

## The complaint

This complaint concerns the transfer of Mr H's personal pension with The Prudential Assurance Company Limited (Prudential) to a Qualifying Recognised Overseas Pension Scheme (QROPS) in October 2015.

Mr H's complaint was that Prudential failed in its responsibilities when dealing with the transfer request. He said Prudential 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 said was required of transferring schemes at the time. Mr H said 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.

Very sadly, at about the time the complaint was referred to this service, Mr H died. His wife intended to continue the complaint as his executor and the sole beneficiary of his estate. But, before a grant of probate had been obtained, Mrs H also died. The complaint is now being continued by the executor of Mrs H's estate who is being assisted by the same representative as was previously involved.

## What happened

I issued a provisional decision on 3 October 2024 setting out what had led up to the complaint and my provisional findings. I've repeated here what I said:

*'On 21 November 2014 First Review Pension Services (FRPS) emailed Prudential with an information request. FRPS also asked for discharge and warranty forms and details of any further requirements Prudential might need for a transfer to be processed. FRPS enclosed a letter of authority (LOA) signed by Mr H on 8 November 2014 for Prudential to provide information to FRPS.*

*Prudential wrote to FRPS on 6 January 2015 (which followed a telephone call from FRPS on 23 December 2014) with policy information and a claim form and receiving scheme/policy declaration form.*

*On the same date Prudential wrote to Mr H saying that FRPS had been provided with the information required to process the transfer of his pension plan. Under the heading, in bold, 'Enclosure', Prudential said it was enclosing a leaflet about pension liberation fraud which The Pensions Regulator (TPR) had asked to be sent to all customers who requested a transfer. Prudential asked Mr H to read and retain the leaflet.*

*Mr H signed Prudential's transfer value acceptance and authority to pay form on 2 September 2015. He gave the details of his new provider as the Optimus Retirement Benefit Scheme No 1 which is a QROPS. On 23 September 2015 Prudential's receiving scheme declaration was signed on behalf of the QROPS. On 2 October 2015 Mr H signed Prudential's claim form. He requested a cheque payable to the Optimus Retirement Benefit Scheme No 1.*

*On 21 October 2015 Prudential wrote to Mr H saying it was a copy of a letter issued to*

*Optimus Pension Administrators Limited. It said a cheque for £43,232.54 had been sent in settlement of the full transfer value.*

*In February 2020 Mr H, through his representative, complained to Prudential. Towards the end of 2014 Mr H had been cold called and offered a free pension review by FRPS. He'd then been visited by an agent of FRPS, an unregulated firm, who'd advised him to transfer out of his existing Prudential personal pension into the Malta based QROPS. Amongst other things, Mr H queried what due diligence had been carried out on FRPS and if it was usual to provide transfer values and discharge forms to unregulated introducers. He also said that no Scorpion insert (I mention the Scorpion campaign further below) had been provided.*

*He queried what due diligence had been carried out during the transfer process, including if he should've been contacted directly to ascertain why he wanted to transfer to a QROPS. He said, if he'd been contacted by telephone, he could've been warned about the 'red flags' – he'd been cold called by an unregulated firm offering a free pension review and a QROPS was only really suitable if he intended to retire abroad, which he didn't. He cited the regulator's Principles for Businesses (PRIN) and the Conduct of Business Sourcebook (COBS). He said Prudential had a duty of care to act with integrity and treat him fairly. It wasn't reasonable or fair to allow him to transfer without making him aware of the Scorpion warnings and not carrying out expected levels of due diligence on the transfer process. He also referred to a Pensions Ombudsman's decision in July 2018.*

*Prudential didn't uphold the complaint. It said information and transfer paperwork had been provided as instructed by Mr H. Before the transfer value was paid Prudential checked HMRC's list of ROPS (Recognised Overseas Pension Schemes) to ensure the receiving scheme was included. HMRC's ROPS reference number matched that given in the transfer paperwork. The QROPS remained on HMRC's ROPS list. And it didn't appear that Mr H was complaining about the scheme itself, rather the investments and investment losses. The scheme trustees would've been expected to carry out appropriate research about the investments. Post transfer investment decisions weren't the responsibility of the transferring provider. Mr H's concerns should be raised with the trustees, the administrator and the Malta Financial Services Authority. Mr H had a statutory and contractual right to transfer to a QROPS. A letter dated 22 May 2014 had been issued to him enclosing a leaflet about pension liberation fraud which he was asked to read and retain.*

