DRN-3425107

The complaint

Mr R has complained, with the help of a professional third party, about the transfer of his personal pension, which was held with The Prudential Assurance Company Limited (‘Prudential’) to a Qualifying Recognised Overseas Pension Scheme (‘QROPS’) in March 2016.

Mr R says Prudential failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr R says he wouldn’t have transferred to the QROPS, if Prudential had acted as it should have done.

What happened

On 3 November 2015, Mr R signed a letter of authority giving Prudential permission to provide information about his pension to a business called First Review Pension Services (‘FRPS’). FRPS was not authorised or regulated by the Financial Conduct Authority (‘FCA’).

On 17 November 2015, Prudential wrote to Mr R acknowledging his letter of authority and confirming it had sent the requested information to FRPS. Prudential said to Mr R it enclosed a leaflet about pension liberation fraud which the Pensions Regulator (‘TPR’) had requested be sent to all customers who request a transfer. And Prudential said Mr R should contact it if he had any questions.

I’ve seen a copy of the letter sent to FRPS on the same day, enclosing information. Prudential also wrote to a company called Moneywise Financial Services (‘MFS’) on 18 November 2015. This letter, which said it was a copy of that sent to FRPS and Mr R, said it referred to ‘your’ transfer request to an overseas pension and gave information about the processes and requirements for making such a transfer. Prudential has said it wrote to MFS as it was recorded as the servicing agent for the pension when it was first taken out in 1998. MFS was FCA regulated at the time.

On 25 February 2016, Optimus Pension Administrators Limited (‘OPAL’) wrote to Prudential requesting the transfer of Mr R’s pension benefits to the Optimus Retirement Benefits Scheme No.1 – a QROPS based in Malta. The letter said Integrated Capabilities (Malta) Limited (‘ICML’) was the registered scheme administrator.

OPAL said it enclosed Prudential’s overseas transfer form as well as HMRC forms and confirmed the receiving scheme was recognised by HMRC. A letter of authority, signed by Mr R, was also provided authorising Prudential to share information with OPAL and ICML. This letter said Mr R was *“happy for the transfer to proceed and would appreciate if this could go ahead with no further delays.”* And evidence was included showing the scheme had been registered in June 2014 and recognised by HMRC as a QROPS from August 2014.

Prudential has provided evidence that it carried out an internal check of its records in respect of OPAL which indicated no concerns. This was carried out on 24 March 2016.

Prudential wrote to OPAL, also on 24 March 2016, confirming it had made the transfer payment as requested. The amount transferred was £36,300.90. Mr R was 47 years old at the time. It also wrote to MFS on the same day, confirming the transfer had been made and referring to MFS having requested this on 2 March 2016.

In September 2020, Mr R complained to Prudential. He said he'd been cold called by FRPS who then arranged a visit to his home. He said FRPS had recommended that he transfer his pension to the QROPS. But FRPS was an unregulated party. Mr R said Prudential had provided documents to FRPS to enable the transfer, even though it wasn't regulated and hadn't done sufficient due diligence or appropriately warned him about the risks, particularly regarding advice from an unregulated party. Mr R says the value of the QROPS is now very low, the assets are illiquid and there is little chance of receiving any positive returns.

Prudential didn't uphold the complaint. It said after receiving a valid letter of authority it had provided transfer information in line with Mr R's instruction. Prudential said it sent Mr R The Pensions Liberation leaflet with its letter of 17 November 2015, making him aware of the risks. It said it had checked that the receiving scheme was on the QROPS list published by HMRC before proceeding and noted that it was still on the list now. And Prudential said it thought the complaint more related to the investment decision taken after the transfer, which was the responsibility of Mr R's advisor and the new scheme.

The complaint was referred to our Service. I issued a provisional decision in October 2024 explaining that I didn't intend to uphold Mr R's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

<u>*The relevant rules and guidance*</u>

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such Prudential 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 how personal pension providers deal with 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.*

In February 2013, TPR issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members to decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance 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 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. So, the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 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.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group ('PSIG') Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

<u>The March 2015 Scorpion guidance</u>

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short "insert", intended to be sent to members when requesting a transfer, and a longer booklet intended to be used for members looking for more information on the subject.

The March 2015 Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members *that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam "leaflet" in member communications. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available when members sought further information on the subject.*

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

<u>The PSIG Code of Good Practice</u>

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- *The PSIG Code includes an observation that: "A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.*

- *The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.*

- *Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*

- *The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.*

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in a member's interest.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

Mr R says he was cold called by FRPS and offered a free pension review. He says he was told these were being offered to all policy holders, that the free reviews were endorsed by the government and there was no suggestion FRPS was unregulated. He says FRPS told him that his Prudential pension was underperforming and "losing money quickly". FRPS said that by transferring he'd make far greater returns and his pension would grow significantly more than if he left it where it was. He says he was told this would mean he'd be able to draw a bigger pension in retirement.

