

The complaint

Mr C has complained about a transfer of his personal pension with The Prudential Assurance Company Limited (Prudential) to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Gibraltar in November 2014. Mr C's QROPS was invested in the Trafalgar Multi Asset Fund (the Fund). The investment now appears to have little value. Mr C says he's lost out financially as a result.

Mr C says Prudential failed in its responsibilities when dealing with the transfer request. He says it should've 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 C says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Prudential had acted as it should've done.

What happened

I issued a provisional decision on 4 September 2024. I've repeated what I said about what had happened and my provisional findings.

'Mr C says he became dissatisfied with the performance of his Prudential pension and began to look into alternatives. We've seen that Prudential received several requests for information from late October 2013 onwards. Prudential responded on 28 October 2013 to a request for information from a firm called Wefindanypension.com Limited made by letter dated 18 October 2013.

In early 2014 Moneywise Retirement Solutions (Moneywise) wrote to Prudential for information. The letter said that Moneywise was a trading style of Moneywise Financial Advisors Limited who was authorised and regulated by the Financial Conduct Authority (FCA) with the registration number given. The letter was undated but the enclosed letter of authority (LOA) had been signed by Mr C on 2 January 2014. Prudential sent information to Moneywise on 13 January 2014, including transfer discharge forms and a quotation.

On the same date, Prudential wrote to Mr C with a transfer value. Prudential said, if he wanted to accept the transfer value (shown as £53,312.28), he'd need to complete the authorisation and sign it in the presence of a witness. Mr C did that on 8 April 2014. On the Transfer Value Acceptance and Authority to Pay form he gave the details of his new pension provider as the QROPS – the STM GIB Pension Transfer Plan (the Plan) and the address, which was in Gibraltar.

Mr C also completed an application form for the QROPS. At section 5 it asked for the financial adviser's details which were shown as Global Partners Limited. The contact given was someone I'll refer to as Mr H. Section 6 of the form, about investment details, said Mr C's preferred investment was the Fund.

On the same date he signed HMRC's QROPS member information form. In doing so he acknowledged that a transfer of funds might not be a recognised transfer and may be treated as an unauthorised payment giving liability to pay tax in the UK. And the same was the case

for a future payment made or treated as made by a QROPS.

On 2 May 2014 the Plan Trustees – STM Fidecs Pension Trustees Limited (the Trustees) – wrote to Prudential, enclosing various forms including the receiving scheme's declaration and HMRC's recognition letter confirming the QROPS' reference number. I think there was an issue as the forms had been faxed – Prudential wrote to the Trustees on 21 May 2014 saying faxed copies of the receiving scheme's declaration were no longer accepted. Prudential also required a company stamp on the form or a letter on company letterhead confirming willingness to accept the transfer. Further, Prudential said it was a criterion for an overseas transfer that the policyholder should reside overseas and since Mr C was residing in the UK, the Trustees were asked to confirm they were willing to accept the transfer. Mr C's Lifetime Allowance (LTA) form was also required, and confirmation as to how the transfer payment should be made. If Prudential didn't get the required documents by 25 June 2014 it would presume that the transfer wasn't to proceed.

On the same date (21 May 2014) Prudential also wrote to Mr C acknowledging part receipt of transfer documents and saying that to proceed his LTA form was required, as well as the receiving scheme declaration and confirmation as to how the transfer payment was to be made.

Prudential wrote to the Trustees again on 11 June 2014. I think by then Prudential had received the Trustees' declaration (re-signed on 28 May 2014) but the LTA form and confirmation about the payment method were still outstanding. If Prudential didn't get those by 16 July 2014 it would assume the transfer wasn't proceeding.

I've seen that on 3 July 2014 Bede Wealth Management Limited wrote to Prudential with a LOA signed by Mr C on the same date. It said he was appointing Bede Wealth Management/Life Compare as his assistants in respect of his pension plan and asked Prudential to update its records so that those firms could receive information. A FCA registration number was given at the foot of the LOA.

On 8 July 2014 Life Compare Limited wrote to Prudential enclosing a LOA signed by Mr C. On 17 July 2014 Prudential responded to that request. Amongst other things, Prudential sent transfer discharge funds and a quotation.

On 12 September 2014 another firm, The Pension Reporter, wrote to Prudential with a LOA signed by Mr C on 9 September 2014 and asking if Prudential could provide regular updates on Mr C's transfer as The Pension Reporter was 'currently working as the clients [sic] Independent Financial Advisor'.

On 17 September 2014 the Trustees wrote to Prudential enclosing a copy of Mr C's LTA declaration (signed by him on 9 September 2014), giving the receiving scheme details and confirming that the Plan met HMRC's revised QROPS conditions following 6 April 2012 and that the Plan would accept the transfer proceeds.

On 18 September 2014 Prudential wrote to The Pension Reporter. I don't think by then Prudential had received the Trustees' letter of the day before as Prudential said that, despite writing to Mr C and the Trustees with reminders, the LTA declaration and confirmation of the Plan's bank details and if a telegraphic transfer was required were still outstanding. Prudential said if it didn't receive the details by 16 October 2014 it would presume the transfer wasn't proceeding and close its file. But, as I've said, it seems that the outstanding requirements had in fact been sent.

