested a scheme check whether an adviser was registered with the FCA. That's essentially because if advice was being given on the transfer of a personal pension to a QROPS, that would have been a regulated activity – and it's an offence under the Financial Services and Markets Act for an unregulated adviser to give such advice to a customer in the UK.*

*However, there was no requirement for a third party administering any QROPS involved in the transfer to be registered. (Only the activity of administering a personal pension scheme*

*in the UK was regulated by the FCA.) So without the additional suggestion of advice being given to Mrs B from the firm involved in her application, there was nothing to have alerted Prudential to anything underhand going on.*

*Overall, it is clear that at the time Mrs B requested the transfer of her pension there was detailed and comprehensive guidance setting out what Prudential needed to do to check the transfer request was to a legitimate scheme and in Mrs B's best interests. As I have explained above, while Prudential followed the scorpion guidance to a degree, by its own admission it didn't follow the PSIG Code of Good Practice which it was also required to do to ascertain whether Mrs B fully understood the implications of transferring her pension. However, based on the information available to me, I think it likely that had Prudential done what the Code outlined – contact her to clarify the transfer details and confirm she was still happy to proceed with the transfer - it would have not changed Mrs B's actions.*

Prudential accepted my provisional findings but provided no further comments.

The CMC on Mrs B's behalf didn't respond by the required deadline.

### **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.

As neither party has provided any further comments for me to consider I have no reason to depart from my provisional findings.

In summary, while Prudential didn't follow *all* the guidance and good practice I think it should have at the time of the transfer request, had it done so I don't think this would have changed Mrs B's actions, for the reasons already set out above and in my provisional decision.

### **My final decision**

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 6 January 2022.

Ayshea Khan  
**Ombudsman**