

The complaint

Mr H complains that The Prudential Assurance Company Limited failed to carry out sufficient due diligence checks before it transferred his pension to his small self-administered scheme (SSAS). Which Mr H says caused him a subsequent loss when the pension fund was then invested into unregulated collective investment schemes (UCIS).

What happened

Mr H had a personal pension with Prudential which he'd taken out in 1988. He explains that he'd stopped making any contributions into his pension around 2009.

On 14 February 2013 The Pensions Regulator (TPR) released guidance for pension providers to help prevent their members becoming victims of pension liberation fraud (being convinced to transfer a pension to obtain an unauthorised payment, usually before age 55). I'll refer to this as the Scorpion Guidance. This guidance included an Action Pack for businesses. Which provided: example scenarios, warning signs, information on what businesses could do to reduce the risks, a checklist to help spot pension liberation, and help in educating customers. The Scorpion guidance also included a two page 'Scorpion insert' that had to be sent to members along with transfer packs, as well as a more detailed 10-page booklet to send to customers that wanted more information.

In March 2014 Prudential received a fax from First Review Pension Services (FRPS) which included a letter of authority, signed by Mr H. FRPS were requesting transfer values and transfer discharge documentation (transfer pack).

Prudential say that it sent a transfer pack to FRPS. And that its internal process at the time was for the transfer pack to include the Scorpion insert.

In July 2014 TPR updated the Scorpion guidance. It released new versions of the Action Pack, insert and information booklet. This guidance provided additional things for businesses to be aware of and actions to consider.

In August 2014 Prudential received further contact from a regulated independent financial adviser (Firm A). This was a Transfer of Service / Letter of Authority that was signed by Mr H. It instructed Prudential that Firm A were assuming responsibility for future servicing on Mr H's Prudential pension. And asked for an up to date summary and valuation.

Prudential provided a standard response to Firm A which included policy details and the current valuation. No transfer discharge documents were sent as Firm A had not requested transfer information. So no Scorpion insert was sent.

On 6 November 2014 a private limited company was incorporated with Mr H as the sole director. And on 28 November 2014 Mr H completed an application to Rowanmoor Group plc to open a SSAS for the limited company that Mr H was the director of. The application appointed Rowanmoor Group as trustees to the SSAS.

The application form included the direction to Rowanmoor Group to request the transfer of

Mr H's Prudential pension to the SSAS.

Prudential received a request to transfer Mr H's pension through the Origo OPTIONS platform – an electronic transfer system – on 16 December 2014. Prudential transferred Mr H's personal pension to the SSAS with Rowanmoor Group. And wrote to the servicing agent, Firm A, on 30 December 2014 to confirm that the transfer had completed.

Mr H complained, via a complaint management company, that Prudential failed to follow industry guidance designed to protect consumers from liberation scams.

Our investigator looked into what happened. But was unable to resolve the dispute. Prudential didn't agree with our investigator's findings. So this case was referred for an ombudsman's decision.

I considered the evidence and issued a provisional decision explaining why I didn't think that Mr H's complaint should be upheld.

My provisional decision

I explained that I would be considering the rules in place at the time in deciding whether Prudential had done anything wrong. And explained that the regulatory rules in place under COBS and PRIN meant that Prudential had a responsibility to follow relevant industry guidance.

I considered the guidance that had been issued by The Pensions Regulator (TPR) at the relevant times.

I explained why I thought that Prudential failed to follow TPR guidance issued under the Scorpion campaign in February 2013. It sent the Scorpion insert to FRPS in response to the request for transfer information in March 2013. Which I didn't think met the requirement to send the information to Mr H. The purpose of the Scorpion guidance was to inform Mr H about the risks of becoming a victim of pension liberation fraud. And sending it to a third party, even if authorised by Mr H to act on his behalf, didn't ensure that Mr H was personally informed of the risks.

