

## **The complaint**

Mrs H has complained about a transfer from a personal pension she held with The Prudential Assurance Company Limited (Prudential) to the Milton Association Pension Scheme (the Scheme) in 2014. The Scheme was subsequently found to be fraudulent and as a result of this Mrs H feels it is very likely that she has lost the total funds she transferred. She has stated that Prudential should have done more to protect her and to warn her about the potential dangers of transferring her pension.

Mrs H is represented by a claims management company (CMC), which has made various arguments on her behalf. However, for simplicity, I'll refer to all submissions made on Mrs H's behalf as being from Mrs H, except where necessary.

## **What happened**

In 2014 Mrs H held a personal pension with Prudential. In September 2014 she asked Prudential to transfer her pension to the Scheme.

At the time Mrs H was 51 years of age and was employed. She's told us she had no experience of investments or pensions and held no savings. She also lived in rented accommodation.

Mrs H has said that from 2013 she began receiving cold calls from firms wanting to discuss her pension. She said she didn't know why she was being called and wasn't interested in speaking with them at that time. However when she was cold called by a firm in 2014 and told she could move her pension away from Prudential to make a better return she became interested in this proposition. She therefore agreed to meet with Capital Facts Limited (Capital Facts) who she has described as her adviser in her complaint submission. She has said that she was told if she moved her pension to Milton her funds would double in value. She says she was told her existing pension was "frozen".

Mrs H has said she was encouraged by what she had been told and so agreed to go ahead with the transfer.

A full timeline of events is as follows:

- 15 September 2013, a firm called St Paul's marketing requested information about Mrs H's pension from Prudential.
- Prudential provided this information on 24 September 2013.
- 24 June 2014 Mrs H called Prudential to say she was getting lots of calls from third parties about transferring her pension. She wanted to check with Prudential if it was ok for her to leave her pension in its scheme until she retired. Prudential confirmed this and no further assistance was required.
- 14 August 2014 Mrs H signed the Letter of Authority (LOA) from Capital Facts giving it permission to request information about her pension from Prudential.
- On the same day Capital Facts requested information about Mrs H's pension from Prudential.
- Prudential responded to this on 22 August 2014 providing the required information.

- Prudential also wrote to Mrs H on 22 August 2014 confirming it had sent her pension information to Capital Facts. In this letter it stated that the Scorpion insert was enclosed for her to read.
- Prudential received another information request from Wise Review dated 18 August 2014. This letter asked for the pension details to be sent to Capital Facts. Milton's administrators, Warwick & Eaton Administrators Limited (Warwick) wrote to Prudential on 16 September 2014 requesting the transfer and providing it with the following documents:
  - A copy of the HMRC pensions Scheme regulation Certificate.
  - The trust deed and scheme rules.
  - Mrs H's indemnity declaration.
  - All the completed and signed transfer forms.
  - Warwick's professional liability insurance certificate.
  - A copy of the Pension Tax Scheme Reference (PTSR)
  - A copy of the Information Commissioners Office (ICO) certificate.
- 2 October 2014 Prudential asked for some information from Warwick – if Mrs H was employed by the sponsoring employer and details about what investments would be made within the scheme.
- 2 October Prudential also wrote to Mrs H asking her to confirm she had read and understood the Scorpion insert previously sent and whether she wanted to proceed. It asked her to provide confirmation in writing. The letter also contained an attachment which Prudential has confirmed was the longer Scorpion booklet from 2014.
- 9 October 2014 Warwick responded to Prudential confirming that Mrs H was not an employee of the sponsoring employer but she didn't need to be as the scheme rules permitted the principal employer to grant membership to the scheme to a non-employee. It also confirmed that the trustees of the scheme made their own investment decisions and the scheme invested in a mixture of regulated and unregulated investments.
- 10 October 2014 Prudential has stated Mrs H telephoned to confirm she wanted to proceed with the transfer. Prudential hasn't been able to provide a recording of the call but in a letter dated 16 October 2014 to Mrs H it refers to her telephone call on 10 October where she confirmed she wanted to proceed with the transfer.
- The transfer was completed on 16 October 2014 with around £15,000 being transferred.

The Pension Regulator (TPR) appointed Dalriada Trustees as independent trustees and administrators of the scheme on 26 March 2019. And following an investigation the scheme is now thought to have been a scam.

