

## The complaint

Mr F has complained, via a representative, about a transfer of his Prudential Assurance Company Limited ('Prudential') personal pension to a small self-administered scheme ('SSAS') in June 2016. Mr F's SSAS was subsequently used to invest in Llana Beach Resort, an overseas commercial property development in Cape Verde. The investment now appears to have little value. Mr F says he has lost out financially as a result.

Mr F 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 F says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Prudential had acted as it should have done.

## What happened

On 16 May 2015, Mr F signed a letter of authority allowing Capital Facts Limited ('Capital Facts') to obtain details, and transfer documents, in relation to his pension. Mr F says this followed an unsolicited approach. On the same date, Capital Facts wrote to Prudential, enclosing Mr F's letter of authority. It requested information about Mr F's pension and discharge forms to allow a transfer. Prudential sent Capital Facts the requested information on 1 June 2015. Prudential wrote to Mr F on the same date confirming it had done that, and it enclosed with its letter a "*leaflet about pension liberation fraud which The Pensions Regulator has asked us [Prudential] to send to all customers who request a transfer.*" Capital Facts wasn't authorised by the Financial Conduct Authority ('FCA').

Mr F says he was attracted by the prospect of getting a better return on his pension, having been told by the person who contacted him that his pension was underperforming.

At the time, Mr F was employed as a lorry driver earning up to £40,000 a year, and he says he had no previous experience of investments or knowledge about pensions.

In June 2015, a company was incorporated with Mr F as Director. I'll refer to this company as 'Business B.' On 30 July 2015, Mr F signed documents to open a SSAS with Cantwell Grove Limited ('Cantwell Grove'). Business B was recorded as the SSAS's principal employer. The SSAS documents provided to us include no mention of what the SSAS was to be used to invest in.

On 17 November 2015, Mr F's transfer papers were sent to Prudential. These were sent in by Cantwell Grove. Included in the transfer papers were: a letter from HMRC confirming that the SSAS had been registered on 2 August 2015, and a discharge form completed with the details of the SSAS.

On 26 November 2015, Prudential wrote to Cantwell Grove explaining it had to carry out due diligence checks on the transfer, and asking for confirmation that Mr F was an employee of Business B. Mr F signed a letter dated 10 December 2015 in reply that said he had received a call from First Review Pension Services ('FRPS') in respect of a pension review, and after consultation, he had decided to establish a SSAS with Cantwell Grove.

Also on 10 December 2015, Prudential sent a letter to a financial adviser firm I'll call 'Business D' and Mr F asking further questions about how the transfer had come about. Mr F signed a letter dated 5 January 2016 in response to those questions. Then on 25 February 2016, Prudential wrote to Business D and Mr F explaining that it was willing to make the transfer in accordance with his "*statutory and/or contractual right*," but that it had concerns about the circumstances surrounding the transfer which it went on to set out. I'll comment more on this later in the decision. It recommended to Mr F getting independent financial advice from an adviser authorised and regulated by the FCA, and it asked him to read an enclosed booklet from The Pensions Regulator ('TPR') about pension scams. It said if Mr F still wanted to proceed with the transfer, he needed to complete and sign an enclosed declaration form. Mr F signed that form on 9 March 2016.

Mr F's pension was transferred on 13 June 2016. His transfer value was around £32,500. He was 46 years old at the time of the transfer.

Later that month, Mr F went on to invest £29,500 in total from his SSAS in a fractional share of a unit at the Llana Beach Resort in Cape Verde. It seems the SSAS received income payments in connection with the investment over the years until 2019 when those payments stopped. As I understand it, the investment did not perform as expected and it now has little to no value. There are legal difficulties with the title to the property and there's no market for the investment, so it's illiquid.

In February 2022, Mr F's representatives wrote to Prudential setting out his complaint. Briefly, his argument is that Prudential ought to have carried out due diligence on the transfer and not allowed it to proceed on the basis it was unsuitable for him.

Prudential didn't uphold the complaint. It said it carried out the necessary due diligence on the transfer given the requirements of the time, and there was no evidence that suggested it had failed Mr F in any way.

Our Investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

### **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.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete, inconclusive, or contradictory, I've reached my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Before setting out the reasons for my decision, I'd like to confirm I've carefully considered everything that has been submitted to us in this case, although, for clarity, I haven't responded to every point that has been made. I've focussed my reasoning on what I consider to be the main points. I hope neither party will take this as a discourtesy.