On 3 November 2014 Prudential issued a cheque for £56,979.73 to the Plan Trustees. On 27 November 2014 the Trustees sent the bulk of that sum for investment in the Fund.

In October 2019 Mr C, through his representative, complained to Prudential. By then he'd become concerned about his investment in the Fund and what had happened to his money.

In his complaint to Prudential he said 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: unregulated introducers and advisers were involved; the catalyst for the transfer was an unsolicited call and the offer of a free pension review; the transfer was to an overseas pension scheme – a QROPS established in Gibraltar and that, with the associated trusts registered or traded in Grand Cayman, was a complex pension structure for an ordinary retail client who had no intention of moving abroad; Mr C didn't receive regulated advice about the transfer; he'd be investing all his pension fund in one overseas fund; and he'd been promised very high returns.

Prudential didn't uphold the complaint. As it didn't hold his authority to send information to his representative Prudential responded direct to Mr C. Prudential said Mr C had a legal right to transfer. The QROPS was (and remained) on the list of Recognised Overseas Pension Schemes published on HMRC's website. Quotations issued from June 2014 automatically included the Scorpion leaflet which warned of the potential risks of transferring to a QROPS. Prudential received discharge paperwork completed by Mr C and additional documents to show the QROPS could accept payment of the transfer. Post transfer investment losses were outside Prudential's control and the customer's responsibility in conjunction with any adviser and the trustees or managers of the scheme.

I understand that the Fund has been suspended. From what I've seen it was mismanaged and is now in the process of liquidation. It appears to form part of an investigation by the Serious Fraud Office (SFO). It looks very unlikely that Mr C will recover any of the money he invested.

What I've provisionally 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.

I've taken into account all that's been said by and on behalf of Mr C, including the points made by his representative in the email sent to us on 30 March 2022.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Prudential was operating in at the time with regard 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 and Personal Pension Schemes (Transfer Values) Regulations 1987 generally give 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, which is either registered with HMRC for tax purposes*

or is a QROPS.

- A QROPS must already be an overseas pension scheme, defined in short as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. Then it must be recognised, meaning that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.
- To be a QROPS a scheme must notify HMRC that it is a recognised overseas pension scheme, provide appropriate evidence of this to HMRC, undertake to adhere to HMRC's requirements and not be excluded by HMRC from being a QROPS. Schemes that have notified HMRC of this are included in a published list on HMRC's website.
- On 10 June 2011 and 6 July 2011, the Financial Services Authority (FSA) issued two announcements in quick succession to consumers about the dangers of "pension unlocking" and "early pension release schemes". At around the same time TPR put up a notice on its website termed 'pension liberation', referring to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan. However, it was designed to raise public awareness about pension liberation, and remind trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow.
- TPR launched its Scorpion campaign on 14 February 2013. 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 FSA, and the FCA which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.
- Prudential was subject to the 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:
 - 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 Scorpion campaign

Overview

As I have said above, the Scorpion campaign was launched in February 2013 and the guidance was updated regularly over the next few years. The guidance published in 2013 and the 24 July 2014 update are relevant in this case because Prudential started to receive requests for information about Mr C's policy from October 2013 and the transfer was processed in November 2014 (so over three months after the July 2014 update).

The 2013 Scorpion campaign comprised the following:

- *A Pensions Advisory Service insert (the ‘Scorpion insert’). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or ‘introducers’ who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These included background searches online, pointing out that any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.*
- *A longer insert issued by The Pensions Advisory Service (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 checklist 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.*

The 2014 update to the Scorpion campaign

This update reiterated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from pension liberation specifically, to pension scams. The action pack for trustees and administrators was entitled “Pensions Scams” whereas the action pack from 2013 was entitled “Pension Liberation Fraud”. And, on the front page of the 2014 insert that was to be sent to members, it said “Pension scams. Don’t get stung”. The 2014 update also made references throughout to “scammers” and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

Other features of the 2014 guidance:

- *It stated pensions scams in the UK were on the increase. With one-off pension investments, “pension loans” or upfront cash being used to entice savers.*
- *Trustees, administrators and pension providers had to ensure that members received regular and clear information about the risk of pension scams and how to spot a pension scam.*
- *It asked for the Scorpion insert to be included in the member’s annual pension*

statement or in any other member communications.

- It highlighted some common features of pension scams such as phrases like “one off investment opportunities”, “free pension review”, “legal loopholes”, “cash bonus” and “government endorsement”.*
- It stated that consumers being approached out of the blue over the phone, via text messages or in person door-to door was a common feature of a scam.*
- Transfers of money or investments overseas, were also highlighted as something to watch out for and it explained this was because the money would be harder to recover.*
- It said that if any of the warning signs applied, the action pack provided a checklist transferring schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.*
- If transferring schemes still had concerns, they were encouraged to contact the member to establish whether they understood the type of scheme they were planning on transferring to and to send them the pension scams booklet.*
- It also encouraged transferring schemes to speak to the member at risk – over the phone, via email or letter – this could help the transferring provider to establish answers to more of the questions on the checklist; or to direct the member to Action Fraud or TPAS if the provider thought it was a scam; or if the member insisted on proceeding the provider could contact Action Fraud itself.*

The 2014 action pack also included two examples of real-life scams where the individuals concerned lost most or all of their pension savings. One of the examples involved an individual under the minimum pension age who wanted to access some of her pension early. And the other concerned an individual (again under the minimum pension age) who had been approached out of the blue with an offer for a free pension review who had been offered a “unique investment opportunity” for his pension savings specifically in a property development overseas.