In this case though, I didn't think that the failure to send the Scorpion insert adversely affected Mr H. The evidence didn't suggest that the pension transfer went ahead on the back of that request. I also explained that the insert in use at that time was very focussed on warning against the risk of becoming a victim of a pension liberation fraud. Mr H wasn't at risk of pension liberation, and the only warning sign on the insert of relevance to Mr H was being 'cold-called'. Which I didn't think, by itself, would have caused Mr H to cancel his transfer.

Mr H's transfer went ahead in December 2014 by which time TPR's Scorpion guidance had been updated. I considered the way that Prudential handled the actual request for the transfer. And didn't identify anything that Prudential did wrong. I didn't think that the circumstances that Prudential were presented with would have given them enough reason to be suspicious of the transfer request. So I explained why I thought it was reasonable that it didn't go on to consider the checklist in the Action Pack further.

The response to my Provisional Decision

Mr H's CMC responded in detail, outlining why it disagreed with my provisional decision. I've reviewed and considered its entire response, but for ease of reading will summarise the issues raised as follows:

- It said that Prudential carried out no due diligence checks at all;
- It considered that there were a number of warning signs present referenced in the checklists in the 2013 and 2014 Scorpion guidance;
- Prudential made no contact with Mr H during the transfer process.
- It explained that Prudential ought to have verified Mr H's statutory right to transfer. So should have contacted Mr H to establish his employment status.

Prudential offered no further evidence or comment following my provisional decision.

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.

I understand the impact that these events had on Mr H and therefore his disappointment with my provisional decision. But having considered the evidence in this case again, I haven't changed my mind. Whilst Mr H has provided further comments about the transfer, there is no new evidence to consider. So much of my explanation remains the same as explained in my provisional decision.

I'm aware that Mr H's CMC has put forward its rationale for what it says ought to have happened. And why Mr H's complaint should be upheld. In explaining my decision though, I haven't addressed every argument raised by both sides. My role is to provide an informal and independent outcome that is fair and reasonable. In explaining my decision I'll explain my rationale for it, based on the evidence presented.

In assessing whether or not Prudential have done anything wrong, I've considered the rules in place at the time. The FSA rules didn't place specific requirements on firms regarding their responsibilities for pension transfers such as this. Prudential weren't responsible in this set of circumstances for assessing the suitability of Mr H's receiving scheme or the intended investments in that receiving scheme.

But the FSA (now FCA) handbook set out general principles of business (PRIN) as well as rules in its conduct of business sourcebook (COBS). The principles (in PRIN) that were most applicable to this case were:

- Principle 2 – A firm must conduct its business with due skill, care and diligence.
- Principle 3 – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.

And within the COBS rules, COBS 2.1.1R placed an obligation on businesses to act honestly, fairly and professionally in the best interests of its client.

Collectively these regulatory obligations in PRIN and COBS meant that Prudential had to have regard to industry guidance and best practice where it directly related to the best interests and fair treatment of its customers. Which meant that it needed to consider and implement the recommendations issued in TPR's Scorpion guidance, which was approved by its regulator, the FSA.

TPR guidance from February 2013

The initial request for transfer information from FRPS came at a time when the industry was aware of the risk of customers being targeted by scams. And Prudential should have been following the February 2013 Scorpion guidance.

Prudential sent the transfer pack to FRPS and say that it included the Scorpion insert. I don't think that was an appropriate approach for Prudential to take. FRPS wasn't a regulated advisor. So whilst Mr H had authorised Prudential to respond to FRPS in his signed letter of authority, I think that Prudential should have sent the Scorpion insert to Mr H directly. The Scorpion insert, and the industry campaign existed to try to prevent consumers from falling prey to unscrupulous introducers or advisors. Only sending the warning insert to the unregulated third party failed to ensure that Mr H was fairly informed about the risks that Prudential had a responsibility to highlight.

Having recognised what I think was a failing of Prudential, I can't say that Mr H transferred his pension off the back of this transfer request though. Mr H hasn't been very specific about the exact advisory path that led to his transfer. But Mr H hadn't set up his SSAS at that stage, so I don't think that whatever was behind this request for a transfer pack was followed up on. Although it does mean that Mr H was denied a copy of the Scorpion insert at this point.

