DRN-3472703

The complaint

Mr G has complained about the actions of The Prudential Assurance Company Limited ("Prudential") when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2016. Mr G's pension was subsequently used to invest in various assets, including those managed by The Resort Group ("TRG"). TRG is an overseas commercial property scheme that has since run into trouble. Mr G says he has lost out financially as a result of Prudential's actions.

Mr G says Prudential failed in its responsibilities when dealing with his transfer request. He says that Prudential 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 G says he wouldn't have suffered the losses he did if Prudential had acted as it should have done.

What happened

On 16 December 2015, the administrator of the Elmo International Retirement Plan ("the Elmo Scheme") sent Prudential paperwork requesting it transfer Mr G's personal pension to the Elmo Scheme. Included in the paperwork were various Prudential discharge forms and disclaimers that had been signed by Mr G, and a letter from HMRC which said the Elmo Scheme had declared it met the requirements to be a QROPS and, as such, HMRC would allocate it a reference number and include the scheme name on its website.

On 23 December, Prudential wrote to Mr G requesting further documentation. This was returned and shortly afterwards – on 19 January 2016 – Prudential wrote to Mr G, and a firm called Financial Review Pension Services, to confirm the transfer had gone through. The transfer value was approximately £90,000.

Mr G also transferred a smaller personal pension from a different provider to the Elmo Scheme the following month. I'll refer to this other provider as "Firm B". Ahead of that transfer, Firm B wrote to Mr G to say it had conducted "routine due diligence", the result of which had prompted it to highlight a number of points for Mr G to consider. The letter, which was sent on 1 February 2016, said:

- Mr G was resident in the UK but was transferring to a QROPS which would typically only be suitable for those living outside the UK or planning to do so.

- Payments from a QROPS can incur additional tax charges if the policy holder is resident in the UK at the time of payment.

- A QROPS isn't covered by the Financial Services Compensation Scheme ("FSCS") meaning there may not be the same level of financial protection should the receiving scheme get into financial difficulties.

- Mr G didn't appear to have taken advice from a regulated UK financial adviser.

- Mr G had been in contact with a firm called First Pension Review which wasn't authorised to provide advice. As such, Mr G should "not place any trust in any advice provided by them being suitable."

- Mr G should consider taking advice from an independent financial adviser authorised by the Financial Conduct Authority ("FCA") to give advice on pensions. A website was given to help Mr G find such an adviser, along with the website for The Pension Advisory Service ("TPAS").

Enclosed with the letter was a "guidance booklet" from The Pensions Regulator ("TPR"). Firm B said this was aimed at educating members about the risks of transferring a pension. This relates to the anti-scam "Scorpion guidance", the details of which I cover later.

The letter went on to ask Mr G to confirm whether he wanted to proceed with the transfer, otherwise it would be cancelled after four weeks. Mr G wrote to Firm B to confirm he had received the letter and that he still wanted to transfer.

Shortly after the transfer of his two personal pensions, Mr G transferred from the Elmo Scheme to a different QROPS and then withdrew tax-free cash of £27,000. Mr G hasn't been particularly clear about what investments he made with his residual funds. But I've seen a QROPS statement from 2019 showing an investment in TRG and correspondence relating to the appointment of discretionary fund managers.

In February 2020, Mr G (with the help of a claims management company) complained to Prudential (and Firm B). Briefly, his argument is that Prudential failed to do adequate due diligence on the transfer and failed to contact him ahead of the transfer in order to warn him about the risks he was taking.

Prudential didn't think it had done anything wrong. It said, in brief, that it had conducted due diligence and hadn't found any reason to prevent Mr G exercising his right to transfer. It said it had sent Mr G the Scorpion warning leaflet. And it said Mr G's complaint was more about the performance of his scheme's investments, the suitability of which wasn't Prudential's responsibility. As such, it thought it would be more appropriate for Mr G to complain to other parties such as the administrators and trustees of his QROPS.

Our investigator didn't uphold the complaint. Mr G asked for an ombudsman to decide on his case.

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.

<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 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, 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 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 PSIG Code of Good Practice. The intention of the 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.

The March 2015 Scorpion guidance

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 where appropriate (for instance, when members requested 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 where appropriate.

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.

The PSIG Code of Good Practice

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 PSIG 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>

We have asked Mr G a number of questions about the transfer. Unfortunately, he doesn't remember much about it – how it came about, who he spoke to, what he was told, and so on. However, it's evident from Mr G's answers, and from what he has told us about his circumstances at the time, that he wasn't knowledgeable on pension and investment matters. As such, I think it would be fair and reasonable to conclude that he wouldn't have decided to transfer his pension to an esoteric arrangement – a QROPS – in order to invest in non-standard assets without significant help from someone else.

That "someone" appears to have worked for First Review Pensions Services Limited. In his complaint to Prudential, Mr G's representatives at the time mention "First Review", albeit briefly. Prudential also sent a letter to "First Review Pensions Services" confirming the transfer to the Elmo Scheme had gone through. And the letter Firm B sent to Mr G said he had been in contact with "First Pension Review" whose advice he should not trust.

With that in mind, I'm satisfied First Review Pensions Services Limited ("FRPS") played a significant role in Mr G's transfer. I'm also satisfied that FRPS went as far as *advising* Mr G to transfer out of his personal pension. For the reasons given above, there isn't especially compelling evidence to show that. But, on balance, I'm satisfied Mr G wouldn't have transferred unless he had been told his pension would perform better for doing so – a recommendation to transfer his personal pension in other words. And, on balance and for the reasons given above, I consider FRPS as being the most credible candidate to have given that recommendation. FRPS wasn't authorised to give such a recommendation.