*With reference to that letter, it was sent by Prudential in relation to an earlier transfer request made by Mr H – although as I've said above, I've seen that Prudential did send a similar letter to him on 6 January 2015 in connection with the transfer to the QROPS that's the subject of his complaint. I think the enclosure referred to would've been the Scorpion insert.*

*Very briefly, as to what happened with the other transfer, Mr H had signed a LOA on 8 January 2014 authorising Prudential to provide information to Blue Infinitas, whose FCA registration number was given and who, at the time, was a regulated firm (although it ceased to be authorised from 11 January 2016). Blue Infinitas wrote to Prudential on 13 January 2014 with Mr H's LOA requesting policy information and documentation required to transfer to another provider which Prudential provided. Further paperwork was completed in connection with that proposed transfer – to a Blue Infinitas SIPP. As noted, Prudential wrote to Mr H on 22 May 2014 about the transfer. The letter was in the same format as the one Prudential sent on 6 January 2015 in connection with the transfer to the QROPS.*

*But by 22 May 2014 the transfer to the Blue Infinitas SIPP had already gone ahead. Prudential had sent Blue Infinitas a cheque for £39,738 representing the transfer value on 28 April 2014. But the next day Blue Infinitas had received Mr H's letter dated 26 April 2014 with a cancellation form saying he'd changed his mind about the transfer and wanted any money paid to be returned. Blue Infinitas returned the transfer proceeds to Prudential who*

*reinstated Mr H's policy. Mr H then transferred to the QROPS the following year.*

*My understanding is that the QROPS – the Optimus Retirement Benefit Scheme No 1 – is based in Malta and the administrators are Integrated Capabilities (Malta) Limited. Optimus Pension Administrators Limited, based on the Isle of Man, carry out certain administrative functions on behalf of Integrated Capabilities (Malta) Limited. As I've mentioned further below, exactly what's happened to the QROPS investments isn't clear.*

*Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I'm sorry that it's taken some time for the complaint to reach this stage in our process.*

### **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 case.*

### **The relevant rules and guidance**

*Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Prudential was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:*

- Principle 2 – A firm must conduct its business with due skill, care and diligence;*
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;*
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and*
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

*In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.*

*The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.*

*The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So the content of the Scorpion guidance was essentially informational and advisory in nature.*

*Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.*

*That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.*

*In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.*

*The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.*

*There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.*

#### *The March 2015 Scorpion guidance*

*When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short "insert", intended to be sent to members when requesting a transfer, and a longer booklet intended to be used for members looking for more information on the subject.*

*The March 2015 Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam "leaflet" in member communications. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available when members sought further information on the subject.*

*When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking*

to transfer.

### The PSIG Code of Good Practice

*The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I’ve made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn’t necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn’t necessarily be a breach of the regulator’s Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.*

*In brief, the PSIG Code asked schemes to send the Scorpion “materials” in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.*

*Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:*

- The PSIG Code includes an observation that: “A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.” This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person’s pension.*
- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.*
- Under the PSIG Code, an ‘initial analysis’ stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*
- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPP, SSASs (Small Self Administered Schemes) and QROPS. The 2015 Scorpion guidance doesn’t distinguish between receiving scheme in this way – there’s just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.*

*TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.*

*Therefore, in order to act in the consumer’s best interest and to play an active part in trying to protect customers from scams, I think it’s fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I’d consider the Code to have been a reasonable starting point for most ceding*

schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in a member's interest.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

The information as to what led up to the transfer to the QROPS is limited and it's uncertain, due to the sad circumstances surrounding the complaint, how much further evidence might be available. But, from what we've seen, Mr H had clearly been considering transferring away from Prudential. That's evidenced by the fact that he'd gone ahead with a transfer the year before, although he then changed his mind and was able to cancel and reverse the transfer. We don't know what prompted Mr H to reconsider. I don't see that Prudential's letter of 22 May 2014 (assuming, and as discussed further below, Mr H received it) could've been a factor as, from what I've seen, he'd already cancelled the transfer by then. But, over a year later, in September 2015, a transfer to the QROPS was requested. That transfer went ahead in October 2015 and wasn't cancelled.