#### Mrs H's recollections about what happened

In a telephone call with our investigator Mrs H provided the following information about what lead up to her requesting the transfer of her pension:

- She wasn't made aware of the investments involved in Milton and she didn't ask about them. She simply presumed she would earn interest on the investments just as her pension was doing with Prudential.
- She was told if she transferred her pension would perform better than it had under Prudential.
- She wasn't sure whether she knew she was getting regulated advice and she didn't think about it because what she was being offered sounded good.
- If Prudential had told her something didn't look right, she wouldn't have gone ahead with it.

- She had received a number of calls from other firms requesting she use their service but she didn't agree to anything and she wasn't sure why she was receiving these calls.
- She didn't remember Prudential sending her anything apart from the letter confirming the cheque had been sent.
- When the investigator provided her with the Scorpion insert she confirmed she hadn't seen this before but if she had, she wouldn't have gone ahead with the transfer. Rather she would have called Prudential, her bank or another party for advice.

#### Points of complaint

Mrs H complained to Prudential in 2021 saying that it failed to carefully assess the transfer and failed to identify any potential warning signs from TPR's guidance to prevent pension scams, such as: the involvement of unregulated introducers and advisers; that she'd been cold called and offered a 'free pension review'; the scheme was "recently" registered with HMRC (October 2013); the scheme was an Occupational Pension Scheme (OPS) but Mrs H was not employed by the sponsoring employer and was geographically remote from her; the administrators of the scheme were not authorised by the Financial Conduct Authority; and unregulated investments were involved.

Mrs H has said that had Prudential identified the presence of these warning signs and given her appropriate warnings, she would not have gone ahead with the transfer.

#### Prudential's response to the complaint

Prudential has said that it conducted the necessary checks and found nothing to justify denying the transfer. It asked for the scheme documentation to ensure the pension fund was transferred to an appropriate scheme.

It stated that it had acted on a formal written transfer request from Mrs H to a scheme Prudential had been told was a UK pension scheme registered with HMRC in October 2013 and had received the transfer paperwork received directly from the scheme administrator. Prudential was aware Mrs H wasn't employed by the principal employer of the scheme but she didn't have to be. Finally, it had sent the Scorpion insert to Mrs H and had requested Mrs H read this and confirm to Prudential the transfer should proceed, which Mrs H did by telephone.

I issued a provisional decision in March 2024 where I set out my reasoning as to why I didn't think the complaint could be upheld. An extract of this is set out below and forms part of this final decision:

#### The relevant rules and guidance

*Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Aviva 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 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.

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). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had formal guidance to follow that was aimed at tackling pension liberation – the “Scorpion” guidance.

The Scorpion guidance was launched by TPR. 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. The guidance comprised the following:

- An insert to be included in transfer packs (the ‘Scorpion insert’). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer insert was intended to be sent to members who had queries about pension liberation fraud.
- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “look out for” various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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.

*I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has 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 legal rights.*

*That said, the launch of the Scorpion guidance 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.*

#### *What did personal pension providers need to do?*

*For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations.*

*With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:*

- 1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their pensions was a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent with transfer packs by pension providers as a matter of good industry practice.*
- 2. The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to lure them into a liberation scam. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to the customer's representative in the hope that the intermediary would then share the insert with their client. I therefore consider it fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to send the Scorpion insert direct to the transferring member even when the request for the transfer pack had come from a different party – an unregulated introducer, say.*
- 3. I also think it would be fair and reasonable for personal pension providers – operating*

*with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn't involve the sending of transfer packs.*

- 4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.*
- 5. The considerations of regulated firms didn't start and end with the Scorpion guidance. 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 the Scorpion guidance – 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.*

#### *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.*

*Prudential has said it sent the Scorpion insert and I have seen its letter to Mrs H dated 22 August 2014 where the letter states the insert is enclosed. There is also an enclosure noted on the bottom of the letter that has a reference number. Prudential has told us this enclosure was the 2014 insert. At this stage I am satisfied that the Scorpion warnings for members was sent to Mrs H.*

*In the letter dated 2 October 2014 also from Prudential there is also another enclosure referred to with a different reference number. Prudential has said this would have been the 2014 Scorpion booklet. Again without anything to the contrary I am satisfied that the Scorpion warnings were again sent to Mrs H along with Prudential's clear request that she read and confirm to it in writing that she had understood the documents.*

*Due diligence:*

*In light of the Scorpion guidance (2014), I think firms ought to have been on the look-out for the tell-tale signs of pension liberation, and other scams, and needed to undertake further due diligence and take appropriate action if it felt their customer might be at risk.*