The status of the Scorpion guidance

When it was launched in February 2013, the Scorpion guidance was described as a cross-government initiative by Action Fraud, the City of London Police, HMRC, TPAS, TPR, the SFO, and the FSA/FCA, all of which endorsed the action pack, allowing their names and logos to appear in the action pack and Scorpion insert.

So far as TPR itself was concerned, it issued the guidance under the powers at s.12 of the Pension Act 2004, which provides:

“12 Provision of information, education and assistance

(1) The [TPR] may provide such information, education and assistance as it considers appropriate to those involved in –

- (a) the administration of work-based pension schemes, or*
- (b) advising the trustees or managers in relation to such schemes as to their operation.”*

So, 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. Likewise, by and large, the

contents of the action pack are framed in a way that is consistent with its stated purpose, namely as points to note or suggested actions a firm might take. For example, rather than telling firms they are expected to spot the warning signs of pension liberation fraud, the action pack lists “some of the things to look out for”; and, rather than say that the presence of a warning sign requires the firm to run through the checklist, it states: “If any of these statements apply, then you can use the checklist ...”

The language arguably strays into the imperative under the heading “Next steps if you have concerns”, stating “Contact the member to establish whether they understand the type of scheme they’ll be transferring to. Then “speak to the member at risk”. But, overall, the tenor of the document is essentially a set of prompts and suggestions, not requirements. And this remained the same for the updated version of the Scorpion guidance that followed in July 2014.

Also, it would seem inconsistent to view the Scorpion guidance as representing a binding rule or legal duty on personal pension providers regulated by the FSA/FCA when such a duty didn’t extend to those bodies that came under the regulator that drafted the guidance, the TPR. Furthermore, 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 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 all the above that the contents of the action pack were essentially informational and advisory in nature and that deviating from the action pack 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 statutory rights.

That said, the launch of the February 2013 Scorpion guidance 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 transfer requests. And this remained the case with all its subsequent updates. The campaign and guidance were 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 guidance.

So, taking all of this into account, I do think it’s fair and reasonable to conclude providers should have recognised that the environment had changed, and more was now expected of transferring schemes. 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.

Therefore, whilst I don’t think personal pension providers had to follow all aspects of the Scorpion guidance in every transfer request, 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 to expect pension providers at least to follow the substance of those recommendations. I look at what this means in practice in the section below. But, before doing so, I’ve considered what Mr C has told us about what happened and what, taking that and all the other evidence into account, what that shows likely happened.

The circumstances surrounding the transfer – what does the evidence suggest happened?

In his complaint to Prudential Mr C said he'd been cold called by a number of firms offering him a free review of his pensions. He was told his existing arrangements weren't performing as well as they could and better alternatives were available. Mr C gave authority to one firm to obtain information from Prudential. He also agreed to meet with an adviser and there was a meeting at Mr C's home and subsequent telephone calls. The adviser was either from Tourbillon Limited or Global Partners Limited. Mr C said neither was authorised or regulated by the FCA and he didn't understand the significance of that.

Mr C says he was advised that his Prudential pension would make better returns if it was transferred to the Plan and invested as recommended in the Fund. He wasn't aware of exactly what this investment was or that it was an overseas fund. He wasn't told how the improved returns would be generated but he was excited by the level of returns promised which were far larger than those which his Prudential funds could generate. He doesn't recall any associated risks being discussed with him.

At the time he was employed in manufacturing and earning around £21,000 pa. He considered himself to be a low risk investor and had no knowledge of pensions or investments. He wasn't intending to move abroad. The adviser recommended that Mr C transfer and invest in a way he was told was appropriate for him. Mr C believed the adviser to be a trustworthy professional and gave authority for him to contact Prudential. Throughout the transfer process, there was little evidence of direct contact between Mr C and Prudential about the transfer.

Our investigator also spoke to Mr C about what had happened. He said he'd been looking for a new adviser/pension arrangement as he felt his Prudential pension wasn't performing well. He said he may have put his name down somewhere, hence all the different advisers who'd contacted Prudential for information. In the end he went with Moneywise as he felt they were professional and, as they were regulated, that put his mind at ease. He realised from the documents that his pension would be based overseas. But he didn't really understand what was going on and the adviser made him think everything was ok. He hadn't been offered any incentive or cash bonus for transferring.

I bear in mind that Mr C is trying to recall what happened some ten years ago and so I think some uncertainties or inconsistencies are, to some extent, to be expected. In broad terms, from what I've seen, Mr C was dissatisfied with his existing Prudential plan and he'd started to look into if he could do better elsewhere. That led to him being in touch initially with two firms (Wefindanypension.com Limited and Moneywise) who then contacted Prudential for information about his pension. In those circumstances, I don't think it would be quite right to say that Mr C was cold called or contacted out of the blue. It seems those firms got in touch because he'd started to look into alternatives himself and, as he says, he may have left his details on some websites. Or contact may have been triggered by his browsing.

Wefindanypension.com Limited wasn't an authorised firm. I don't know what the FCA's website at the time said but it now very clearly says that it is an unauthorised firm that may be providing financial services or products in the UK without the FCA's permission and that, if you deal with unauthorised firms, you'll have less protection if things go wrong. But I mention that largely for the sake of completeness as I haven't seen anything to suggest, although Prudential sent information to that firm, that it was further involved.