In his complaint to Prudential Mr H said he'd been cold called by FRPS, offered a free pension review and he'd then been visited by someone from FRPS who'd advised him to transfer out of his existing personal pension with Prudential to the QROPS. That's really all we've been told about what happened.

It's clear that Mr H was in contact with FRPS. There's documentary evidence of that – the LOA in favour of FRPS that Mr H signed on 8 November 2014. I don't think there was anything wrong in Prudential providing information to FRPS, even though FRPS wasn't a regulated firm. Prudential had Mr H's authority and, although FRPS's request for information indicated he was considering a transfer, there was no regulatory requirement at the time for Mr H to obtain regulated advice if he wanted to transfer.

It appears that someone from FRPS then visited Mr H at home and discussed with him transferring away from Prudential to the QROPS. I accept that's likely to have happened. I'm aware from other cases we've seen that's how FRPS operated – a personal visit (sometimes several) to the consumer's home, even if in most cases the transfer would've been to a SSAS, not a QROPS.

But it's unclear when the meeting took place. I'd have thought it would've been relatively soon after FRPS received the information requested from Prudential and which was sent to FRPS on 6 January 2015. That seems to have been the pattern in other cases. But a meeting round about then doesn't fit with the timeline – the transfer request wasn't made until September 2015. We don't know what happened in the interim. It's reasonable to assume that Mr H would've been dealing with FRPS in January 2015 when Prudential sent the information requested to FRPS. But it's not obvious that Mr H would still have been dealing with FRPS over six months later, by which time another firm could've become involved. Or it might be that Mr H just took his time in deciding to go ahead with the transfer to the QROPS.

*And, leaving aside the timing of any meeting, although Mr H said he'd been advised by FRPS to transfer to the QROPS, we don't have any further details. Such as what Mr H may have been told about a QROPS and why it was suggested he should transfer to that type of pension arrangement and if that might amount to advice. I bear in mind that a QROPS would be an unusual pension choice for someone in Mr H's situation and when he had no intention of moving or retiring abroad. So, on the one hand, it's likely he'd only have been prepared to transfer if he'd been told it would be in his best interest and that he'd be better off in retirement. That would be regulated advice and which should only be given by a regulated adviser, which FRPS wasn't. But, on the other hand and as I've noted, it's possible that Mr H took his time in deciding if he was going to transfer. And that might've been because he undertook his own research and decided, for himself, that transferring to a QROPS would work for him.*

*Nor do we know what may have been said about what the QROPS would be investing in. We've seen, in other cases involving the same QROPS, that the investments included speculative, illiquid and overseas investments, some of which have since been suspended. And in other cases involving FRPS, investments in The Resort Group (TRG) were usually suggested – FRPS had links with TRG, including a director in common. FRPS appears to have been working in conjunction with TRG to procure the transfer of UK pension funds for investment in TRG – fractional ownership of hotel accommodation in Cape Verde and Turkey. So Mr H may have been told about investing in TRG. But I don't know if that was the case. Nor do we know exactly what investments were actually made through the QROPS – and which might shed some light on what investments may have been discussed.*

*There's also an issue about if Mr H saw the Scorpion inserts. His representative said that Prudential had provided all the paperwork to the unregulated adviser and so it wasn't certain that Mr H saw the inserts. And Mr H's representative said they'd spoken to Mr H before compiling the complaint letter (a few months before he died) and he didn't recall seeing a Scorpion warning leaflet or being aware that FRPS weren't regulated and that by advising him on the merits of transferring FRPS was undertaking a regulated activity.*

*But it isn't the case that Prudential provided all the paperwork to FRPS. Prudential did send, as FRPS had requested, information and transfer documents to FRPS in January 2015. But that was the extent of Prudential's dealings with FRPS. When the transfer request was made in September 2015 all the paperwork was from the receiving scheme. And, as I've said, Prudential did write direct to Mr H on 6 January 2015 with a copy of the Scorpion insert.*