The version of the Scorpion insert available at that time was very much focussed on the risk of being victim of a pension liberation scam. I've seen nothing to indicate that Mr H was given any incentives or promises to access his benefits by transferring. Had he been concerned by what he read in the insert, it listed steps to avoid becoming a victim. Which included speaking to an adviser that isn't associated with the advice. And the evidence suggests that Mr H appointed a regulated financial adviser after this anyway.

So I don't think that Prudential's failure to send him the Scorpion insert had any effect on what happened at that time. No transfer request was received off the back of that transfer pack, so I don't think Prudential needed to have made any other form of contact with Mr H at that stage.

TPR guidance from July 2014

TPR updated the Scorpion insert and Action Pack in July 2014. Which is the Action Pack that Prudential should have had in mind regarding Mr H's transfer request in December 2014. That action pack highlighted things to look out for that may have been present in liberation or other scams, including:

- cold calling
- transfers of money or investments overseas
- accessing the pension before 55
- encouragement to speed up a transfer

The action pack asked transferring schemes to look for these sorts of issues. And where any of these features applied said that transferring schemes could use a checklist to find out more about the receiving scheme and how the consumer came to make the request. The guidance allowed judgement to be applied in deciding whether it was necessary to use the checklist. It didn't require Prudential to conduct the same level of checks for every transfer request. I need to decide whether the information Prudential had ought to have given them sufficient reason to go on to consider the checklist questions further.

The next contact that Prudential received on Mr H's behalf was from Firm A. This was a regulated financial advisor with Mr H's signed letter of authority. This contact was a transfer

of service request. It wasn't a request for transfer information. The guidance that was in place at that time didn't require Prudential to make any direct contact with Mr H in this circumstance. Nothing in this interaction would have been a trigger in TPR's guidance. The significance to this complaint though, is that from this point Prudential were entitled to consider that Mr H had access to regulated financial advice.

It appears that there followed the involvement of a different third party (Firm B) in advising Mr H. I explained in my provisional decision that I'd seen no documentary evidence from Mr H of what that advice was or at what time it was provided. And the response to my provisional decision provided no further information on that point.

Prudential provided no evidence relating to correspondence or knowledge of Firm B. And I think, on balance, that Prudential received no correspondence from firm B. When the transfer went ahead in December 2014, it doesn't seem to have followed a new request for a transfer pack. Prudential explain that the first contact it had about the transfer was the request through the 'Origo Options' system. I don't think that Prudential would have been aware of any involvement of Firm B in any decision to transfer Mr H's pension.

Prudential wouldn't have been aware whether or not Mr H had been cold called in this case. But would have been aware that he had a regulated IFA as a recently appointed servicing agent. So could reasonably have concluded that Mr H had access to regulated financial advice.

The transfer request itself was made through the electronic transfer system Origo Options. Prudential have explained that receiving the transfer in that way provided reassurance that there wasn't anything untoward. Which I don't think was unreasonable. The system was in place to enable transfers between pension providers to be quicker and more efficient. And eliminate the need for written forms.

The request came from Rowanmoor Group who were an established and respected provider of SSASs. They weren't regulated by the FCA but didn't need to be to provide this type of occupational pension. Prudential have said that it understood Rowanmoor Trustees Limited acted as professional trustees which the application form for Mr H's SSAS corroborates. And I agree that the presence of independent professional trustees would have provided Prudential with an additional degree of confidence.

Prudential have shown that it confirmed that Mr H's SSAS was an HMRC approved UK based pension scheme. So wasn't obviously an overseas transfer. Prudential haven't indicated that it carried out any other due diligence checks. I've considered whether additional checks would have alerted Prudential to the risk to Mr H.

Checks with Companies House would have shown Prudential that Mr H was named as the sole director and sole shareholder of the company that the SSAS was set up for. There were no accounts that would have indicated the trading status of the company at that stage. It wasn't until 2016 that accounts for a dormant company were updated to the register. From Prudential's point of view, the company and therefore the SSAS would most likely have looked legitimate.