Mr R says he felt slightly under pressure because he was told if he didn't transfer there was a chance he'd make a significant loss. Mr R says he understood that the investments would be diversified with money in property, bonds and stocks and shares. Mr R says he was not told any property would be overseas and was led to believe all of the investments made through the QROPS would be standard investments but would just achieve greater returns and he was assured he wouldn't be making any high-risk investments. Mr R says he wasn't offered access to his pension before age 55 or a cash incentive to transfer.

Mr R says he assumed, because FRPS had contacted him that they were regulated and if not, that Prudential would tell him otherwise. And he said he trusted the adviser and had no reason, at the time of the advice, not to believe them. He noted that, while "there are always slight doubts about most things we do in life", he expected if there were any perceived doubts that Prudential would have told him. But Prudential didn't contact him during the transfer process to discuss it.

I think Mr R's recollections are plausible. I've seen nothing to indicate that Prudential contacted him to discuss the transfer, beyond writing to him to confirm a request for information had been received and then confirming the transfer had gone ahead. And I think it was FRPS that Mr R likely spoke to. The letter of authority he completed was for this business and it was the party that requested transfer information from Prudential. As I mentioned, Prudential also wrote to MFS. But I've seen nothing to indicate MFS was in any way involved in this transfer or that it provided any advice to Mr R about moving to the

QROPS. Prudential has said it wrote to MFS because it was the registered servicing agent for Mr R's Prudential pension when it was set up in 1998. But there isn't any evidence of MFS responding to Prudential's letters or having any contact with Mr R around the time of the transfer. So, I'm satisfied that Mr R seems to have largely dealt with FRPS and that this was throughout the transfer process – which I think is supported by FRPS having certified it had seen Mr R's ID documents in February 2016, several months after the enquiry first began.

Mr R has said that it was the promise of greatly increased returns and being able to draw a bigger pension that persuaded him to transfer. Mr R doesn't appear to have had any prior connection with the QROPS or ICML. And he hasn't said that he had any intention of moving overseas – either to Malta, where the QROPS was registered, or anywhere else. I've also not seen anything to suggest Mr R had any more than a very limited experience of pensions and investments. So, in the circumstances I think it is unlikely he'd have sought to transfer his benefits to the QROPS on his own. And I think it likely was the promise of better returns, which I'm satisfied was made by FRPS, that persuaded him to do so.

I also think it is likely FRPS recommended the transfer. What it told Mr R, that his Prudential pension was underperforming, and he'd receive far better returns by transferring seems to have represented comparing the prospective benefits of the two schemes and suggesting the new scheme was more beneficial. I think this represented advice to transfer. And I think this advice was the catalyst for the transfer. But FRPS was unregulated and not authorised to provide advice to Mr R.

Statements for Mr R's pension show that the majority (over 98%) is invested in 'Resort Group – Property'. While the information is limited, I think this is likely to be The Resort Group ('TRG'). This is because, we've seen in a large number of other complaints that FRPS tended to be involved in securing investments into TRG. TRG's investments tended to involve fractional ownership of commercial property ventures in Cape Verde. And from what we know these are now largely illiquid with little market for re-sale – even though the pension statements don't necessarily reflect this and still attribute a value to the investment. So, I think Mr R is likely correct about the status of his pension.

<u>What did Prudential do and was it enough?</u>

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Prudential's letter to Mr R on 17 November 2015 referred to it including a leaflet about pension liberation. This was sent directly to him rather than via FRPS. And it said the sending of the leaflet had been requested by TPR. While the copy of the letter we've been provided didn't include the insert, on balance I think this was likely the Scorpion insert. So, I'm satisfied that Prudential did send this to Mr R and followed the PSIG code in this regard.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr R's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Prudential's actions using the 2015 Scorpion guidance as a benchmark instead.

As I've said the PSIG code includes an observation that a letter of authority being received, *from a business not authorised by the FCA, requesting transfer information would be a strong first signal of a scam. The request for information and letter of authority that Prudential received were from FRPS and only referred to that business. A quick search of the FCA database, which I think Prudential ought to have done, would have shown FRPS was not authorised. And so, ought to have flagged to Prudential that there was a potential risk here.*

The Scorpion action pack for businesses meanwhile said that if a member was asking for a transfer, businesses should use the checklist enclosed. It also included an infographic on how to spot warning signs and some of the most common tactics used by scammers. One of these was an overseas transfer of funds – which Prudential knew Mr R's transfer clearly involved. So, this too ought to have flagged to Prudential that further due diligence would have been appropriate.