*The Scorpion inserts were (deliberately) distinctive and so if Mr H had seen them I'd have expected him to recall that. But Prudential has provided copies of the letters, which were correctly addressed. I don't see Prudential would've had those on file if they hadn't been sent at the time and I'm satisfied they were. As to whether they were received, the vast majority of correctly addressed post reaches its intended destination. I don't think Mr H was being other than honest when he said he didn't remember getting them. But his complaint was made some years after the event and he may have simply forgotten he'd got them. On balance I think it likely that both letters were sent and safely delivered and so Mr H would've seen the Scorpion inserts even if, some years later, he didn't recall them.*

#### *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.*

*As I've referred to above, Prudential sent Mr H the Scorpion insert in May 2014. The insert enclosed with that letter would've been the February 2013 version. And Prudential sent a further copy of the Scorpion insert in January 2015. That would've been the updated July 2014 edition when the Scorpion campaign was refreshed and the focus widened to pension scams generally, rather than just pension liberation fraud. I note Prudential's letter of 6 January 2015 referred to TPR's leaflet being about that rather than being about pension scams. But I'm satisfied the updated July 2014 insert which had, by then, been in use for over six months, would've been sent. So Mr H would've seen both the February 2013 and the updated July 2014 inserts.*

*By the time the transfer actually went ahead the Scorpion guidance had been updated and the PSIG Code had been in place for several months. I don't say that Prudential needed to send a further copy of the Scorpion insert when it actually received Mr H's transfer request in September 2015. But, when processing the transfer, Prudential needed to do so in accordance with the updated guidance and the PSIG Code.*

*Due diligence:*

*As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr H's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Prudential's actions using the 2015 Scorpion guidance as a benchmark instead.*

*Prudential did establish the legitimacy of the QROPS. An overseas pension scheme must meet certain requirements for QROPS status. HMRC maintains a list of schemes meeting those requirements. Prudential checked that the QROPS was on HMRC's list of ROPS and that the registration number it had been given for the QROPS matched. The receiving scheme was on that list at the time of the transfer and had been from 2014. It remains on that list today.*

*But that was the extent of Prudential's due diligence. Prudential didn't contact Mr H. Contacting the member was seen as an important step in both the Scorpion guidance and the Code which, as I've said, had been in force for some months by the time Mr H's transfer was completed in October 2015.*

*As I've said above, there was an initial triage process which should've led to Prudential asking Mr H further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least one of them would have been answered "yes". The member questions included the following: Have you been informed of an overseas investment opportunity? Prudential would've seen from the transfer paperwork that there was an overseas element to the transfer – Mr H would be transferring to a QROPS, based in Malta. Under the Code, further investigation should follow a "yes" to any question.*

*Another question was: Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)? As discussed above, it's a little unclear whether Mr H was cold called in connection with the transfer to the QROPS. But whether or not that was the case, as I've said, the fact that the transfer was to an overseas arrangement should've triggered further investigation.*

*The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) has the following statement:*

*"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.”*

*In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.*

*Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a “wide range” of issues to establish whether a scam was a realistic threat. With that in mind, I think in this case Prudential should have addressed all four areas of concern and contacted Mr H in order to help with this.*

*What should Prudential have found out – and would it have made a difference?*

*Based on such information as I’ve seen and in the light of what I’ve said above, I don’t think it’s clear exactly what Prudential would’ve found out – that is what Mr H would’ve told Prudential in response to any further enquiries. I think he’d have said he received an unsolicited call from FRPS and, after he’d agreed that FRPS could obtain information about his pension policy with Prudential, FRPS had then visited him at home and suggested he transfer to the QROPS. And, if Prudential had said that type of pension arrangement was more commonly used by people living overseas, Mr H would’ve said he wasn’t intending to move or retire abroad. So that would’ve looked odd to Prudential. He may also have said that part of the reason for the transfer overseas was to invest in a particular investment, such as TRG, which was an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.*

*And, if Prudential had probed further as to exactly what FRPS had said, Prudential may have realised it was possible it amounted to advice that Mr H transfer to the QROPS. Prudential could’ve easily checked, by accessing the FCA register, FRPS’s regulatory status and would’ve seen that FRPS wasn’t an authorised firm.*

*Being advised by an unauthorised firm 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 that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren’t authorised to do so. So Prudential should’ve been concerned by FRPS’s involvement because it pointed to a criminal breach of FSMA.*

