DRN-4961013

The complaint

Mr A has complained about a transfer of his The Prudential Assurance Company Limited ('Prudential') personal pension to the Focusplay Retirement Benefit Scheme ('the scheme') – an occupational pension scheme ('OPS') – in February 2016. The scheme has been suspected of being involved in pension liberation and its benefits are thought to have little value. Mr A says he has lost out financially as a result.

In essence Mr A says Prudential failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him that an unregulated firm was advising him on the transfer and investments. Mr A asks to be restored to the position he would have been in had he not transferred his pension.

What happened

Mr A's representative has not provided much detail about Mr A's recollections of the events leading up the transfer of his pension. So, the following is taken from the available documentary evidence from the time.

On 26 May 2015, Mr A signed a letter of authority allowing Gleeson Bessent Trustee Services Limited ('GB') to obtain details, and transfer documents, in relation to his pension. GB was the trustee of the scheme. The same day Mr A also completed and signed an application to join the scheme. This involved Mr A declaring that he had not been paid or offered a financial incentive to join the scheme, he'd read and understood the two leaflets The Pension Liberation fraud transfer pack insert for members and The Pension Liberation fraud awareness leaflet for members.

The application also recommended Mr A take independent advice from an 'appropriately qualified' adviser. Mr A ticked to say that he had not been advised by 'an FSA [sic] regulated Financial Adviser' on the establishment of the scheme and any investments within it. The application also included a fee agreement to pay £500 + VAT to "my Adviser/Consultant/ Intermediary" despite no adviser seemingly being involved.

On 2 June 2015, GB submitted Mr A's transfer papers to Prudential. The covering letter provided with the papers referred to enclosed 'supporting documentation as per the attached checklist.' While the enclosures aren't listed or included with the letter, from the evidence provided by Prudential, it appears GB likely enclosed the following:

- A printout from HMRC's website confirming that the scheme had been registered since 2 May 2013.
- A printout from The Pension Regulator's ('TPR') website of the information it held about the scheme (dated July 2014), including the trustees.
- A deed of substitution and participation showing that Focusplay Limited, the current principal employer was retiring in favour of the new employer of the scheme Lola Investments & Marketing Limited. The trustee remained the same.

- An “About us” sheet confirming amongst other things the pedigree of the trustee company – referring to its long trading history as a firm of accountants. This included a declaration from the trustee confirming that the scheme wasn’t intending to make unauthorised payments; no individual involved in the scheme was involved with a previous scheme that was deregistered or subject to any investigation; held written confirmation from the member that they hadn’t been offered any incentives to transfer and was aware of the consequences of unauthorised payments; and that the member had read and understood the TPR pension liberation leaflet entitled “Predators Stalking [sic] Your Pension”.

On 12 August 2015, Prudential wrote to Mr A asking him to sign a transfer value acceptance form and to get a declaration signed by the new pension provider. These documents were returned to Prudential in October 2015 along with a revised letter of authority Prudential also asked for (the previous one had amendments which were not signed or initialled.)

On 27 October 2015, Prudential wrote to GB. It said to allow it to proceed with the transfer, as part of its due diligence checks it required details of the scheme’s investment providers and scheme administrator confirmation that Mr A as the member was an employee of the employer establishing the scheme.

The same day, Prudential also wrote to Mr A. It referred to receipt of his transfer request and said that it was unable to proceed with the transfer until it had received the information I referred to above from GB. It said in addition, it also required copies of promotional material, emails or letters Mr A had received about the scheme, details of how he became aware of the scheme and what he’d been told about it.

On 4 November 2015, GB replied to Prudential’s information request enclosing details of the investment providers, which included Strategic Aero Limited (an aerospace services company), Farina Investments Limited (a boutique corporate finance and asset management company), and Sport 80 Limited (a sports management and events company). It also enclosed a letter on Lola Investment & Marketing Limited headed paper to say that Mr A was employed by it and that the company was associated with the scheme.

On 16 November 2015, Mr A replied to Prudential saying that he was made aware of the receiving scheme by his employer and that he was happy with the information he’d been provided with about the scheme.

On 7 January 2016, Prudential wrote to Mr A again. The letter said that it had outstanding requirements in relation to other transfer requests to the scheme and it was waiting for HMRC to answer its questions. It said things couldn’t be progressed until then, but in the meantime it asked Mr A to provide some further information. It asked him to answer the following:

- Who introduced him to GB and how he became aware of them?
- Had he received advice in relation to the transfer request? If so, by whom? And if regulated by the Financial Conduct Authority (‘FCA’) provide their reference number.
- How he intended to pay for any fees for the advice?
- Is the Prudential pension the only plan being transferred to the scheme?
- What fees will be applied for putting him into membership of the scheme and how will they be paid – e.g. deducted from the transfer value or paid separately?