Mr C has suggested that Moneywise was further involved – he says he 'went with' Moneywise as it was regulated by the FCA which, understandably, Mr C would've felt reassured by. And Moneywise was in fact regulated – as I've said above, Moneywise was a trading style of Moneywise Financial Advisors Limited and that firm was authorised and

regulated by the FCA.

But it wasn't Moneywise who Mr C says he met with – he's said the adviser was from Tourbillion Limited or Global Partners Limited. And, I haven't seen anything which indicates that, aside from sending the LOA and information request, Moneywise was further involved. And, as far as I'm aware, there's nothing to suggest that Moneywise had links with either Tourbillion Limited or Global Partners Limited. So, from what I've seen, I don't think Moneywise was further involved. That supports what Mr C's representative has said – that Moneywise had minimal involvement with Mr C and the adviser on the transfer and the investment was Mr H from Global Partners Limited. That's the adviser and the firm shown on the QROPS application form. So, from what I've seen and what Mr C has said, I think the meeting would've been with someone from Global Partners Limited.

As to what happened at the meeting, I think what Mr C has said is plausible. He says he was told that his Prudential pension wasn't performing well (which it seems was Mr C's own view, hence he'd started to look into alternatives) and that it would be in his interest to transfer to a QROPS so he could invest in the Fund. From what I've seen Mr C wasn't an experienced investor and he didn't have any real knowledge about pensions. A QROPS is an unusual pension choice for someone in his circumstances and particularly as he didn't have any plans to move abroad. I can't see he'd have decided on moving his pension fund with Prudential to a QROPS, or even known that sort of arrangement existed, unless he'd been told that's what he should do – essentially that he was given a personal recommendation to transfer away from Prudential into the QROPS so he could invest in the Fund. I think he'd have been attracted by the prospect of higher returns and improved retirement benefits – a larger fund when he came to retire. I don't think he'd have understood exactly how the pension would be structured or how the investment would work or the risks involved.

As to Global Partners Limited's regulatory status, it was, from 14 January 2011 to 18 June 2014 – so at about the time that Mr C's transfer was being processed – a registered trading name of Tourbillion Limited. Tourbillion Limited has since had its permissions cancelled (from 8 February 2022). But at the time it was an EEA (European Economic Area) based firm, which had been passported into the UK. It can no longer undertake regulated business in the UK unless an exclusion applies. But in 2014 it would've been shown on the FCA's register as authorised in the UK by virtue of passporting rights.

Mr C's representative says a consumer has no right to complain either to this service or the Financial Services Compensation Scheme (FSCS) about advice received from an EEA registered firm using passporting rights in the UK unless that firm has a branch office in the UK which Global Partners Limited didn't. And Prudential, as a FCA regulated firm itself, ought to have been conversant with the rules about access to this service and FSCS, which was something Mr C wouldn't have been aware of. So any discussions between him and Prudential ought to have covered that point – effectively Prudential should have said that reliance on Global Partners Limited for advice was very different to relying on a UK FCA regulated IFA firm and that, if things went wrong arising out of advice from Global Partners Limited, Mr C wouldn't be entitled to UK regulatory support. I've discussed below what Mr C would've likely told Prudential and what Prudential should've made of it.

We've seen that other firms were also involved: Bede Wealth Management Limited/Compare Life Limited in July 2014 and The Pension Reporter in September 2014. It's not entirely clear what those firms did or didn't do. But Bede Wealth Management Limited was and remains a regulated business – its FCA register number was given on the LOA. And Compare Life Limited was until 25 July 2014 an appointed representative of a regulated business (albeit not Bede Wealth Management Limited) so Compare Life Limited would also have been shown on the FCA register. And The Pension Reporter was, from 29 May 2014, a trading name of Nationwide Benefits Consultants Limited which was an appointed representative of

an EEA based firm: Joseph Oliver – Mediacao de Seguros – based in Portugal and passported into the UK. I think Mr H may also have had some links with Nationwide Benefits Consultants Limited.

What did personal pension providers like Prudential need to do?

TPR said it wanted to see the use of the Scorpion insert in transfer packs become best practice. Sending the insert 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. I therefore think it reasonable for the Scorpion insert to have been sent by pension providers to transferring customers as a matter of course with transfer packs.

The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to scam them. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to an intermediary in the hope that that intermediary would then share the insert with their client. I therefore consider it fair and reasonable to say the insert had to be sent direct to the member rather than, say, to an unregulated introducer.

Under the 2014 Scorpion action pack, firms were asked to look out for the tell-tale signs of pension 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 scam warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, as above, 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.

Furthermore, 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 this 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 its standard practice was to send the Scorpion leaflets and that they'd have been included with all quotations sent to Mr C, at least those sent after June 2014. I'm not sure if Prudential is saying that the insert would've been sent or the longer version. But that aside, from what I've seen, information which I think included quotations was sent to Bede Wealth Management Limited on 3 July 2014, to Life Compare Limited on 8 July 2014 and to The Pension Reporter on 12 September 2014. But, and even if the Scorpion insert was included, as I've said above, it should've been sent directly to members, rather than to intermediaries. In the absence of clear evidence to show that Prudential sent Mr C a copy of the insert – for example a letter or email to him referring to it being enclosed – I can't be sure a copy (or materially the same information in another format) was sent to Mr C.