### The relevant rules and guidance

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. 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, TPR, the Serious Fraud Office, 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 2000, 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.

In a similar vein, in April 2014, the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled ‘Protect Your Pension Pot’ the increase in the use of SIPP and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

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.

#### The March 2015 Scorpion guidance

The March 2015 update to the 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 pack 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.

## 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. (I noted the contents of some of those alerts earlier in my decision.)
- 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 interests 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 the interests of both parties.

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.

#### The circumstances surrounding the transfer: what does the evidence suggest happened?

Mr F said in his complaint that he was contacted by Cantwell Grove about a pension review, and advised to transfer his personal pension into a SSAS as his existing pension was underperforming. I haven't been provided with any additional recollections from Mr F about what happened here.

The documents I've seen from the time of the transfer indicate Mr F was contacted about a pension review, but not by Cantwell Grove. The letter of authority he signed gave Capital Facts the authority to obtain information from Prudential about his pension. The December 2015 and January 2016 letters to Prudential that Mr F signed both said that he had received a call from FRPS in respect of a pension review, and that after consultation he had decided to establish a SSAS with Cantwell Grove. At that time, one of the Directors of Capital Facts was also a Director of FRPS. So I accept Mr F received an unsolicited call about a pension review, and I've found it was FRPS, or someone representing them, that contacted Mr F.

The January 2016 letter also said Mr F wished to transfer to *"take advantage of the flexibilities of a SSAS, not present within other types of pension scheme,"* and that he had not received any financial advice to establish the SSAS or in relation to the transfer. The arrangement Mr F transferred to was complex and unusual considering his circumstances and his lack of experience of investments and knowledge of pensions. So I consider it unlikely he decided to enter into this arrangement on his own.

I note Prudential sent a copy of its December 2015 and February 2016 letters to Business D as well as Mr F. There's no other evidence of Business D's involvement in the transfer though. It seems to me from a screenshot of Prudential's records that Business D's involvement with Mr F's pension was likely in establishing the policy in the first place. I also note Mr F mentioned a different firm in his complaint that he said he received advice from. But there's no other evidence of that firm's involvement in the transfer either.

The evidence from the time is that Mr F was led to transferring his pension by a “consultation” with FRPS. What Mr F said in his complaint isn’t consistent with that. But I’m mindful the transfer took place a number of years prior to his complaint and recollections can fade over time. And Mr F signed the January 2016 letter which stated he had not received any financial advice about transferring. So I accept that the transfer came about in the way that letter described because that’s contemporaneous evidence of what happened, and Mr F was prepared to sign that at the time. Therefore it’s my finding that Mr F was persuaded to transfer by the opportunity to achieve a better return on his pension that was introduced to him by FRPS.

#### What did Prudential do and was it enough?

##### *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.

Mr F said in his complaint that Prudential did issue the “*pension liberation leaflet*” to him. Prudential’s June 2015 letter said:

##### ***“Enclosure***

*I have enclosed a leaflet about pension liberation fraud which The Pensions Regulator has asked us to send to all customers who request a transfer. Please read and retain this leaflet.”*

And Prudential’s December 2015 letter referred to “*the Pensions Regulator’s leaflet you have already received from us.*” So I’m satisfied a Scorpion leaflet was sent to Mr F with Prudential’s June 2015 letter. I think it would have been the shorter version of the March 2015 leaflet, given Prudential had just received a request for information about Mr F’s pension from Capital Facts.

There’s also evidence that Prudential sent Mr F the longer version of the Scorpion leaflet. I’ve seen an internal email from Prudential dated 23 February 2016 which said a copy “*of the Pensions Regulator seven-page pension scams booklet*” should be included with its letter to Mr F. Prudential’s letter that followed said, “*please read the enclosed booklet from TPR on pension scams. Further information on pension scams is also available on their website at [website address].*” Mr F signed the declaration form that was enclosed with that letter. So I’ve found Prudential also provided Mr F with the longer version of the March 2015 Scorpion leaflet.

##### *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 F’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.

I’ve looked at what due diligence Prudential carried out in this case to consider whether it was sufficient.