*As detailed earlier in this decision, while Prudential had received confirmation of the scheme's HMRC registration, it also conducted some checks into Mrs H's transfer. From this it knew that Mrs H was not employed by the sponsoring employer (but she didn't have to be as the scheme rules provided that nonemployees could become a member of the scheme); and that the trustees of the scheme made their own investment decisions and the scheme invests in a mixture of regulated and unregulated investments.*

*So it did carry out some enhanced due diligence in line with the checklist. The Scorpion guidance includes a suggested list of initial warning signs that might prompt a ceding scheme to carry out further due diligence, but they were just suggestions - Prudential was free to design its processes broadly taking into account the substance of TPR's recommendations. Whatever the process Prudential was following to initially examine Mrs H's transfer request, it's clear from its actions that this did trigger further due diligence.*

*The question in this case, however, is whether it did enough of that further due diligence. And given the questions Prudential asked were directed to toward the Scheme rather than Mrs H I am of the view it didn't do enough. I think there was more Prudential should have asked Mrs H about the transfer and the circumstances surrounding it. The easiest way would have been for Prudential to revert to the checklist in the Scorpion action pack.*

*The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):*

*1. The nature/status of the receiving scheme*

*Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?*

*2. Description/promotion of the scheme*

*Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?*

*3. The scheme member*

*Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?*

*Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.*

*I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat. Given the warning signs that should have been apparent when dealing with Mrs H's transfer request, and the relatively limited information it had about the transfer, I think in this case Prudential should have addressed all three parts of the check list and contacted Mrs H as part of its due diligence.*

*The questions Prudential asked the Scheme's administrator appears to have focused its investigations under part 1 of the check list. It found out that the scheme involved some*

*unregulated investments and that the sponsoring employer didn't employ Mrs H. But it should also have identified that Mrs H was geographically far from the registered address of the sponsoring employer of the scheme.*

*Enquiries under part 2 of the checklist would have revealed that Mrs H had been offered a free pension review and offered one-off investment opportunities.*

*Under part 3 of the checklist Prudential would have found out Mrs H's interest in transferring had been prompted by a cold call. And she didn't really understand what she was going to be investing in, only that it would double the value of her pension. These would have been further warning signs, which should have prompted Prudential to enquire further. And had it done so I think it's also fair to say it also would have been able to find out whether Mrs H had received advice and if so from who.*

*The question of whether Mrs H received advice is an important one. I appreciate she marked on one of the transfer forms that she hadn't received advice. But I think this should have prompted Prudential to ask further questions because conducting this type of transfer without advice should have appeared unusual to Prudential so it should have asked her about this.*

*However, it's also worth noting that throughout the complaint Mrs H has said she was advised by Capital Facts and she has said that remembers the adviser sorting most of the forms for her and talking her through them, allowing her to sign at the end of the discussion. Therefore, it is possible that the representative from Capital Facts marked this on the transfer form.*

*In my view based on the balance of probabilities I think had Prudential asked Mrs H whether she had been advised I think it's likely she would have told Prudential she was receiving advice from Capital Facts. And I say this because Mrs H was not an experienced investor and wasn't in a financially secure position so I think it's very unlikely that she would have decided to transfer into an OPS to which she didn't have an employment link of her own volition. I cannot see a scenario where she would otherwise have found out about the scheme.*

*The Scorpion checklist recommends that in order to establish whether a member has been advised by a non-regulated adviser, the transferring firm should consult the FCA's online register of authorised firms. Prudential should have taken that step, which is not difficult. And had it done so it would quickly have discovered that Capital Facts was not regulated to provide financial advice and consequently Mrs H had received unregulated advice to transfer out of her personal pension.*

*This is relevant because being advised by a firm which lacked authorisation or any relevant exemption to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware of this.*

*My view is that Prudential should have been concerned by the involvement of an unauthorised adviser because it pointed to a criminal breach of FSMA.*

*To be clear, I haven't assumed Prudential actually had evidence Mrs H was being advised by Capital Facts. Rather, I've concluded this is what Prudential would have discovered if it had followed the Scorpion checklist to find out more about how Mrs H came to request the transfer.*