As I've said it would've been good practice – and a relatively quick and easy step for Prudential to take – to send the leaflet directly to Mr C. And Prudential did have opportunities to do that – it wrote direct to Mr C several times. For example, it sent him a transfer value quotation on 13 January 2014 and later it wrote direct to him on 21 May 2014 in connection with the LTA form. And, as it appears that Mr C didn't return that form until 9 September 2014, Prudential may have sent further reminders. The insert could've been included with Prudential's letters.

What version of the Scorpion insert would've been sent depended on when it was sent and so might've been the February 2013 insert or the updated one, in use from July 2014. I've considered the likely impact of both below.

Due diligence

Prudential went ahead with the transfer without getting in touch with Mr C for further information, aside from chasing up documents (such as the LTA form) required in connection with the transfer. Prudential didn't contact Mr C to ask what had led to his transfer request and who was involved. Prudential has said the QROPS was (and remains) on HMRC's published list of Recognised Overseas Pension Schemes. But I don't think that, of itself, meant Prudential had no need to make further enquiries. Prudential knew Mr C would be transferring to an overseas pension scheme – the documents clearly set out that the QROPS was based in Gibraltar. A pension based abroad would very likely include overseas investments. Further, Prudential knew that Mr C wasn't intending to move abroad – I note here Prudential's letter of 21 May 2014 to the Trustees saying it was a criterion for an overseas transfer that the policyholder should reside overseas and since Mr C was living in the UK, Prudential sought confirmation that the transfer value could be accepted.

In the circumstances, and taking into account the possible warning signs of a scam listed in the 2014 Scorpion Action Pack (for example, overseas investments), Prudential should've made further enquiries. The most reasonable way of going about that would've been to turn to the checklist, from that action pack, to structure its due diligence in regard to Mr C's transfer. The checklist is divided into three parts (which I've numbered for ease of reading and not because I think the checklist 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 employer or a dormant employer, is that employer geographically distant from the transferring member and 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' 'one-off investments', 'free pension reviews' or allude to overseas investments?

3. The scheme member

Sample questions: Has the transferring member been contacted 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?

Opposite each question, or group of questions, the checklist listed actions that should help the transferring firm establish the facts.

I don't think it would always have been necessary to follow the checklist in its entirety. And I don't think an answer to any one single question on the checklist would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether liberation or a scam were realistic threats. However, given the warning sign that should have been apparent to Prudential when dealing with Mr C's transfer request, and the relatively limited information it had about the transfer, I think in this case Prudential should reasonably have addressed all three parts of the checklist and contacted Mr C as part of its due diligence.

What would Prudential reasonably have discovered?

As I've said, the QROPS was registered with HMRC and remains on its list of Recognised Overseas Pension Schemes. It wasn't newly registered at the time Mr C's transfer request was made. And it didn't seem he'd been offered upfront cash or any other incentive. But enquiries would've confirmed that Mr C wasn't planning to move abroad and he'd been told a QROPS and investing in the Fund would deliver higher returns than his existing pension – essentially that he'd been advised to make the transfer. I think Prudential should've asked Mr C about who'd given him that sort of advice.

In considering what he'd have told Prudential I've borne in mind what Mr C has told us about what happened. As I've said, it seems he'd been looking at alternatives so I don't think he'd have told Prudential that he'd been cold called as such – rather that he'd been doing some research and he'd given one or more firms authority to approach Prudential for information about his pension and he'd then followed that up with a meeting with an adviser. To some extent I can see why that would've reassured Prudential – the position wasn't that the idea to transfer had come 'out of the blue' and was clearly being driven by a third party. Instead it seemed that Mr C had instigated things himself.

I think Mr C would've named the same firms as he told us he'd met with – someone from Tourbillion Limited or Global Partners Limited. And that fits with what Mr C's representative says Mr C would've said – not that he'd been advised by Moneywise but by Mr H from Global Partners Limited who, as I've said, was the adviser and firm shown on the QROPS application form. To be clear, I don't think Prudential would've seen that form but it does support what's been said about who advised Mr C.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA's online register of authorised firms. Prudential should've taken that step, which isn't difficult.

As I've said above, Tourbillion Limited (of which Global Partners Limited was a trading name) appeared on the FCA register as a firm that was passported from the EEA to the UK. That means, for UK purposes, throughout the period of this transfer, Tourbillion Limited was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act. So, it's reasonable to suppose that, if Prudential had made further enquiries, it would've identified that Mr C was being advised by an authorised person. That would suggest that the transfer was unlikely to be a scam and that Mr C would enjoy regulatory protections in the seemingly unlikely event that it turned out that he was in fact the victim of a scam. In terms of regulatory protections I'm not necessarily referring here just to the right to make a complaint to this service (and which, as I've acknowledged below, might not be possible) and/or a claim to FSCS. But it's not unreasonable to assume that a firm which was regulated elsewhere would be held to a higher standard, with its actions and business generally scrutinised by a regulator, than a wholly unregulated firm.

