The complaint

Mr T has complained, via a Claims Management Company ('CMC') about a transfer of his Prudential Assurance Company Limited ('Prudential') personal pension to an occupational pension scheme in February 2013.

Mr T 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 T 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 9 January 2013, a financial advice firm I'll refer to as Firm J wrote to Prudential requesting information about Mr T's pensions and transfer forms. Prudential sent that information to Firm J on 18 January 2013. At the time Firm J was an appointed representative of a principal firm that was authorised by the Financial Services Authority ('FSA').

Mr T hasn't been able to recall how Firm J became involved in the transfer. His recollection is that he was introduced to a company called Victus Solutions by an individual who assists him with other, unrelated financial matters. He had a meeting at Victus Solutions' office where they explained he could get a better return on his pensions by pooling them in a scheme with a group of people and investing in non-standard investments. He proceeded to transfer on the understanding these were good investments that would give better returns. Victus Solutions was not authorised by the FSA.

On 28 January 2013, Mr T signed the transfer form for his Prudential pensions. The section of the form for the details of the receiving scheme was completed with the details of an occupational pension scheme I'll refer to as 'Scheme B', that was administered by TWS Pensions limited ('TWS').

On 21 February 2013, TWS sent Mr T's transfer request to Prudential. Included in the request was the signed transfer form and a letter from HM Revenue & Customs ('HMRC') confirming that Scheme B had been registered on 12 February 2013 and its Pension Scheme Tax Reference number.

On 28 February 2013, Prudential completed the transfer of Mr T's pensions to Scheme B. His transfer value was around £43,800. He was 47 years old at the time.

In March 2023, Mr T's CMC wrote to Prudential setting out his complaint. Briefly, his argument is that Prudential ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: Mr T didn't work for the sponsoring employer of Scheme B, the sponsoring employer was a newly formed company that was only set up to establish Scheme B, and Mr T hadn't received any regulated advice on the transfer.

Prudential didn't uphold the complaint. In summary, it said Mr T had a statutory and contractual right to transfer and none of the information it had about the transfer gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

One of our Investigators looked into the complaint and thought it shouldn't be upheld. Mr T disagreed, 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

It will be useful to start by setting 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 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, The Pensions Regulator ('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 T's transfer, Prudential was regulated by the FSA. As such, it was subject to the FSA 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.

For context, it's also worth noting that on 14 February 2013, 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. The Scorpion campaign was endorsed by the FSA (and others). For reasons that I will come on to, the campaign came too late to impact on Mr T'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 at the time of Mr T's transfer and that, realistically, it wasn't until after this transfer that scheme administrators had specific guidance to follow.

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

At the time of Mr T's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Prudential had Scheme B's HMRC registration certificate which confirmed the scheme's Pension Scheme Tax Reference number and that the scheme had been registered earlier in February 2013. Therefore, Prudential could have been satisfied the scheme was validly registered with HMRC and that it didn't need to do anything further in this respect.

There was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. I'm satisfied nothing along these lines would have been apparent to Prudential at the time of the transfer process. The evidence is that Prudential received an information request about Mr T's pensions from a regulated firm, followed by a request from TWS to transfer his pensions to Scheme B, an occupational pension scheme registered with HMRC. I'm mindful it's unclear how Firm J became involved, and that Mr T has recalled he dealt with a business that, unbeknown to him, wasn't authorised by the FSA. But there's no evidence to suggest Prudential had any knowledge of that. And given the guidance in place at the time, there was no expectation for Prudential to contact Mr T to see how his transfer had come about.

It's important to recognise that the more extensive list of warning signs issued in February 2013 hadn't yet been published by the regulator when many of the activities in relation to Mr T's transfer were taking place. By then, Scheme B had been established and registered with HMRC, and Firm J had already obtained information about Mr T's pensions and transfer forms which he had signed. That means Prudential could not have sent the Scorpion insert with the transfer pack.

I recognise Prudential received and processed Mr T's transfer request after the regulator had published its Scorpion guidance. But I don't think Prudential could reasonably have foreseen the guidance. It wasn't in a position to know what action the regulator may or may not take in relation to various industry-wide concerns about pension liberation and/or scams. In my view, the launch of the Scorpion campaign on 14 February 2013 marked a significant inflection point in the industry as far as pension transfers were concerned. After the launch of the campaign, I would have expected firms to first digest the new guidance and then start changing their processes where required. I don't think it's reasonable to expect Prudential to have done that within two weeks (that being the amount of time it had between the launch of the campaign and when it completed Mr T's transfer). Therefore, I don't consider it would have been reasonable to expect Prudential to have applied the guidance in Mr T's transfer.

It wouldn't be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance where they could not reasonably have done so at the time. This means that I can't fairly expect Prudential to have considered the fact that the scheme was registered very recently, less than a month before the transfer request. And it means I don't expect Prudential to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.

Mr T's CMC says Prudential should have taken a more cautious approach in light of the Scorpion guidance and it should have delayed the transfer until it had updated its processes. I disagree. 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 legal rights). In my view, simply deciding to delay transfers received shortly after the launch of the guidance would not have been a reasonable or practicable step to take to achieve that balance.

Conclusion

At the time of Mr T’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 in this particular case. 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 Prudential should, reasonably, have spotted and responded to.

My final decision

For the reasons given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 4 March 2025.

Asa Burnett
Ombudsman