And the process through Origo Options was designed to be quick. Whilst Prudential had to consider the Scorpion guidance in its due diligence, it was also obliged to carry out the transfer where legislative requirements were met. Which they were here.

Taken as a whole, I don't think this would have appeared to be a transfer that carried a significant risk of fraud. The combination of an application through Origo Options from a reputable provider would have made the request seem legitimate from Prudential's perspective. The presence of a regulated financial adviser and professional trustees appointed to the receiving scheme would have been reassuring.

The guidance in the Action Pack was structured in such a way, that Prudential were only required to consider the questions in the checklist if any of the things to watch out for were present. And I've seen no evidence that makes me think Prudential would have suspected any of these warning signs were present. So it isn't reasonable to conclude that Prudential had to go on to consider the checklist in the Scorpion Action Pack in this case.

In response to my provisional decision, Mr H's CMC referred to the checklist information in some detail. And highlighted those parts of the checklist that may have alerted Prudential to the risks associated with Mr H's requested transfer. But, I've explained why Prudential wouldn't have had to go on to consider the checklist in this case. It wouldn't have had to contact Mr H to obtain any further information to comply with the guidance.

Mr H's CMC has suggested that Prudential may not have done enough to satisfy itself that Mr H had a statutory right to transfer his pension to the SSAS. The relevant law is in sections 94 and 95 of the Pensions Schemes Act 1993. I won't list the sections in full as they can be found elsewhere. The impact on this transfer to an occupational pension scheme is that Mr H had to be an 'earner', to have the right to transfer. So Mr H had to be in paid employment.

The evidence presented so far doesn't show that Prudential had confirmation of Mr H's employment status. But if it sought this information from Mr H, it would have ascertained that he was employed. So was entitled to request the transfer.

I don't agree with Mr H's CMC's interpretation that in contacting Mr H to establish if he was employed, it would have revealed any warning signs of the presence of a pension scam. A request for Mr H to provide a pay slip would have satisfied Prudential that Mr H was employed. I don't think that Prudential had to phone Mr H to answer this question. The extent of its enquiry, would reasonably be limited to establishing that Mr H was employed. Prudential may have failed to satisfy itself fully that Mr H had a statutory right to transfer. Nonetheless, he did have. And any failing in checking didn't cause the subsequent loss that Mr H suffered after transferring.

The updated guidance in 2014 created a new Scorpion insert that was worded to warn of scams more generally than the 2013 version. TPR guidance in the Action Pack said, "*we're asking all trustees to include our pension scams scorpion insert in their annual benefit statements and when issuing transfer packs to members*". But Prudential weren't asked to provide a transfer pack for the December transfer.

The guidance wasn't clear about whether Prudential needed to send the insert in response to the Origo transfer request. No documentary correspondence was necessary. It was a feature of this type of transfer. So I can't reasonably say that Prudential were at fault in not sending the insert in this case. It's unfortunate that Mr H didn't receive the July 2014 insert. But I don't think that was Prudential's fault, so I won't consider whether or not it would have mattered to any decision Mr H would've made about his pension transfer.

I explained previously that I think Mr H ought to have had the earlier Scorpion insert sent to him in March 2014. And I've considered whether Mr H may have acted differently with the transfer in December if he'd had that copy of the Scorpion insert then. The only warning sign that may have seemed relevant to Mr H may have been that he was approached out of the blue. But I don't think that an insert that highlighted 'cold-calling' alone would realistically have prevented this transfer around nine months later. As I've said, the warnings in that first Scorpion insert were targeted at the risks of pension liberation. Which weren't likely to have concerned Mr H as he was not at risk of, and didn't become victim of, that type of scam.

For the above reasons, I don't think that Prudential are responsible for the losses that Mr H suffered from this pension transfer. So won't be asking it to do anything to put things right.

My final decision

For the reasons given I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 April 2022.

Gary Lane
Ombudsman