I don't agree with the suggestion that Prudential should've pointed out to Mr C any distinction

between Tourbillion Limited's/Global Partners Limited's passported in regulatory status and that of a UK FCA regulated firm in terms of whether a complaint could be made to this service and/or a claim to FSCS. I think Mr C's representative is referring here to DISP (Dispute Resolution) 2.6 which deals with the territorial scope of our Compulsory and Voluntary Jurisdictions. It is the case that in some circumstances we can't look into a complaint about an EEA passported firm unless the firm has a UK office.

But, as I've said, Prudential would've seen that Tourbillion Limited/Global Partners Limited was registered and, in terms of the checks Prudential needed to carry out, I think that would've been enough. I say that taking into account that Prudential, as the ceding scheme, didn't need to know with certainty that a scam was in progress. A ceding scheme's duties were to recognise the presence of any potential warning signs of a scam, take proportionate actions to find out more about the transfer and warn the consumer. While I understand the point that Mr C wouldn't have appreciated any technical issues arising from Tourbillion Limited's passported in status, I don't agree that Prudential needed to look into that. Here, as I've said, Prudential would've been reassured as it would've appeared that Mr C was acting on advice from an authorised firm.

As I've mentioned, other firms were also in contact with Prudential – Bede Wealth Management Limited, Life Compare Limited and The Pension Reporter. I've considered if Prudential should've been concerned about the number of firms that were apparently 'helping' Mr C in connection with his pension. I'm unclear exactly what each may have done. For example, if the requests for information from Bede Wealth Management Limited/Compare Life Limited were acted on by those firms when the information was to hand. The requests came at a time when, from what I've seen, the transfer to the Plan was already underway. So it's unclear how and why those firms became involved.

But the other firms involved were all regulated, to some degree or another at least. I say that taking into account what I've said about above The Pension Reporter's regulatory status. But, if they'd been mentioned by Mr C (and that may not have been the case if any enquiries had stopped short at the point he'd said he'd been advised by Tourbillion Limited/Global Partners Limited) and if Prudential had checked out the status of the other firms, that would've reinforced Prudential's belief that Mr C was getting regulated advice. And the involvement of several authorised firms could indicate that he was getting regulated advice from a number of different sources, so he'd be in a good position in deciding if he should go ahead with the transfer – he'd be able to weigh up advice from more than one firm.

What should Prudential have done and would it have made a difference?

Prudential needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. I think the knowledge that Mr C was being advised by a authorised adviser would've given Prudential comfort that the transfer was unlikely to be a scam or involve an unauthorised pension withdrawal. In the circumstances, I think it would've been proportionate for Prudential to undertake no further due diligence. Nor would it have been appropriate for Prudential to have provided Mr C with explicit warnings, nor to delay the transfer further.

But I've said above that Prudential ought to have given Mr C, at some point during the transfer process, the general warnings about pension liberation and scams included in the Scorpion insert (or given him materially the same information in another format). Depending on when the insert would've been sent, it may have been the 2013 version or the updated, July 2014, edition.

The focus of the 2013 Scorpion guidance was pension liberation, that is accessing pension benefits before the age of 55. As far as I've seen, I don't think Mr C was planning on doing

that so I can't see the warnings in the insert would've resonated with him. I don't think sight of that insert (or materially the same information) would've made a difference to his decision to transfer.

Although the later, July 2014 insert, was arguably more relevant, I'm not sure Mr C would've necessarily thought it might apply to him. There were some features which were highlighted as being indicative of a pension scam: a claim that the pension pot could be accessed before age 55; an out of the blue approach over the phone, via text message or in person door-to-door; the prospect of upfront cash; or the offer of a free pension review or so called 'one-off' investment opportunities. Mr C has said he was cold called out of the blue but, as I've explained above, I don't think that was really the case. And any pension review would've been generated because he'd already formed the view that his pension with Prudential wasn't performing well and he might do better if he moved it somewhere else. So, even if he'd seen the July 2014 insert, I don't think he'd have thought much of it or that it would've made a difference to his decision about transferring.

Summary

I'm of the view that Prudential didn't fulfil its obligations under PRIN and COBS, nor did it follow the Scorpion guidance – it didn't send Mr C the Scorpion insert. And, for the reasons I've explained, Prudential should've made further enquiries in connection with the transfer. But, if Prudential had done that, I think it would've been reassured by the presence of regulated firms which, it would appear, were advising Mr C on a new pension arrangement and how his fund should be invested. Further, I don't think Mr C would've changed his mind about the transfer if he'd received either version of the Scorpion insert. I know that's going to be very disappointing for Mr C. I recognise it's very difficult to accept, if Prudential should've done more, that it isn't responsible for Mr C's losses. But I've explained above why I don't think, in the circumstances of this complaint, it would be fair and reasonable for Prudential to have to meet Mr C's losses incurred in connection with the transfer to the QROPS and the investment in the Fund.'

Responses to my provisional decision

Prudential didn't make any further comments.