But from what I can see, beyond checking its internal records for any recorded concerns about OPAL, Prudential seems to have done no further due diligence, including failing to contact Mr R about the reasons he was thinking of transferring.

Although Prudential's information showed there was nothing recorded about OPAL it is worth noting that the documentation says ICML was actually the scheme administrator. I also haven't seen anything to suggest that the receiving scheme was part of an accepted club or group. So, the initial triage process should have led to Prudential asking Mr R further questions about the transfer as per Section 6.2.2 of the PSIG code ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would likely have been answered "yes":

- *Did the receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*
- *Have you been informed of an overseas investment opportunity?*

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code also makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, I think in this case Prudential should have addressed all four areas of concern and contacted Mr R in order to help with this.

<u>What should Prudential have found out?</u>

Prudential did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mr R's rationale for transferring. If it had asked Mr R about this – which it should have done, using the framework outlined above – it would have found out he was transferring his pension following an unsolicited approach and that he was transferring to a type of arrangement more commonly used by people living overseas even though he wasn't intending to do that. More importantly though, I'm satisfied that Mr R would also have made Prudential aware that transferring had been recommended to him by FRPS – an unauthorised firm.

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that Prudential should therefore have been concerned by FRPS's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

<u>What should Prudential have told Mr R – and would it have made a difference?</u>

Had it done more thorough due diligence, there would have been a number of warnings Prudential could have given to Mr R in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). One of the most significant being the threat posed by a non-regulated adviser, which Prudential failed to uncover.

With those obligations in mind, it would have been appropriate for Prudential to have informed Mr R that the firm he had been advised by was unregulated and could put his pension at risk. Prudential should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. I don't think this would have been a disproportionate response given the scale of the potential harm Mr R was facing.

What I need to consider is whether further warnings would have changed Mr R's mind about the transfer.

As I've said, I'm satisfied that Prudential did provide Mr R the Scorpion insert. And I think this would've been the March 2015 version, given when it was sent. The front page made the statements "Pension scams. Don't get stung". It then explained "Scammers don't care whether you're an inexperienced investor or have never put your money anywhere other than a bank. They will try to flatter, tempt and pressure you into transferring your pension fund into an investment with guaranteed returns. Once the transfer has gone through, it's too late. Remember, the only people who benefit from scams are the scammers themselves." It then went on to explain how to spot warning signs by setting out some of the most common tactics used by scammers. The things listed were:

- *Being cold called, receiving a text message, a website pop-up or a doorstep caller offering a 'free pension review', 'one-off investment opportunity' or 'legal loophole'.*

- *Convincing marketing materials that offered returns of over 8%.*

- *Pension access before age 55.*
- *Documents being delivered by courier for immediate signing.*
- *The overseas transfer of funds.*
- *The suggestion to put money into a single investment (noting in most circumstances advisers will suggest diversification).*

At least two of those warnings applied to what Mr R has said he was told. Mr R has said he was cold called and offered a free pension review. And the transfer involved moving his funds overseas to a QROPS. While he has said he didn't know any property investments would be based overseas, I think he would have known from the documents he completed that the application was to join an overseas pension scheme. And from what we know from other complaints that our Service has considered, about how FRPS tended to conduct sales, it's also likely to have used convincing marketing materials.

In addition, Mr R has said he was inexperienced. And the initial explanation within the Scorpion leaflet referenced this as being something that scammers did not care about. With the implication being it was something they exploited. The initial introduction also said scammers would attempt to pressure people into transferring – something Mr R has acknowledged feeling.

After listing the signs of a scam, the leaflet went on to explain steps that could be taken. These were to not be rushed into a decision, call TPAS before signing anything and making a report to Action Fraud if an offer had already been accepted. It concluded by saying "arm yourself with the facts and stop a lifetime's savings being lost" and provided a link to the pension scams website, to find out more. Additional information given for individuals, via this website, included to make sure their adviser was approved by the FCA. But it doesn't appear that Mr R took any of these suggested actions, despite there being several parallels he should have drawn between the description in the Scorpion leaflet and what he was being offered.

I think most people acting rationally would generally be somewhat wary of being approached out of the blue, particularly to talk about such a significant financial product as their existing pension provisions. And Mr R has acknowledged that he had doubts. But he said he was reassured by what the adviser said, particularly about reviews being offered to all consumers. But even if the person he spoke to might have seemed persuasive and genuine, the Scorpion insert warned that scammers commonly tried to tempt people into a transaction. And if he was in any doubt, I think these warnings ought to have resonated more with him, rather than, as he says, him assuming everything was ok.

I believe the information in the Scorpion insert at that time gave stark warnings about the risks of falling victim to a scam. The document was clearly headed as referring to pension scams. It reiterated the point that scammers are acting for themselves and not in a consumer's interest. It listed the warning signs to look out for and referred to these as being common tactics of scammers. And it said what consumers should do before signing anything. These are strong warnings. And, as I've explained, they were relevant to Mr R's circumstances.