*But it’s difficult to be satisfied that a breach did occur and bearing in mind what I’ve said above – that although the assertion is that FRPS advised Mr H to transfer, we don’t have much to back that up, such as details of what was discussed with FRPS and when that meeting was. Any findings I might reach about that would be based largely on circumstantial evidence – that is what happened in other cases – rather than on what we’ve been told actually happened in this case. I’d be prepared to reconsider if further evidence can be provided. For example, based on what Mr H said and supported by contemporaneous evidence, such as file notes or call recordings of any discussions between Mr H and his*

*representative as to the basis for his complaint.*

*Further, even if I was satisfied I could fairly make findings on the balance of probabilities that Mr H had been advised by FRPS to transfer, I'd also have to consider what would be the likely outcome if Prudential had given Mr H any warnings – whether he'd likely have heeded them. And against the background that I think it likely he did see the Scorpion inserts sent to him in May 2014 and January 2015. Although I'm satisfied the inserts were sent, I can't say if he read them and decided to continue with the transfer anyway or if he simply didn't read them. If the latter that might suggest he was determined to transfer and so wouldn't have taken any notice of any further warnings Prudential may have given and even if they were given to him direct and were somewhat more pertinent to his situation rather than the more generic warnings given in the inserts.*

*If he did read them I think he might have discounted the earlier, February 2013 insert. Its focus was pension liberation fraud – accessing a pension fund early, that is before age 55, and the tax consequences that could result. Mr H was just coming up to his 53rd birthday when the transfer to the Blue Infinitas SIPP went ahead and so too young to legitimately access his pension (absent ill health). But, if there's nothing to suggest he was trying to do that, he wouldn't have thought that was an issue. The 'What to watch out for' section did refer to being approached out of the blue over the telephone which it seems was a feature in Mr H's case. But the 'Five steps to avoid becoming a victim' included checking that a financial adviser was registered with the FCA – at the time Mr H was dealing with a regulated firm.*

*The later, July 2014, insert which listed 'tricks' commonly used by scammers, was probably more relevant. Mr H had been cold called by FRPS and offered a free pension review, although I'm not sure what may have been said about any investment opportunities. So arguably he should've paid more attention to the insert and, as it didn't stop him from proceeding with the transfer, it might be the case that he'd have ignored any other warnings too. I also bear in mind that Mr H had transferred away from Prudential the previous year. Although he was able to reverse that transfer, it suggests he was dissatisfied with his Prudential pension and he remained interested in, or possibly favoured, transferring away. So by October 2015 he may have formed a settled intention to transfer away from Prudential such that he would've gone ahead with the transfer anyway and regardless of any reservations Prudential had expressed.*

*But, even if I was satisfied that Mr H had been given unlawful advice and that, if Prudential had contacted him and warned him that he might be about to become victim to a scam, he'd have decided not to proceed, there's still another issue. As I've noted, we've not been given any information about what the QROPS invested in and whether those investments have any current value. And I don't know what, if anything, happened following Mr H's death and if Mrs H made a claim for any payment to be made to her and, if so, whether anything was paid out. The same is true for any claim made by Mrs H's estate following her death.*

*Although I suspect that nothing would've been paid out and it may be the case that the QROPS has little if any residual value, in the absence of any evidence to show that's actually the case, I can't say with any degree of confidence that Mr H and in turn his estate and Mrs H's estate has suffered a financial loss. My understanding is the Optimus Retirement Benefits Scheme No 1 remains in existence so it should be possible to get some information about it – what Mr H's transfer value was invested in, what's happened to those investments, what their current value might be and if they are liquid, whether any payments out of the QROPS have been made and what its current value is. As it is, I don't think it would be fair to simply assume that the QROPS has no value and/or any investments are illiquid. All in all and as things stand, there's insufficient evidence and information for me to uphold this complaint.'*

## **Responses to my provisional decision**

We didn't receive any further comments from Prudential. The estate didn't accept my provisional decision and through its representative made further comments. In summary:

- Prudential had failed to adhere to the PSIG Code.
- The transfer involved multiple red flags – unsolicited cold calling, the involvement of an unregulated adviser and overseas transfers – which should've triggered enhanced due diligence.
- Prudential's handling of the transfer constituted a breach of its fiduciary duty. The courts had held that providers must act proactively when there are clear risks, especially where vulnerable clients such as Mr H are involved.
- Prudential hadn't provided Mr H with the Scorpion leaflet or other relevant scam warnings.
- Prudential's due diligence had been grossly inadequate and opportunities for direct contact had been missed.
- Prudential had failed to meet its regulatory obligations under the FCA's Principles for Businesses and in particular Principles 2, 6 and 7.
- Several other complaints which had been upheld were cited.

