DRN-5045212

The complaint

Mr K has complained, through his representatives, that The Prudential Assurance Company Limited ('Prudential)' undertook insufficient due diligence when transferring his personal pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in 2017.

Mr K's QROPS - the Elmo International Retirement Plan -was based in Malta. The pension funds were subsequently moved to an investment platform with Granite Investment Global/Gravitas Finances LLC from where the monies were invested using a portfolio by Bishop & Associates in the USA. Mr K says the value of his pension is nil as the funds have been fraudulently misappropriated.

What happened

Our investigator set out the background to this complaint in detail. I've considered everything but I'm not going to repeat everything and instead will focus on what I consider most relevant to this complaint.

Mr K had two defined benefit pensions worth over £600,000. He was in touch with Vanguard Marketing Consultants LLP who promoted an investment proposition using a QROPS. They introduced him to L J Financial Planning Ltd ('LJF') for regulated financial advice as this was required to transfer defined benefit pensions with a value over £30,000.

In the LJF's fact find and suitability report it was noted that Mr K was intending to move to Portugal to retire. He was planning to take a tax-free cash lump sum and buy a property in Portugal and then use the rest of his funds to invest through a QROPS and take a regular income from it.

In 2017 LJF recommended Mr K shouldn't transfer to a QROPS. They said he could achieve what he wanted through a UK scheme, there were no perceived tax advantages in his circumstances and they didn't consider a high risk offshore solution appropriate for him. Instead they recommended him to transfer to a retirement account with Prudential.

Mr K transferred his pensions to Prudential and Mr K took his tax-free cash lump sum in early March 2017. However, the plan to ultimately transfer the remainder of his funds to a QROPS continued. Between June and August 2017 Mr K called Prudential several times to ask for an update on his transfer to a QROPS, however Prudential had not received any transfer request. In late August the administrators of the Elmo QROPS asked Prudential for discharge forms as Mr K wanted to transfer his pension and to treat the request with urgency as they needed to invest Mr K's funds.

A formal transfer request followed in early September 2017. There were some communications between Prudential, Elmo and Mr K about what information was needed and whether Mr K was intending to transfer both crystalised and uncrystallised funds. The transfer completed in December 2017.

A dealing instruction shows the majority of the monies were invested on 20 December 2017 through Gravitas Finance into the 'Bishop Fairmount Strategy'. Mr K says he was told the money would be invested in Santander offshore investment bonds with respective two and five-year terms after which he could use funds to buy an annuity or take income drawdown.

Mr K complained to LJF about the advice he received to transfer his defined benefit pensions to Prudential which was dealt with separately by this service.

Subsequently, he complained to Prudential that they should have done more due diligence on the transfer to the QROPS. Mr K says if they had done so it would have become clear he was not receiving FCA regulated advice and Prudential should have not permitted a transfer until he was receiving such advice.

Prudential responded that they didn't provide advice on the transfer and directed Mr K to complain to LJF. Mr K's representatives clarified the complaint wasn't about the advice but Prudential's insufficient due diligence and referred the complaint to this service.

One of our investigators thought Mr K's complaint shouldn't be upheld. He said Prudential failed to send Mr K a Scorpion insert issued by The Pensions Regulator which warned about pension scams and they also should have contacted Mr K about his transfer and asked more questions. However, he concluded that even if they had done so Mr K likely still would have proceeded with the transfer and so Prudential wasn't responsible for his financial losses.

Mr K's representatives disagreed and so the complaint was passed to me for an ombudsman decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

What did Prudential do and was it enough?

The investigator set out in detail the relevant rules and guidance in place at the time of the transfer and how they would apply. Both Prudential and Mr K's representatives are familiar with this and so I'm not going to repeat this here again in detail. However, in short I consider the Principles of Business (PRIN), COBS 2.1.1 R (the client's best interest rule), the Scorpion guidance in the version of March 2017 and the PSIG Code of Practice 2015 to be relevant for this complaint.

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 rights. I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance or PSIG in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take.

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. I consider this is a reasonable expectation of personal pension providers dealing with transfer requests bearing in mind their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion leaflet

Both the Scorpion guidance and PSIG asked pension providers to keep customers informed and send them warnings about how to spot a scam. This could be done by sending the Scorpion leaflet issued by the Pension Regulator with transfer packs or provide messages to the same effect. PSIG also made it clear this should be sent to customers directly. I've seen no evidence this happened here. The relevant leaflet at the time the transfer was requested was the version of March 2017.

However, like the investigator I don't think the leaflet likely would have raised any real concerns with Mr K that he might be scammed. The leaflet warned about cold calls and investments offering guaranteed returns often through exotic sounding investments like hotels, vineyards or other overseas ventures. It warned to make sure that if using an adviser they were FCA registered.

The investments Mr K was told about were offshore bonds with Santander, a well-known reputable firm, and he was aware that he wasn't receiving advice. After the transfer to Prudential Mr K was dealing with two solicitors, both regulated by the SRA and member of the Law Society. One was going to deal with the investment of the funds and one was dealing with the Elmo QROPS. Mr K says both solicitors told him he didn't need any financial advice to transfer from Prudential to the QROPS.