Mr C didn't accept my provisional decision and, through his representative, made detailed comments. In summary:

- Prudential had acknowledged they were aware in 2014 that Mr C was transferring to a QROPS but he was residing in the UK. Prudential should've identified that as a scam warning. And Prudential had received numerous LOAs, some from FCA regulated firms and others which weren't. That clearly indicated cold calling and the involvement of unregulated introducers and advisers.
- I'd said, based on a comment Mr C made almost ten years after the event, that he may not have been cold called. He'd very clearly told his representative in 2019 that he'd received lots of unsolicited calls from so many different companies that he couldn't recall their names. And cold calling was how the companies involved operated. He was concerned his Prudential pension might be underperforming so he was prepared to engage with the cold callers.
- I'd agreed (see page 9 of my provisional decision) that, because Global Partners Limited had no UK branch office, Mr C couldn't complain, which Prudential should've been aware of and informed him. But I'd later contradicted that and said, because Prudential ought to have discovered Mr C was being advised by a firm with passporting rights into the UK, Prudential could've reasonably assumed it wasn't a

- scam and/or the advice Mr C was receiving would be of a reasonable standard.
- My view appeared to be that Prudential should've concluded it wasn't a scam and taken no further action after carrying out due diligence. But the guidance is clear that it wasn't the role of the ceding scheme to reach a conclusion as to whether a consumer was being scammed, which would've placed too high a burden on ceding schemes. Rather their role was to look out for scam warnings signs and, once identified, communicate those to the member to allow them to make an informed decision whether to go ahead with the transfer or not.
- Prudential provided no warnings to Mr C, not even the Scorpion insert, carried out no due diligence and didn't communicate with him. Despite that I'd said, if Prudential had sent either the 2013 or 2014 Scorpion insert, Mr C would've gone ahead anyway. As the initial complaint had made clear, and as had been confirmed in a number of this service's decisions, where warning signs were identified, the due diligence the provider should've carried out was more extensive than just providing the Scorpion insert. What ought to be considered is how Mr C would've reacted if Prudential had contacted him in a bespoke manner and said they'd identified potential pension liberation/scam warning signs relating to his specific transfer.
- There's no evidence to suggest Mr C, an inexperienced investor with a cautious approach to his pension planning, would've gone ahead. He'd put his Prudential pension in place in 1991 when he was aged 27. There wasn't anything to support a conclusion that he'd have been prepared to risk a pension he'd been saving into for 23 years if he'd have been given any indication there were warning signs. He may have been dissatisfied with performance and he may, at some stage, have transferred away but not, if warnings had been given, to this QROPS. Properly regulated advice and a transfer into a well invested and FCA regulated pension arrangement wouldn't have subjected him to the total loss he'd incurred as a result of the scam perpetrated by Global Partner Limited's advice to transfer to QROPS and invest in the Fund which, as I'd acknowledged, had been subject to investigation by the SFO.
- Mr C's representative also referred to submissions made in 2022 about causation which it was suggested I hadn't considered in reaching my provisional decision.

Mr C's representative also noted I'd referred in my provisional decision to correspondence between May and November 2014 which hadn't been disclosed (despite a DSAR to Prudential in 2019) and asked for sight of the correspondence, which we provided. In response, Mr C's representative said the numerous information requests from a variety of sources during 2014 confirmed that the starting point for the transfer had been a cold call. And the letters Prudential sent out to various firms during 2014 (but not direct to Mr C) didn't refer to the Scorpion insert being enclosed. An enclosure list was given on the last page and it was reasonable to conclude, if the Scorpion insert had been included, it would've been listed.

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 paid particular attention to the comments made on Mr C's behalf in response to my provisional decision. I've also considered what his representative said in March 2022 and the supporting documents provided. But, having done so, I'm not persuaded to depart from my provisional findings.

I'd first clear up a misunderstanding about what I said in my provisional decision about whether Prudential should've explained to Mr C that, because there was no UK branch

office, he couldn't complain about Global Partners Limited. On page 9 of my provisional decision I was citing what had been said on Mr C's behalf about that – the relevant paragraph commences '*Mr C's representative says ...*'. But I set out my findings – what Mr C would've told Prudential about who'd been advising him and what Prudential would've found out if they'd checked Global Partners Limited's/Tourbillon Limited's regulatory status – on pages 12 and 13 of my provisional decision. And I went on to say I didn't agree that Prudential should've pointed out to Mr C any distinction between passported in regulatory status and that of a UK FCA regulated firm. And I explained why I'd reached that conclusion. So there's no contradiction in my provisional decision.

I note what's been said about the role of ceding schemes being to look out for scam warnings signs and, once identified, communicate those to the member to allow them to make an informed decision whether to go ahead with the transfer or not. I agree that a ceding scheme didn't need to know with any degree of certainty that a scam was in play. When considering transfer requests, ceding providers needed to take a proportionate approach and balance consumer protection with the need to execute a transfer promptly and in line with a member's statutory rights. A ceding scheme's duties were to recognise the presence of any potential scam warning and take proportionate action to find out more about the transfer and take appropriate action where it was apparent the member might be at risk. But where what a ceding scheme found out was sufficient to allay any concerns, there'd have been no reason to warn the member – because the risk they might be about to fall victim to a scam had been reasonably discounted.

Given it's accepted that Prudential's due diligence was lacking, the central issue is causation. There are three considerations: First, what Prudential would've likely found out if they'd looked into the transfer, including what Mr C would've told them. Secondly whether, and based on what they'd have found out, Prudential ought to have warned Mr C that he might be about to become the victim of a pension scam. And, thirdly, what Mr C would've likely done in response to any such warnings. But the last question only arises if the answer to the second one is that Prudential should've shared with Mr C concerns about the transfer. I didn't go on to consider, in my provisional decision, Mr C's likely reaction to any reservations expressed by Prudential. That's because my view was that it wouldn't have been appropriate for Prudential, acting proportionately and based on what Prudential should've reasonably discovered, to have given Mr C explicit warnings. So, consideration as to what he'd have likely done if such warnings had been given fell away.