- Could he provide a copy of his employment contract with Lola Investments & Marketing Limited and a copy of his latest pay slip?
- When did he join the scheme?
- Is Lola Investments & Marketing Limited contributing to the scheme?

The letter said that Mr A was aware why Prudential was asking for this information from TPR's leaflet it had already sent him. And it referred him to TPAS' website for further information about transfers, the potential tax consequences of unauthorised payments and pension liberation plans.

On 18 February 2016, Mr A replied to Prudential. He said he became aware of GB by his employer; he hadn't received financial advice; his Prudential plan was the only plan being transferred; and he joined the scheme on 1 June 2015. Mr A also said that he had sent a recent pay slip, a copy of his contract of employment and a pension contribution statement.

On 23 February 2016, Prudential transferred Mr A's pension benefits to the scheme – an amount of around £18,100.

On 14 March 2016, a company called the Enduro Partnership wrote to GB to say that it was in receipt of the signed placing documents for Mr A's investment, which included the three companies I referred to earlier on. It said it was in receipt of the payments and the investments had been made.

In March 2017 the trustee companies, Gleeson Bessent Trustee Services Ltd and Gleeson Bessent Trustees Ltd, were wound up in the public interest by The Insolvency Service. And in May 2017 TPR appointed Dalriada Trustees as the independent Trustee and Administrator of the scheme following concerns about the original trustee. In February 2018 TPR began a criminal investigation into the use of FocusPlay's assets by the director of GB for personal use. Criminal proceedings were later initiated against the director for fraud by abuse of position. And in March 2019 he was sentenced to imprisonment. In April 2019 Proceeds of Crime Act confiscation proceedings were also initiated against him.

My understanding is that due to the illiquid nature of the investments, Mr A's pension fund currently has little or no value. I also understand that Dalriada is exploring whether claims can be made through the Fraud Compensation Fund.

On 30 November 2022, Mr A complained to Prudential using the services of a professional representative. Briefly he said that Prudential failed in its responsibilities when dealing with the transfer request. He said it should have done more to warn him that an unregulated firm was advising him on the transfer and investments. And he asked to be restored to the position he would have been in had he not transferred his pension.

Prudential didn't uphold the complaint. In summary it said that it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr A then referred his complaint to the Financial Ombudsman Service.
Our Investigator didn't uphold the complaint and was unable to resolve the dispute informally. So, the matter was passed to me to make a final decision.

I note that Mr A's representative said that it wanted to provide further information for my consideration back in July 2024 following the Investigator's assessment of the complaint, but they failed to do so. We sent a reminder on 29 November 2024 asking them to send anything they wanted me to consider by 6 December 2024. But again we have not received anything. I think in the circumstances if they wanted to provide me with more information they would've done so by now. So in the circumstances I think it is fair for me to carry on and issue my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so, 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. And where the evidence is incomplete, inconclusive or contradictory, I reach 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.

<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, 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 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>

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.

<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. (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 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 the interest 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.

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

Mr A's representative says GB provided advice to Mr A to transfer his pension benefits to the scheme. But this isn't supported by the wider evidence available from the time.

As I have set out above, when Prudential asked Mr A at the time of the transfer request whether he had received advice in relation to the transfer request, he said he had not received financial advice. In my view the question was clear and unambiguous and Mr A's answer was too. If Mr A had received advice from GB as his representative now says, I would've expected him to have told Prudential when it asked him at the time. Mr A said that he found out about the scheme and was introduced to GB through his employer. And in the absence of any other evidence to indicate otherwise (as I said at the start of my decision, Mr A's representative has not given us any background information about how things came about) I have no reason to doubt what Mr A indicated at the time. Mr A's scheme application form also said that he had not received *regulated* financial advice in relation to the transfer into the scheme or in relation to any investments within it.

So, based on the available evidence, I find that Mr A most likely did not receive advice – regulated or otherwise – in relation to the pension transfer and that he was introduced to the scheme by his employer as he says.

<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.

Firstly, the transfer paperwork GB submitted to Prudential said that Mr A had read and understood TPR's pension liberation leaflet entitled "Predators Stalking [sic] Your Pension". This was the 2013 version which was only concerned with the risks of pension liberation. So, while GB likely made Mr A aware of the risks of pension liberation, in this case, because of the timing of the transfer, the risks were broader than just pension liberation – they covered wider scams more generally.