## **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 paid particular attention to the points made in response to my provisional decision. But, having done so, I'm not persuaded to depart from my provisional findings. My view remains that there's insufficient evidence to fairly uphold the complaint.

Essentially the estate's point is that Prudential's due diligence was lacking. I don't disagree. I said in my provisional decision that the extent of Prudential's due diligence was establishing that the QROPS had been registered with HMRC. I agreed there was at least one warning sign – the overseas element to the transfer – which meant that Prudential should've contacted Mr H to obtain more information about the transfer. But that failing doesn't automatically mean the complaint must be upheld. I also have to consider causation – that is the consequences of Prudential's failings.

It's been suggested that Mr H was vulnerable. He and other consumers in a similar position, who were considering transferring existing pensions held with large, well known providers and invested in what might be termed mainstream funds, risked falling victim to a pension scam. So, in that sense, he might be regarded as vulnerable. But I haven't seen anything to suggest that, at the time of the transfer, there were other reasons why Mr H should've been treated as particularly vulnerable.

The first stage in establishing whether Prudential's shortcomings caused the losses sustained is to consider what Prudential would've likely found out if they'd looked into the transfer further, including what Mr H would've likely told Prudential about it.

I think there's a problem here. As discussed in my provisional decision, it's unclear exactly what Prudential would've found out and in particular what Mr H would've said about FRPS's involvement and if it would've appeared to Prudential that there was a risk he'd been given unlawful advice by FRPS. I said I'd reconsider if further evidence around that could be

provided – I suggested there might be some notes of discussions between Mr H and his representative as to the basis for his complaint. But no further details have been provided. So I still can't say what Mr H may have said about what had happened and in particular around FRPS's role in the matter and if FRPS had advised him in connection with the transfer. So it isn't obvious that Prudential would've found out that Mr H had likely received unlawful advice from FRPS.

Another area of uncertainty is whether Mr H did get some warnings from Prudential anyway – that is, if he got the Scorpion inserts which were sent to him in May 2014 and January 2015 – but decided to go ahead anyway. The representative has told us that Mr H said he didn't recall seeing a Scorpion warning leaflet. But I bear in mind that it would've been some years after the event and it's possible Mr H did see the inserts even if he didn't remember getting them. I think it would be odd for Mr H not to receive either of the two letters Prudential sent, both of which appear to have been correctly addressed. I think it's more likely that Mr H did receive them even if he didn't later recall seeing them.

I said, even if Mr H had got the earlier one (which would've been the February 2013 edition), he may well have discounted it as its focus was pension liberation fraud – that is, early access to pension benefits and the tax consequences that could result – which Mr H wasn't seeking to do. But I did think the later (June 2014) insert was more relevant and covered some of the same ground that would've come to light if Prudential had contacted Mr H direct. Because he wasn't swayed by what the insert said and he didn't see the need to check out if any adviser was regulated, it's difficult to conclude he'd have reacted differently, had Prudential also warned him about proceeding.

I recognise a direct warning from Prudential may have carried more weight, especially if it included something about unregulated advisers acting unlawfully. But, as I've said, I don't think it would be fair to assume that whatever Mr H may have said to Prudential would've been such that Prudential would've concluded he may have been given unlawful advice – as I've said, it's unclear what Mr H may have said about FRPS's part in the matter.

And the final point I made in my provisional decision hasn't been addressed either – that is what the QROPS actually invested in and what is the current position regarding those investments and the value of the QROPS. So the extent of any loss remains unclear.

As to consistency, each case is decided on its own individual facts and merits and on the basis of what's fair and reasonable in the circumstances of that particular case. Sometimes complaints which may appear very similar aren't identical and may be decided or redressed differently. I've however considered the cases referred to in response to my provisional decision. All three were settled with no ombudsman's decision issued so it's unclear what any ombudsman would've decided and what their reasoning would've been.

### **My final decision**

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 29 November 2024.

Lesley Stead  
**Ombudsman**