In this case, my view remains, had Prudential looked into the transfer request and which would've included contacting Mr C, a number of warning signs would've come to light. Specifically, Mr C was transferring to a QROPS but he wasn't planning to move abroad. And he'd been told that investing in the Fund would deliver higher returns than his existing pension. And, if he'd been cold called, that would've been another warning sign.

But I think it still turns on what Mr C would've said about who was advising him. He's been clear that he met with an adviser from either Tourbillon Limited or Global Partners Limited (which was a registered trading name of Tourbillon Limited). That's supported by the QROPS application form which shows the adviser as Global Partners Limited. So I maintain Mr C would've told Prudential he'd had advice from that firm. I don't think Mr C disputes that. My view remains that Prudential would've been reasonably reassured as it would've appeared that Mr C was acting on advice from a regulated firm. And, once Prudential had established that, it would've been reasonable to conclude that Mr C wasn't at risk of falling victim to a scam.

Mr C's representative argues there's an issue because of Tourbillon Limited's passported in regulatory status. And which meant Mr C's position wasn't as well protected as it would've been – in particular he'd be unable to complain to this service or recover from FSCS if things

went wrong. I agreed, in my provisional decision, that because Tourbillion Limited/Global Partners Limited didn't have a UK branch office, Mr C wouldn't have had any recourse to this service or FSCS.

But that doesn't mean he'd have no protection whatsoever. Tourbillion Limited had been passported from Malta to the UK and so for the period of this transfer was an authorised person under FSMA 2000. The right to passport financial services from one EU country to another is a feature of the EU's internal market, which applied to the UK at the time. The right was underpinned by the introduction of EU-wide standards of investor protection and harmonised conduct of business rules. The searches a ceding scheme would've been reasonably expected to do at the time weren't extensive and what Prudential would've found out would've been sufficient to indicate that advice had been given by a regulated firm.

So the UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under the FSMA 2000. As a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Tourbillion Limited would've been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Tourbillion Limited would've had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would've been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Maltese system.

In my view, Prudential, had it checked up on Tourbillion Limited's regulatory standing, would've been reassured that it was regulated to EU standards that were accepted for the purpose of authorisation under UK law. In my view, in the present case, that would've provided sufficient comfort for Prudential's purposes here.

To be clear, and as I said in my provisional decision, Prudential should've done more. It wasn't enough for Prudential just to check that the QROPS was registered with HMRC. And there were some issues which would've come to light. But, in making further enquiries, Prudential would've found out that Global Partners Limited was involved and had given advice to Mr C. If Prudential had checked out that company, it would've seen it was a registered trading name of Tourbillion Limited, which firm was regulated by the Malta Financial Services Authority and, under an EU passport, was authorised to act in the UK.

I think the fact that a regulated adviser was involved and had apparently recommended the transfer as suitable for Mr C would've reasonably given Prudential sufficient comfort that the likelihood of a scam was minimal. It would've been reasonable for Prudential to conclude that a regulated adviser would be acting in Mr C's best interest and would've made him aware of the risks involved in transferring and investing in the Fund. So, although there were some warning signs, what Prudential would've found out, had it made further enquiries, would've been sufficient to allay any concerns. There'd have been no reason to warn Mr C, the risk that he might be about to become a victim to a scam having been discounted. So it follows I don't need to go on to consider how Mr C might've reacted to any warnings.

However, that's any warnings over and above those contained in the Scorpion insert and which, regardless of whether Prudential should've identified any warning signs, should've been sent to Mr C – as I've said, personal pension providers should've sent transferring members the Scorpion insert (or given them substantially the same information) as a matter of course. Here I'm not satisfied that Prudential did send Mr C the Scorpion insert.

I considered both the February 2013 and the updated July 2014 versions of the insert in my provisional decision. Although, as the transfer request was made in early May 2014, it's

probably the earlier version that's most relevant here. Its focus was on pension liberation – that is early access to pension benefits – and the serious tax consequences which could result. Mr C wasn't seeking to access his pension fund early. So I can't see he'd have thought the warnings in the insert applied to him.

There were opportunities to send the insert later and by which time the updated, July 2014, version was in use. The focus of the refreshed campaign and updated insert had widened from pension liberation fraud to pension scams more generally. So the later insert may have appeared more relevant. But, and even if I accept Mr C had been cold called and offered a free pension review, I don't see he'd have thought there was a problem with that and when he wanted to look at alternatives to Prudential anyway. I don't think any of the other warning signs really featured in his case. And, even if the insert would've prompted him to check out Tourbillion Limited's/Global Partners Limited's regulatory status, he'd have seen they did appear on the FCA's register. I think he'd have been unlikely to have concluded that they were '*scammers*' who were using '*tricks*' to catch him out. So I don't think sight of the July 2014 insert would've changed Mr C's mind about the transfer.

I've set out above my provisional findings and they form part of this decision. For the reasons I gave in that provisional decision and my further findings here, I'm unable to uphold Mr C's complaint.

My final decision

I don't uphold the complaint and I don't make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 November 2024.

Lesley Stead
Ombudsman