DRN-3592627

The complaint

Mr S has complained, with the help of a professional third party, about a transfer of his personal pension, that he previously held with The Prudential Assurance Company Limited ('Prudential'), to the 5G Futures Pension Scheme ('5GFPS') in March 2013.

Mr S 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 S says he wouldn't have transferred if Prudential had acted as it should have done. And as a result, wouldn't have incurred the losses he says he now has – noting The Pensions Regulator ('TPR') had said it believed the 5GFPS was a vehicle for pension liberation and has appointed new independent trustees.

What happened

Mr S says he was cold called and offered a free pension review to see if he could obtain better returns on his pension. He says he was also told he could take a lump sum from the pension, interest free.

On 15 January 2013, Mr S signed a letter of authority allowing Portland Wealth Associates / Portland (UK) Ltd ('Portland') to obtain details, and transfer documents, in relation to his pension. On 18 January 2013, Portland wrote to Prudential, enclosing Mr S's letter of authority and information request.

I understand Prudential sent Portland the requested information on 24 January 2013. Portland wasn't regulated or authorised by the Financial Services Authority ('FSA') the regulator at the time. Prudential also sent a copy of the documents to ADF Financial Services. It has explained that the reason for copying in ADF was they were noted as the servicing agents for Mr S's pension at the time. But I haven't seen anything to suggest that ADF (who were previously registered with the FSA but only until 2009) provided any advice or was in any way involved in the transfer that is the subject of this complaint.

In February 2013, 5G Wealth Management Ltd ('5GWM'), the administrators of the 5GFPS, wrote to Prudential requesting it transfer Mr S's policy to the 5GFPS. 5GWM was not regulated by the FSA. The documents sent included:

- A 5GFPS application to transfer form, signed by Mr S on 8 February 2013. This said that Mr S confirmed his nominated adviser / consultant was a business called Alliance Wealth Ltd ('AWL'). AWL was also not regulated or authorised by the FSA.

- A letter from 5GWM dated 14 February 2013, confirming details of the 5GFPS, that it was a registered pension scheme under the Finance Act 2004 and that it was registered with HMRC.

- A completed version of Prudential's receiving scheme declaration form, signed by 5GWM on 26 February 2013. This form had questions about the receiving scheme, including what type of pension arrangement it was. The option for 'Individual

Personal Pension Scheme' was ticked with 'SIPP' handwritten on the form (a SIPP being a self-invested personal pension).

- Pension Scheme information from HMRC which confirmed that the 5GFPS was registered on 23 May 2008 but also that it was an Occupational Pension Scheme ('OPS').

Mr S's pension was transferred on 5 March 2013. His transfer value was £30,685. He was 51 years old at the time of the transfer.

I've seen a letter from AWL to 5GWM confirming an instruction to invest £28,235 of Mr S's pension in Panther Equities Ltd – an unregulated investment in a property development company involving loan notes.

In May 2013, TPR appointed independent trustees to the 5GFPS. TPR's concerns, amongst other things, included that the scheme had been used as a vehicle for pension liberation and scheme funds had been invested inappropriately. Mr S has said that he did not receive any payments from the pension pot or provider. And he confirmed the same to the independent trustees.

In November 2020, Mr S complained to Prudential. Briefly, his argument is that Prudential ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included that he had been cold called, he hadn't received regulated advice but rather unregulated introducers / advisers had recommended the transfer, he'd been told he could access money from the pension before age 55 and the receiving scheme had been re-registered in January 2013 shortly before the transfer. Mr S said he was disabled and reliant on benefits, he'd been pressured to go ahead by the party that contacted him and the catalyst for the transfer had been the call and advice from the unregulated business.

Prudential didn't uphold Mr S's complaint. It said Mr S had made a formal written request to transfer to an HMRC registered scheme and it had no evidence at the time to suggest that this would have been an unauthorised transfer or that the scheme may be used for pension liberation. It noted that TPR had introduced guidance after the transfer was requested but before it was completed – the 'Scorpion' guidance. But it said it was accepted that pension providers had a period of grace to embed this guidance into their processes. So, it didn't think it had done anything wrong and that it had conducted an appropriate level of due diligence given the requirements of the time.

One of our Investigator's considered the complaint but didn't think it should be upheld. They didn't think Prudential ought to have had reason to suspect at the time that the transfer could be for pension liberation. And they didn't think it had made an error by not sending the 'Scorpion' leaflet to Mr S, as the guidance had only recently been introduced when the transfer was completed. Although they didn't agree with Prudential that the grace period was as generous as it had suggested.