In coming to that conclusion, I've considered a written report Mr G was provided with which gave background information on his proposed QROPS and investments (TRG included). It's not clear who wrote that report or when it was sent (or given) to Mr G because there's no letterhead and it's undated. Mr G's representatives haven't given any commentary on it either. But based on what I know of similar transfers, it's likely that the Elmo Scheme required Mr G to have such a report ahead of opening his QROPS. As Mr G hasn't given much weight to the report, and as its aim was to provide background information, I'm satisfied it doesn't change my findings in relation to FRPS.

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

The Scorpion insert:

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 where appropriate (for instance, when members requested more information on the subject).

When Mr G complained, his representatives at the time said Prudential had sent him the Scorpion "leaflet". Whilst it isn't clear from this whether this was the shorter or longer version of the Scorpion warning materials, either would have sufficed. So I'm satisfied with Prudential's actions here.

Due diligence:

Prudential has said it conducted due diligence on Mr G's transfer because it had evidence that the Elmo Scheme was a QROPS and listed as such by HMRC. It was therefore a legitimate destination for transfer funds. It said it had no reason to prevent Mr G exercising his right to transfer.

The steps Prudential took were a necessary part of the due diligence process. And it's correct to point out that ceding schemes typically can't block a transfer except in very specific circumstances. However, Prudential has misread the extent of its obligations here. The Scorpion guidance and PSIG Code meant there was far more that Prudential should have done.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes dealing with transfer requests. I've therefore considered Mr G's transfer in that light. But it wouldn't 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.

Although Prudential's due diligence was brief, it hasn't argued that it fast-tracked Mr G's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. Nevertheless, for completeness, it's worth noting the transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Prudential hadn't already identified the receiving scheme/administrator as being free from scam risk. In fact, other than the destination of Mr G's transfer, it's apparent that Prudential knew very little about Mr G's transfer.

So the initial triage process under the Code should (if deployed) have led to Prudential asking Mr G further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least one of them (and most likely more) would have been answered "yes": "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 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 G in order to help with this.

Prudential did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mr G's rationale for transferring. If it had asked Mr G about this – which it should have done, using the framework outlined above – it would have found out Mr G was transferring to an arrangement that was designed for people living overseas even though he wasn't intending to do that. Mr G was, and remains, resident in the UK. It would also have found out that the reason for transferring overseas was to invest, in part, in TRG which was an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

I'm also satisfied Mr G would have said that he was being advised to transfer by FRPS had Prudential asked him about this, as it should have done under the Code. 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) makes 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.

I appreciate that if Prudential had spoken to Mr G then the due diligence process wouldn't have necessarily followed a neat, linear, path. But I think it is fair to say that Prudential wouldn't have needed to progress too far through the Code, or asked too many questions of Mr G, for various warning signs to have become apparent. And if Prudential had followed the Scorpion action pack, similar findings would have followed.

<u>What should Prudential have told Mr G – 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 G: he was transferring his pension overseas even though he was resident in the UK and despite the potential loss of some financial protections that could follow; the tax treatment of a QROPS may not have been advantageous for him; and the TRG investment was the type of investment that the Scorpion guidance and PSIG Code had highlighted. It would also have been appropriate for Prudential to have informed Mr G that the person, and firm, that 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. Prudential's failure to conduct sufficient due diligence and warn Mr G accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

However, in my view, any warnings along the lines of the above wouldn't have made a difference to Mr G. I say this because there's contemporaneous evidence of what Mr G actually did when faced with those warnings – he transferred anyway. Firm B provided those warnings in its letter of 1 February 2016. To recap, Firm B warned Mr G about some of the risks he was potentially facing which included: advice from an unauthorised and therefore untrustworthy source; loss of FSCS protections; potential tax charges; and the likely unsuitability of a transfer to a QROPS for someone resident in the UK. Firm B also told Mr G what he could do to protect himself which included taking advice from an adviser authorised by the FCA, how to find such an adviser, familiarising himself with the booklet produced by TPR – the Scorpion warning materials in other words – and going to TPAS. As none of this prompted Mr G to reconsider the transfer from Firm B, I see no reason why something similar from Prudential would have made a difference.

I also note that Prudential sent Mr G the Scorpion warning materials. Whilst it's unclear whether this was the shorter or longer version of those materials, it doesn't ultimately make a difference to my decision because even the shorter version provided Mr G with warnings that had parallels with his own situation. It opens with the following statement, which closely describes the situation that was facing Mr G:

"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 goes on to highlight a number of warning signs, including cold calls, free pension reviews, one-off investment opportunities and transfers of funds overseas. So, even if Mr G was sent just the shorter version of the Scorpion warning materials, he would still have been given warnings that were applicable to his situation. But he transferred his Prudential pension anyway. So even putting aside what Firm B did, it's evident Mr G transferred his Prudential even after receiving relevant warnings.

On balance, therefore, I'm not persuaded Mr G would have changed his mind had Prudential conducted more thorough due diligence and done more to warn him about the risks he was facing. Mr G's actions at the time indicate he wouldn't have heeded such warnings.

It follows that I don’t uphold Mr G’s complaint.

My final decision

For the reasons given above, my final decision is to not uphold Mr G’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 21 January 2025.

Christian Wood
Ombudsman