*With its obligations under the regulator's Principles and COBS 2.1.1R in mind, it would have been appropriate for Prudential to have informed Mrs H that the firm she'd been speaking to was unregulated and could be putting her pension at risk. It should also have told her that transferring to an OPS where there was no employment connection was highly unusual and that she was geographically remote from the employer and those features made the scheme she was transferring to at risk of being a scam. Furthermore, Prudential should have told her that only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity.*

*Would it have made a difference if Prudential had acted as it should have done?*

*As I have set out above I am of the view that Prudential should have done more to find out what lay behind Mrs H's decision to transfer into the Scheme. And what her understanding of the whole process was. I think there are a number of concerns that Prudential should have picked up on and highlighted to Mrs H.*

*However an important consideration is whether if Prudential did act in the way it should have done would this have made Mrs H act any differently.*

*In my view, I don't think it would have. I say this because as detailed earlier in this decision I am satisfied Prudential sent Mrs H the Scorpion insert as well as the longer booklet. Both these documents were aimed at members and set out the things they should be looking for if they were thinking about transferring their pension.*

*The 2014 insert was entitled Pensions Scams and explained a variety of ways scammer could catch people out:*

- Claiming they can access their pension pot before age 55.*
- Approaching a member out of the blue over the phone via text message or in person door to door.*
- Enticing a member with the promise with upfront cash.*
- Offering a free pension review or luring a member in with so called one-off investment opportunities.*

*The insert goes on to provide the number for The Pension Advisory Service and Action Fraud for the reader to call if they think they are being targeted.*

*The longer booklet explained the types of scams to watch out for and reiterated some of the methods detailed in the insert with the addition of transfers involving overseas investments and no documentation being provided to the member.*

*It provided some facts about pensions – namely that a pension can't be accessed before the age of 55 other than due to ill health and that no more than 25% of the pension can be taken as a cash lump sum.*

*It also provided some examples of individuals who have been scammed and what their circumstances were.*

*The first example concerned someone who was six years away from retirement who was looking to see if she could access her pension early. This individual is told she can take 5% of her pensions in cash now and the rest would be invested in UK storage facilities which would generate a guaranteed 8% return for her savings. She signed papers provided via a courier and she received the money. She didn't hear anything about her pensions for over a year. When she tried calling the number, she held for the scheme it was constantly engaged.*

*She visited what she thinks is their offices and is told by a company on the premises that they are not responsible. When she spoke to Action Fraud, she was told its very likely she has lost all of her pension. Three months later she is contacted by HMRC and told she would be hit with an unauthorised payment tax charge. It is explained that the upfront cash was offered to this individual to lure her in by the scammers. By the time she had reported it, it was already too late.*

*The second was someone who was 44 years old who received a cold call out of the blue and offered a free pensions review. He was offered a unique investment opportunity and promised the new scheme would provide higher returns than his current pensions. He also received the paperwork via a courier. He had some questions, but the courier wasn't able to answer them. The individual signed the paperwork anyway because the day before he was told if he didn't take the investment opportunity it would be offered to someone else. Six months later he enquired about investing more money into the property development. When he called the number on the brochure the line was disconnected. He investigated online and discovered that some pension transfers offer may be a scam. He also was charged with an unauthorised tax charge from HMRC.*

*The document goes on to explain the reader to not be rushed into making a decision and provided the contact details for TPAS and Action Fraud along with details of where and how the reader could check their adviser was regulated.*

*I think the information in these documents, which I am satisfied Mrs H received, was enough to highlight any warning signs that existed in her transfer process. And if she was concerned about anything she should have known who to approach for help or to ask any further questions.*

*In my view its only reasonable that Mrs H would have read these documents. While she has said she doesn't remember receiving them I am satisfied they were sent to her directly. And considering the information was sent to her by the pension provider, a large reputable business it is reasonable to say that Mrs H should have read it and taken it seriously. I think any reasonable person would have done so.*

*The evidence I have is that Mrs H confirmed to Prudential that she was happy to go ahead with the transfer and didn't ask any questions at the time. I must take from this that she also confirmed she had read and understood the Scorpion warning documents it had sent to her because Prudential asked this of her in the letters it had previously sent. So it's unlikely it wouldn't have asked her again when she spoke to Prudential over the telephone. Therefore, I can only conclude that having read the information and warning signs she was still happy for the transfer to proceed.*

*It therefore follows that even if Prudential had asked more questions and would very likely have reiterated much of the information already set out in the insert and booklet (which she didn't react to) I think she wouldn't have reacted and therefore wouldn't have changed her mind about the transfer.*