But Mr R evidently ignored those warnings and didn't seek the further information he was directed to. Given Mr R didn't heed or act on strong, easy to understand and relevant warnings about the scam risk he was potentially facing, I don't think it would be reasonable to say a further warning from Prudential would have prompted Mr R to reconsider his transfer. The contemporaneous evidence doesn't, in my view, support that argument.

Summary

For the reasons I've explained, I don't think Prudential did everything that it should have in respect of this transfer request. I think it should have done further due diligence. But Mr R received the Scorpion insert, which highlighted a number of the same areas of concern Prudential would have uncovered through further due diligence. This did not dissuade Mr R from proceeding with the transfer. So, in the specific circumstances of this complaint I don't think further warnings from Prudential would have led to him abandoning the transfer.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Prudential didn't provide any further comments for me to consider.

Mr R's representative said they did not accept my findings as they said I'd overlooked Prudential's lack of due diligence and my findings were not consistent with precedent set in other complaints, including several the Financial Ombudsman Service had considered and upheld. The representative said in other complaints we'd said:

- Where unregulated advisers were involved, businesses needed to investigate and warn consumers of this.
- Ceding schemes needed to assess and communicate the risks involved with overseas investments.
- Issuing the Scorpion leaflet alone did not satisfy the level of due diligence expected.

As these things were present in Mr R's complaint the representative said it should therefore be upheld.

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've reached my decision based on the specific circumstances in Mr R's individual complaint. These are different to those in complaints and transfer requests made by other consumers. So, while Mr R's representative has referred to conclusions reached in other complaints which they believe share similarities with his, I'm not bound by those findings. And the individual circumstances of a complaint, while appearing similar, may well result in different outcomes.

Mr R's representative has said I overlooked Prudential's lack of due diligence. But I disagree. I explained in my provisional findings that I didn't think it had done everything it should have. While it sent the Scorpion insert and checked its internal records, I thought the PSIG Code should have prompted it to ask further questions. And I said those would have led to it becoming aware of certain aspects of the transfer – Mr R being contacted unsolicited, overseas investment, the involvement of an unregulated party – that the Scorpion guidance and PSIG Code warned about. Which it could in turn have set out to Mr R in additional correspondence. Likewise, I didn't say that issuing the Scorpion leaflet meant Prudential had done everything that it needed to or that this meant it didn't have to carry out further due diligence. But a business not doing everything that it should have done does not automatically mean that a complaint should be upheld.

As I've said, Prudential could've provided further warnings to Mr R in addition to the Scorpion leaflet. But what I need to decide is whether that would have led to him being in a different position than he is now.

I'm satisfied Prudential sent Mr R the Scorpion leaflet. The information in the Scorpion leaflet at that time gave stark warnings about the risks of falling victim to a scam. The document was clearly headed as referring to pension scams. It reiterated the point that scammers are acting for themselves and not in a consumer's interest. It listed the warning signs to look out for and referred to these as being common tactics of scammers. And it said what consumers should do before signing anything. These are strong warnings.

As I explained in my provisional findings, several of those were relevant to Mr R's circumstances. It talked about scammers using pressure to persuade people to transfer – something Mr R says he felt at the time. He says he was cold called and offered a pension review – which the leaflet warned was a trick used by scammers. He was also transferring his money overseas, to a QROPS. I'm satisfied Mr R would've been aware this was where his money was being transferred to. And transferring overseas was another warning sign the leaflet highlighted.

The warnings in the Scorpion leaflet were clear and easy to read. Several things were highlighted that Mr R should be wary of that were directly relevant to his transfer. And the leaflet provided Mr R with clear direction about where he could obtain further information. Although he may no longer remember doing so, on balance I think Mr R likely read this information. The covering letter was only a page long and other than acknowledging the request for information its main aim appears to have been to direct Mr R to the leaflet. And the leaflet itself, which appears to have been the only enclosure, was succinct and, due to the striking imagery used, I think Mr R would've been unlikely to miss this.

So, given Mr R didn't heed or act on strong, easy to understand and relevant warnings about the scam risk he was potentially facing, I explained in my provisional findings I didn't think it would be reasonable to say further warnings from Prudential would have prompted him to reconsider his transfer. And having considered the matter again, I haven't seen anything that leads me to change my opinion about this, in the specific circumstances of Mr R's individual complaint.

I know this will come as a disappointment to Mr R but, while Prudential could have done more here and provided further warnings, for the reasons I've explained I think Mr R would ultimately have still been in the same position. So, I don't require Prudential to do anything here.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 December 2024.

Ben Stoker
Ombudsman