I can see that Mr A's representative has said that Prudential did provide Mr A with a Scorpion leaflet and this is supported by Prudential's letter to him of 7 January 2016, which referred to it having previously provided it to him.

I think it's more likely than not this was a more up to date version than the 2013 version GB referred to – most likely the March 2015 version covering pension scams more generally. So, I think Prudential did what it ought reasonably to have done here.

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 A'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 firstly looked at what due diligence Prudential carried out in this case to consider whether it was sufficient.

As I referred to earlier on, upon receipt of the transfer request, Prudential wrote to GB for more information about who the investment providers of the scheme were and it asked for confirmation that Mr A was employed by the employer associated with the scheme.

And importantly, Prudential also wrote to Mr A directly on two occasions asking him to provide more information in a series of questions to understand the background to the transfer, how it came about, what he'd been told, what marketing material he'd received and crucially whether he had received any advice in relation to the transfer. I also think Prudential made the purpose of its requests clear.

In my view the questions Prudential asked were unambiguous and were relevant to understand how things had come about. And I think overall they broadly followed the suggested questions in the PSIG Code to determine whether a scam risk was present before proceeding with the transfer.

<u>So, what did Prudential find out and should it have done more with the information gathered?</u>

With the information Prudential gathered, I think the key things it established were:

- The scheme was not recently registered.
- There was an employment link – Mr A himself had provided a copy of his employment contract and a pay slip to show that he was employed, or seemingly employed, by a company associated with the scheme and that he'd been paid.
- Mr A's home address was geographically distant from his employer's registered address (just under 200 miles.)
- The scheme had not been marketed to Mr A and he had not, for example, been cold called – he said he heard about the scheme through his employer and he was happy with the information he'd been provided about it.
- Mr A said he had *not* received financial advice on the transfer.

I accept there was a geographical distance between Mr A's home address and the employer's address and this could be a warning sign. But Mr A's employment contract referred to his normal place of work as being his home.
And given the nature of Mr A's recorded role on his employment contract as a market researcher, I don't think this looked out of place. So, I don't think Prudential would've likely seen this as a risk or a scam warning sign.

Mr A hadn't received advice on the transfer and this could also be a warning sign. So, on the one hand, perhaps Prudential could've explained to Mr A that he should take regulated advice and where he could access it. But on the other hand, I'm mindful that Mr A didn't have to get advice to transfer. Also Mr A had an employment contract with the sponsoring employer and he said that he heard about the scheme through his employer. So, in the circumstances I don't think the fact Mr A hadn't received advice stood out as being odd. And given there were no other apparent warning signs, in the round, I don't think this was a risk indicator Prudential should've fairly and reasonably have acted upon.

But even if I thought it was reasonable for Prudential to have explained to Mr A that he should take regulated advice and how he could access it, given Mr A didn't act on the recommendation in the scheme application form to seek regulated advice about his membership of the scheme, I don't think it's likely that, had Prudential done so, Mr A would've likely acted differently and sought that advice and ultimately decided not to go ahead with the transfer.

I'm mindful that in Prudential's letter to Mr A of 7 January 2016, it said that it had outstanding queries with HMRC more generally about the transfer requests it had received to the scheme. I asked Prudential what questions it asked of HMRC and the answers it received. Unfortunately Prudential no longer has a record of either. But on the basis that Prudential took action to make enquires with HMRC and given the other due diligence it carried out specifically in relation to Mr A's transfer as I've set out, I think it's unlikely that Prudential didn't wait for HMRC's response before making Mr A's transfer or that HMRC responded with anything of concern which it then ignored. Had it received something of concern, I think in the circumstances and given Prudential's due diligence exercise in this case, it would've likely acted on any concerns and taken appropriate action. I'm mindful too that it wasn't until May 2017, more than a year after Mr A's transfer, that concerns about the trustees prompted TPR to appoint a new scheme trustee.

So, overall I think Prudential undertook reasonable due diligence into Mr A's transfer. And in the circumstances I don't think Prudential fairly and reasonably ought to have provided Mr A with any warnings. I think based on the information it had gathered as part of its due diligence exercise into the transfer, and in weighing things up and taking a proportionate response, it was fair and reasonable for it to have discounted the risk of a scam and to go ahead and make the transfer. I don't think Prudential did anything wrong here.

So, while I understand that Mr A has lost out financially as a result of transferring to the scheme, in the circumstances and for the reasons I have set out above, I don't think it is fair and reasonable for Prudential to put right those losses.

I therefore don't uphold this complaint.

My final decision

For the reasons above, I've decided to not uphold this complaint, so I make no award in Mr A's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 February 2025.
Paul Featherstone
Ombudsman