*So, While Prudential could have done more to communicate with Mrs H, it sent her a good amount of information about pension scams reasonably presuming she would have read this and I think it's more likely than not that she communicated to Prudential that she had read them. Furthermore, if she ignored the information then it's more likely that even if Prudential had contacted her to discuss the points, I think it should have, as I have detailed above its very possible she would have ignored Prudential too.*

*Prudential didn't respond to my provisional findings.*

The CMC on behalf of Mrs H disagreed with the provisional findings. A summary of its most relevant comments are set out below:

1. They haven't seen the enclosure referenced in Prudential's letter of 2 October 2014. There is still concerns over whether the Scorpion insert was indeed sent to Mrs H and/or the longer booklet; along with whether the telephone call between Mrs H and Prudential in October 2014 took place. They also feel the text of the letter didn't attempt to make any distinction between the short and long form Scorpion Leaflets, simply requesting that Mrs H confirm that she had read the pension liberation awareness leaflet. There is nothing in this letter to convey to Mrs H that Prudential had identified any particular concerns about her transfer request.
2. There is no record of the call between Prudential and Mrs H of 10 October 2014. So there is no evidence to confirm whether or not Prudential conveyed to Mrs H that it had identified any particular concerns about her transfer request.
3. Prudential had a "Pension Liberation Fraud – Due Diligence Checker" in use at the time. So it can be seen that Prudential identified that the administrators of the receiving scheme appeared on their "caution list". So at least internally, Prudential had picked up specific concerns about the administrators of the receiving scheme.
4. The conclusion of the provisional decision is not fair or reasonable. The ombudsman has failed to consider that the specific nature of the communications that should have taken place between Mrs H and Prudential is the point on which this complaint turns. There was nothing in the manner in which Prudential sent these general warning leaflets to Mrs H to alert her to the fact that Prudential thought that there were scam concerns associated with her particular transfer requests. Both of the letters sent to Mrs H were presented to her as administrative steps Prudential had to complete, rather than targeted warnings. If Prudential had tailored its concerns and related it to the particular scheme she was applying to transfer to this would have made a difference to Mrs H's actions.
5. The call in the previous year Mrs H made to Prudential about the cold calls she was receiving provides clear, contemporaneous evidence that Mrs H considered Prudential to be a reputable company and one which she was prepared to refer to for guidance.
6. It is accepted that Mrs H wasn't a sophisticated investor and wasn't conversant with financial or pensions matters. This means that she was vulnerable to persuasion by unregulated firms such as Capital Facts, but equally, was receptive to clear, targeted warnings, had they been provided by Prudential.
7. There is no evidence that Mrs H was a person who was prepared to take risks on financial matters.

### **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; regulatory 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 or inconclusive (as some of it is here) I've reached my decision based on the balance of probabilities – in other

words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

Having taken account of the responses to my provisional decision, I am not persuaded to alter my findings. I have set out below why, with reference to the CMC's comments.

As detailed in my provisional findings I am satisfied based on the evidence I have seen that Prudential sent Mrs H the insert and the longer booklet directly. I am also satisfied that despite there being no call recording, the call between Prudential and Mrs H on 10 October 2014 did take place as per the reasons explained in the provisional decision. So, while the CMC seems to be asserting some doubt about this my findings are clear and require no further debate.

At the time Prudential had sent the first letter and enclosure there was no reason for it to point out any concerns it had with the transfer. Its arguable that at that point in time Prudential wouldn't have known it had concerns because the first letter was sent at the start of the process before it had carried out any investigations. All Prudential's responsibility was at that time was to provide Mrs H with the Scorpion insert, which it did, and it was Mrs H's responsibility to read the information presented to her.

I also don't think Prudential had to make a distinction between the insert and the booklet. The most important thing was for Prudential to provide the information, which it did, and encourage Mrs H to read the enclosures.

In terms of the telephone call as there isn't a recording, I can't speculate on what was discussed but again there was no reason for Prudential to raise any concerns with Mrs H. especially if at that point in time it was satisfied with the responses it had received from the scheme's administrators after making its enquiries. There was no reason, nor would it have been of value for Prudential to explain to Mrs H that it had concerns but was now satisfied. And in any case, she knew about the queries Prudential had made of the scheme's administrator and given she didn't act upon this she clearly had no concerns.