Mr S's representatives said he did not agree. They acknowledged that the Scorpion guidance had only recently been introduced and had not been embedded by Prudential. But they still felt it shouldn't have agreed to the transfer. They said Mr S was unemployed at the time, so didn't have a statutory right to transfer. But Prudential hadn't checked this, and the representative felt they were obliged to do so. They also said there was an inconsistency in the documentation about how the pension was described – one saying it was a SIPP and the other an OPS. And unregulated advisers had been involved one of which, Portland, the regulator had published a warning about in February 2010, saying it was providing financial advice without authorisation.

Prudential said it didn’t think the minor administrative error in the paperwork in relation to the description of the receiving scheme was enough to say it ought to have had concerns about it being used for pension liberation. It also said, it was under the impression that AWL was advising here, not Portland. And even if Mr S didn’t have a statutory right to transfer, which it said it wasn’t obliged to check, he had a contractual right under the pension plan.

I issued a provisional decision in August 2024 explaining that I didn’t intend to uphold Mr S’s complaint. Below are extracts from my provisional findings, explaining why.

The relevant rules and guidance

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

- *The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.*

- *On 10 June 2011 the FSA, the then regulator, issued a warning about the dangers of “pension unlocking” which specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.*

- *At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*

- *At the time of Mr S’s transfer, Prudential was regulated by the FSA – the FSA was succeeded as regulator by the Financial Conduct Authority (‘FCA’) in April 2013. As such, it was subject to the 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 rules governing pension transfer requests, but the following have particular relevance:*

  - *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.*

It's also worth noting that on 14 February 2013, shortly after Prudential received the request to transfer Mr S's pension and just under three weeks before the transfer payment was made, TPR launched its "Scorpion" campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. It 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.

For reasons that I'll explain below, I think the campaign came too late to affect Mr S's transfer. But I highlight it here to illustrate the point that the industry's response to the threat posed by pension liberation was still in its infancy. And it was only from this point that transferring schemes had guidance to follow that was aimed at tackling pension liberation.

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

At the time it received Mr S's transfer request, personal pension providers like Prudential had to make sure the receiving scheme was validly registered with HMRC. Prudential had a copy of the current scheme details from HMRC for the 5GFPS which confirmed it was registered in May 2008. Prudential also had the scheme's Pension Scheme Tax Reference number. So, it had evidence that the scheme was validly registered with HMRC.

The information from HMRC also confirmed that the 5GFPS was an OPS. It is true that the Prudential application form, completed by the scheme administrators, gave a conflicting description of what type of scheme the 5GFPS was. But I don't think that is enough to say that Prudential should've delayed or refused the transfer here. In response to the complaint, Prudential put this down to an administrative error when the form was completed. I can't say for certain that this reflected what happened or for that matter Prudential's opinion at the time of the transfer. And it isn't clear if in fact this discrepancy was even noticed. But ultimately, bearing in mind the requirements of it at the time, I think it was reasonable of Prudential to rely on the information from HMRC about the scheme.

In addition to establishing that the scheme was validly registered, there was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering early access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

I'm satisfied nothing along these lines would have been apparent to Prudential at the time of Mr S's transfer. Although Mr S has said he was cold called and offered access to his pension funds before age 55, the paperwork that was provided to Prudential gave no indication that his interest in transferring followed a cold call or promotion offering early access to pension funds. And, given the guidance in place at the time the request was received, there was no expectation for Prudential to contact Mr S to see how his transfer had come about, who he'd spoken to or why he'd decided to transfer.

The letter of authority originally sent to Prudential was from Portland. And the FSA had published a consumer warning about this business in February 2010. The most recent update to that warning was in November 2013 – after the transfer here took place. And the nature of the warning was that Portland may have been providing financial services or products without permission. But the letter of authority Prudential received was only a request for information and transfer paperwork. It didn't say that Portland was providing a service, such as advice, to Mr S. The transfer paperwork that was later received by Prudential named a different business, AWL, as Mr S's nominated adviser / consultant. So, I don't think, based on the information available to it that Portland having provided a letter of authority again meant Prudential should not have proceeded with the transfer.

It is true that AWL also was not authorised by the FSA. And nor was 5GWM. But I don't think this reasonably ought to have given Prudential cause for concern. The FSA didn't regulate occupational pension schemes – which as I've explained HMRC stated the 5GFPS was – so I don't think Prudential would have necessarily expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. In any event, as mentioned previously, the FSA announcement about pension liberation mentioned that some advisers it regulated were involved in this very activity. So that doesn't suggest to me that, at that time, it considered the adviser's regulatory status as being a clear determining factor of whether liberation was taking place.