Further to the information it received in the transfer papers from Cantwell Grove, Prudential requested confirmation from them that Mr F was an employee of Business B. Before receiving Mr F's 10 December 2015 letter in response to that request, Prudential wrote to Mr F on that date asking a number of questions about how the transfer had come about. Prudential received a full response to its questions in Mr F's January 2016 letter to it. In summary, that letter said:

- He had received a call from FRPS in respect of a pension review, and after consultation, he decided to establish a SSAS and was introduced to Cantwell Grove by FRPS.
- He wanted to take advantage of the flexibilities of a SSAS that weren't present in other types of pension scheme. He used Business B to establish and sponsor the SSAS, and he had not received any financial advice to establish the SSAS.
- Business B was currently a dormant company and he had elected not to remunerate himself from it.
- He had not received any financial advice in relation to the transfer or the establishment of the SSAS, so there weren't any advice fees to be paid. Although after transferring, he was considering making an investment onto the "Aviva platform" which would be managed by Astute Financial Management UK Ltd.
- He enclosed a copy of the 'SSAS guide' that had been provided to him by FRPS before he had decided to establish the SSAS.
- His Prudential pension policy was the only policy being transferred to the SSAS.
- He didn't want to divulge any other employment details other than that he was employed as a Director of Business B.

Those responses led Prudential to establish concerns about Mr F's transfer that it communicated to him in its 25 February 2016 letter. Prudential explained, with reference to its regulatory obligations and guidance from TPR and the FCA in relation to potential pension scams, that:

*"We continue to have concerns about some of the circumstances surrounding the transfer and our willingness to proceed does not mean that we approve of or endorse the transfer. Our concerns include that you are under age 55, have established your own employer to set up a [SSAS] and you are investing your pension fund into an unregulated overseas investment.*

*You should also read the 'Pension Scam Alert' published on 26 October 2015 by the National Fraud Intelligence Bureau and the City of London Police that refers to cold calls to customers to transfer their pension and specifically relates to pension '...investments in alternative commodities such as hotel developments or property in Cape Verde...' available at [Action Fraud website address]."*

The concerns Prudential identified and informed Mr F of in this letter are highlighted in the PSIG Code as warning signs of a potential pension scam. Those concerns, and the fact they were communicated to him in the context of a letter warning about the risk of a potential pension scam in his transfer, ought to have resonated strongly with Mr F. They were warnings identified in his specific transfer.

Additionally, what Prudential said about the 'Pension Scam Alert' also ought to have resonated with Mr F. Mr F has said in his complaint that he's not aware of where or what his pension was invested in. However, Prudential's letter pointed out that he was investing in unregulated overseas investments. And he would have known he had been cold called about a review of his pension. A copy of the Alert wasn't enclosed with the letter, however, Prudential stated that it had been published by the National Fraud Intelligence Bureau and the City of London Police, that he should read it, and it provided a website address for it. So I see no reason why Mr F wouldn't have reasonably read it.

Mr F said in his complaint that Prudential didn't notify him of anything untoward about the transfer. This simply is not true. Prudential explained in the letter that it was willing to carry out Mr F's transfer in accordance with his "*statutory and/or contractual right to require us [Prudential] to do so.*" It also strongly recommended to Mr F seeking independent financial advice from an adviser authorised and regulated by the FCA. Given everything it said in the letter, I don't think Prudential's willingness to carry out the transfer could have reasonably undermined the concerns it communicated to Mr F about the transfer. Furthermore, the letter explained that if Mr F still wanted to proceed, Prudential required him to sign and date a declaration form enclosed with the letter, acknowledging it had raised concerns about the transfer because it could involve a potential scam, and confirming he had read the Scorpion leaflet. Mr F signed that form on 9 March 2016, so I'm satisfied he received and read Prudential's letter.

## **Conclusion**

In summary, I find Prudential met its responsibilities to Mr F in dealing with his transfer request. Prudential gathered sufficient information about the transfer to identify numerous warning signs of a potential pension scam. It provided those warnings to Mr F in the letter and the enclosed warning materials it sent him. And before proceeding to carry out the transfer, it obtained confirmation from Mr F that he had considered the warnings provided to him and that he still wanted to proceed. Therefore it's my view that Prudential carried out sufficient due diligence of Mr F's transfer.

I note Mr F's representatives have argued that Prudential should have refused to carry out the transfer on the basis that Mr F had not received regulated advice, and the transfer value of his pension was more than £30,000. I understand this to be in reference to s.48 Pension Schemes Act 2015, which explains that regulated advice is required in the transfer of a pension that includes safeguarded benefits. But Mr F's pension did not include safeguarded benefits, so I don't agree this would have been a valid basis for Prudential to have refused to carry out the transfer.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 January 2025.

Asa Burnett  
**Ombudsman**