With regards to Prudential's due diligence checks and the "caution list" as the CMC has called it, it is reassuring to see that this existed; and I am satisfied that Prudential acted in line with the administrators appearing on this list when it made its queries to the administrators. The fact Prudential had an internal list indicates to me it was, in this case, taking its responsibilities seriously and doing what it could at that point in time. Prudential acted upon its concerns about the administrators and questioned it. And the response it received answered the questions satisfactorily so therefore it was not wholly unreasonable that Prudential proceeded.

Prudential could have done more in terms of asking Mrs H about the transfer and the circumstances surrounding it. It should have told her about the unregulated adviser being involved and what risk this posed to her along with there being no employment link between her and the sponsoring employer of the scheme and his being unusual (even though the scheme allowed for this). However, much of this information was already in the enclosures Prudential had sent Mrs H – (The booklet isn't normally sent by businesses unless requested by transferring members or the business feels it would be beneficial. So, in this regard Prudential did more than what was expected of it at the time). So before proceeding with the transfer Mrs H had been provided with extensive information about the risk of transferring her pension and should have been aware of the warning signs to look out for.

I am satisfied Mrs H was furnished with a detailed level of information. And while she wasn't a sophisticated investor the insert and the booklet were written with the lay person in mind, so it was easy to understand even if financial experience was lacking. So, it should have

been easy for her to recognise the similarities in her circumstances and apply it to herself and act accordingly if she was concerned - even one of the example scenarios in the booklet almost mirrored that of Mrs H. So I see no reason why Mrs H wouldn't have taken note of it. Any reasonable person would have done so.

Therefore, I see no reason why bespoke communications would have made a difference. Given Prudential's warnings to Mrs H would have reiterated for the most part what was already in the information sent to Mrs H it is reasonable to assume that as she didn't react to that information, she wouldn't have reacted to the similar information being conveyed to her again by Prudential. Furthermore, I think it unlikely that one more piece of information that should have been given to her – the presence of the unregulated adviser - would have made her change her mind given the extensive information she had already seen. I don't think Prudential highlighting everything she had already read in the booklet and relating it directly back to her would have made a difference and I also don't think it was reasonable for Prudential to do this for fear of straying over into giving advice which it wasn't able to do.

In relation to the CMC's comments, I agree Mrs H shouldn't have been willing to risk her pension. But in my view, she was given ample information and had a responsibility to read this, which I think she did. Just to reiterate what's in my provisional decision, Prudential has said it asked Mrs H to confirm she had read and understood these pieces of information and confirm she remained happy to proceed. I can see the letters Prudential sent to Mrs H (to which she didn't respond) and I am satisfied that Mrs H gave this confirmation in the call on 10 October 2014. On the balance of probabilities given what it had said in the letters about needing Mrs H's confirmation that she had read and understood the information it seems unlikely that Prudential would have proceeded with the transfer without obtaining this from Mrs H.

By the CMCs own admission Mrs H would have taken notice if Prudential would have contacted her and set out its concerns. So, by the same logic when Prudential provided her with the insert and booklet surely Mrs H would have read these and taken notice of them. Therefore, having been provided with detailed information that was easy to understand given it was aimed at transferring members the only deduction that can be made is that the reason she didn't react to it was because she wasn't concerned about the transfer.

Essentially, again if accepting the CMC's assertions, either Mrs H did take notice of the booklet because it was provided to her by Prudential but ignored the warning signs. Or she ignored the information even though it was provided to her by Prudential who the CMC seems think Mrs H would have valued and trusted. Therefore, it follows that Mrs H would have continued to ignore any additional warnings Prudential should have provided to her and would have continued with the transfer.

Furthermore, the specific communications would most likely have been in written form from Prudential – there was no requirement for a business to actually speak to a transferring member at this time. So, if Mrs H would have viewed the provisions of the booklet and insert as a mere administrative step which the CMC has claimed, what is there to say that she wouldn't have felt the same about a further letter from Prudential. And again, the logic is if she did ignore the booklet and the insert sent from Prudential, whom she trusted, it's likely she would have ignored another letter from Prudential too.

In summary, therefore, while I have thought carefully about the arguments Mrs H and her CMC have raised, for the reasons I have set out above I am not persuaded that Mrs H would have changed her mind about the transfer had Prudential contacted her and highlighted the warnings signs present in her transfer. Based on her reaction to the detailed information Prudential had provided to her I think she would have proceeded with the transfer regardless of whether Prudential had acted in the way I have set out above.

**My final decision**

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 4 October 2024.

Ayshea Khan  
**Ombudsman**