Where they were accompanied by the consumer's valid authority, a personal pension provider might also receive requests for information from other parties that might be engaged in some legitimate aspect of a consumer's financial affairs (accountants, tax or legal advisers, credit brokers, debt charities, introducers to authorised financial advisers and so on). But none of these other activities were required to be authorised by the FSA at the time either. So, sending information to an unregulated business, like Portland, ahead of the transfer, which Prudential did, wasn't problematic in itself and it wasn't something it needed to be mindful of when it came to processing the transfer. And when Prudential received the transfer request itself, it came directly from the scheme administrators, which again did not require FSA authorisation.

Mr S's representative have said Prudential needed to check that he had a statutory right to transfer and that he didn't, as he was not employed and therefore not earning. Notwithstanding that Prudential has said he had a contractual right to transfer regardless of the statutory right, I haven't seen anything that suggests Prudential ought to have been aware that he didn't have any earnings. None of the transfer paperwork that I've seen included questions about Mr S's employment status or his earnings. And in any event, I'm not aware of there being a regulatory obligation for Prudential to have checked this.

So, at the time of the transfer request, and by the reasonably expected standards of industry due diligence at that time, Prudential had no reason other than to conclude that Mr S had an employment link to the scheme requesting the transfer. And there is no basis on which I could reasonably expect Prudential to have investigated this further.

So, overall, I don't think there was anything present in the information that ought to have given Prudential reason for concern about the transfer, at the time.

As I've mentioned, the introduction of the Scorpion guidance on 14 February 2013 brought in a more extensive list of warning signs for businesses to be aware of. And the transfer payment wasn't made by Prudential until after this, on 5 March 2013. As I've explained above, I also don't think that the Scorpion guidance necessarily came "out of the blue" as there had been some warning by the FSA and TPR prior to its introduction. But at the same time, given the communication about the launch of the guidance were predominantly *expressed in terms that made its non-obligatory status clear and the tenor of the guidance is essentially a set of prompts and suggestions, not requirements, I think it's reasonable that pension providers would've needed time to review and consider this guidance and decide how to embed it into their processes. So, I think this guidance came too late here for it to have impacted Mr S's transfer.*

And lastly, I don't think it would be fair to say that Prudential ought to have put all transfers on hold while it worked through this guidance. I would expect an FSA-regulated personal pension provider at that time to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer request promptly (and in line with a member's rights). And indeed, even after the Scorpion guidance was introduced, the same expectation existed. So, I don't think it would be reasonable to have expected firms to suspend their transfer activity simply because new, and relatively informal, guidance had very recently been issued.

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 S's representative said that he didn't agree with my decision. They said they disagreed that Prudential didn't need, as a matter of course, to check if Mr S was employed and if a statutory right to transfer existed. And they said my opinion was not consistent with that the Pensions Ombudsman had expressed in other decisions. The representative also said that they thought any contractual right Mr S had to transfer only existed if he had a statutory right to do so, based on their review of the terms of the pension.

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 taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. I should also make it clear that I've reached my decision based on the specific circumstances in Mr S's individual complaint. These are different to those in complaints and transfer requests made by other consumers to other ceding schemes. So, while Mr S's representatives have referred to conclusions reached by the Pension Ombudsman, in complaints that they believe to be similar to Mr S's, I'm not bound by those findings. I'd expect a transferring scheme to assess each transfer request on its own individual facts. And that may well result in different outcomes based on what looks to be similar circumstances.

I've outlined the obligations businesses had in my provisional decision. I won't repeat them here other than to say I'm not aware of any rule or guidance that included an obligation for ceding schemes to check, as a matter of course, whether the transferring member was earning. If the information received as part of the transfer request indicated that the member was not employed, I might've expected Prudential to ask further questions about that. But there was nothing in the transfer paperwork here that I think would reasonably have led Prudential to believe Mr S was not earning. And it was reasonable for it to believe he had a statutory right to transfer.

Mr S's representatives have questioned whether he had a contractual right to transfer. But as I'm not saying that Prudential needed to rely on any contractual right, I don't need to make a finding on this point.

While I know this will come as a disappointment to Mr S, I still consider that Prudential has acted fairly here. At the time of Mr S's transfer, Prudential would have been expected to know what type of scheme it was transferring to and that it was correctly registered with HMRC. Prudential had this information. Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-scam due diligence or, as I've explained above, to check that Mr S was earning. The FSA's Principles and COBS 2.1.1R meant Prudential still had to be alive to the threat of pension liberation, and other types of scams, and act accordingly when that threat was apparent. But I'm satisfied there weren't any warning signs that it should, reasonably, have spotted and responded to here.

My final decision

For the reasons I've explained, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 October 2024.

Ben Stoker
Ombudsman