Mr K said he trusted and had confidence in the individuals involved and engaging with regulated solicitors provided him with assurance that the proposed investment was legitimate, trustworthy, and aligned with his strategic objectives, ultimately serving his best interests.

So overall, I don't think the leaflet would have changed his view on this.

Due diligence

Like the investigator I agree that Prudential should have contacted Mr K as part of their due diligence. PSIG recommended to ask the consumer some initial questions about their transfer which included questions like whether sales agents for the receiving scheme made the first contact or whether the customer was informed of overseas investment opportunities. Both applied in this transfer. Mr K also had transferred a large sum from defined benefit pensions to Prudential only a few months prior, so I think further questions were reasonable here.

PSIG provided guidance about what additional information should be sought if any of the initial questions were confirmed with yes. For transfers to a QROPS it said:

'*The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not.'*

I think Prudential had sufficient information about the QROPS not to be concerned about its legitimacy, however, his motivation for transferring to a QROPS should have been queried with Mr K. I think had they done so they would have learned that Mr K was intending to move abroad and was interested in the investment strategy proposed to him through a QROPS.

I can see that Mr K's representatives have said that Mr K never intended to move abroad and is still living in the UK now. However, as mentioned above, the fact find and suitability report issued by LJF did mention Mr K was planning to move to Portugal and he told our service that his plan was to purchase a house in Portugal and possibly move there, though nothing was concrete. So based on the evidence I have I think if asked by Prudential in 2017, Mr K would have told them that a move abroad was one of the relevant considerations here.

I think Prudential would have also learned from Mr K that he was not receiving any financial advice on the transfer and that he was in touch with SRA regulated solicitors and some unregulated parties who had promoted the investment to him. If asked about the investments, Mr K likely would have mentioned the Santander offshore investment bonds.

What should Prudential have told Mr K?

I think Mr K's intention to move abroad would have seemed a plausible explanation why he was looking to transfer to a QROPS and the investments into offshore bonds wouldn't have been concerning either in my view. I don't think any of this information would have reasonably raised concerns Mr K was victim of a scam. So I don't think any additional warnings would have been required in this regard.

I think Prudential reasonably could have recommended Mr K should seek FCA regulated advice to make sure the transfer was suitable for him as this is advisable in every case and particularly if moving to a pension scheme abroad. And that solicitors or unregulated parties couldn't advise on pensions and if anything went wrong with the transfer Mr K would have no regulatory protections.

I disagree that Prudential had to insist on Mr K taking regulated financial advice before proceeding with the transfer. Whilst advisable, Mr K wasn't required to take financial advice to transfer his personal pension to a QROPS.

It has been mentioned that Mr K was pressured to make the transfer which should have also been pointed out as a warning sign. I can see that Mr K chased the transfer with Prudential several times and even complained that it didn't happen fast enough. However, the idea to invest through a QROPS had been promoted to Mr K in summer 2016 and the transfer happened in December 2017. I'm sure everyone was keen to transfer as soon as possible, however given the timescales involved I'm not persuaded that Mr K was pressured in a way that he didn't have enough time to think about his actions.

Would further questions and the recommendation to seek regulated financial advice from Prudential made a difference to Mr K's decision to transfer?

Mr K says if Prudential had contacted him or if he had received the Scorpion leaflet, he would have been aware to ask more questions and seek out documentary evidence to support what he was being told. He also said he would have used an independent financial adviser.

I don't doubt that this is what he genuinely believes with the benefit of hindsight. However, I have to decide what-on the balance of probabilities- I think most likely would have happened back in 2017 based on the evidence I have.

Mr K had already received advice from a regulated adviser who recommended not to transfer to a QROPS as they didn't consider it appropriate in Mr K's circumstances. Nonetheless, Mr K disregarded this advice and still transferred to a QROPS. So I don't think it's likely he would have acted upon a generic recommendation from Prudential to seek regulated financial advice. As an aside I also note that Mr K had been working for an FCA regulated firm, so I think he likely would have had a basic understanding of the protections available when dealing with FCA regulated firms.

Mr K said he trusted the parties he was dealing with, particularly the solicitors who were regulated by the SRA and were seen by Mr K as legally qualified and professional individuals who would act with integrity. And he was under the impression he was investing in offshore bonds provided by Santander, a reputable and regulated firm. I don't think he was concerned he was at risk of a scam and I don't think further questions from Prudential -which wouldn't have resulted in any scam warnings either-would have likely raised any doubts or made him question what he had been told.

In summary I don't think Prudential did enough in terms of due diligence. However, if they had done everything they should have, on balance I still think Mr K would have transferred his pension and so he would be in the same position he is in now.

I understand that some of the individuals involved have since been connected to other fraudulent activities. I have genuine sympathy with Mr K's situation and I understand that he has lost a significant part of his retirement provision which is devastating and very upsetting.

However, for the reasons I've explained I don't think Prudential has caused the investment losses he has suffered and so it wouldn't be fair or reasonable to require them to compensate Mr K for these losses.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 February 2025.

Nina Walter
Ombudsman