

The complaint

Mrs R has complained about a transfer of her personal pension from The Prudential Assurance Company Limited to a self-invested personal pension (SIPP) in May 2018. Mrs R's SIPP was subsequently used to invest in two Luxif Amathus funds managed by a firm based in Luxembourg. The investments have since been liquidated. Mrs R says she has lost out financially as a result.

Mrs R says Prudential failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence, in line with the guidance she says was required of transferring schemes at the time. Mrs R says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Prudential had acted as it should have done.

What happened

Following a recommendation from a friend Mrs R was introduced to an FCA authorised advising firm called Connected Financial Services (CFS) as she was considering transferring her former employer's defined benefits (DB) pension.

CFS didn't have the regulatory permission to advise on DB transfers and referred her to a firm called Nurture Financial Planning (NFP). NFP was fully authorised by the FCA to advise on pension transfers including DB transfers. NFP advised Mrs R to transfer her DB funds into a Prudential Retirement Account and invest in one of Prudential's own portfolios. Mrs R's funds of around £162,900 transferred to the Prudential in December 2017.

On 30 January 2018 Mrs R signed a letter of authority allowing CFS to obtain details, and transfer documents, in relation to her Prudential pension. Mrs R says this was because CFS told her that her Prudential investment was *vanilla* and unlikely to grow.

CFS gave Mr R a financial planning report, dated 22 February 2018 in which it recommended she transfer her Prudential personal pension to a SIPP offered by a firm I'll call provider S. And then to use the transferred funds to invest in both the Luxif Amathus conservative fund and the Luxif Amathus balanced fund. CFS said these funds would be held in an account offered by Cornhill Management based in Luxembourg.

On 1 March 2018 Mrs R completed an application to join provider S's SIPP. Provider S sent a transfer request to Prudential on 14 March 2018; however provider S gave the wrong pension plan number.

On 20 March 2018 Prudential wrote directly to Mrs R. It sent a similar letter to NFP the same day. It enclosed forms that required completion in order for the transfer to go ahead.

Provider S sent a further request to Prudential to transfer on 17 April 2018, this time quoting the correct pension plan number. It enclosed a transfer form signed by Mrs R in which she said her reason for transferring was "better investment"

Prudential confirmed in May 2018 that it had transferred Mrs R's pension funds, of just under £160,000 to provider S's SIPP.

I understand that the Luxif Amathus funds were put into 'temporary suspension' in 2020. In September 2022 Mrs R was informed that the funds would be liquidated. Provider S then valued the funds at £0.00.

Mrs R initially complained about provider S's action in allowing the investments. One of our Investigators looked into that but didn't recommend it should be upheld.

Mrs R then complained to Prudential that it had failed to carry out sufficient due diligence when dealing with the transfer to provider S. Prudential replied in May 2024. It didn't uphold her complaint. It thought it had conducted an appropriate level of due diligence given the requirements of the time.

Mrs R referred that complaint to the Financial Ombudsman Service. Another of our Investigators considered it. She didn't think the complaint should be upheld. Mrs R didn't agree with the investigator's complaint assessment. So, as our investigator was unable to resolve the dispute informally the matter was passed to me to decide.

What I've decided – and why

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

While doing so 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.

My findings are similar to those our Investigator reached in her assessment of the complaint. So, my analysis as described below occasionally echo's the wording our Investigator presented.

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, so called because of the imagery it contained, 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 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 those requests. It was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms, like Prudential, 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 a turning 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.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPP's and small self-administered schemes SSAS's in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

There was a further update to the Scorpion guidance in March 2015. 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.

Updates to the Scorpion guidance

The March 2015 update to the 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.

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 Scorpion guidance was updated again in 2016. Of relevance to this complaint the action pack reminded ceding schemes of the importance of checking that financial advisers and SIPP providers were FCA regulated. It continued to say, as had the versions that came before it, that ceding schemes needed to be on the look out for schemes which were not registered or were only newly registered with HMRC. It also told ceding schemes to check that the operator of receiving schemes were FCA registered.

TPR updated the guidance again in 2017. This condensed some of its earlier information and reduced it to a scheme transfer checklist to help ceding schemes identify warning signs of scams. It said that answering ‘yes’ to any single question on the checklist wouldn’t necessarily indicate a scam but if several features were present this could be cause for concern. The shorter insert, intended for consumers considering transferring their pensions, gave five ‘top tips’ to help consumers protect themselves from scammers. Those included advising consumers of “‘Deals’ to look out for’. It said:

“Beware of unregulated investments offering ‘guaranteed returns’. These include exotic sounding investments like hotels, vineyards or other overseas ventures, and deals where your money is all in one place – and therefore more at risk.”

It also suggested a series of questions that consumers could ask themselves, before transferring.

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 updated versions) 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. (I noted the contents of some of those alerts earlier in my decision.)
- 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, SIPPs, SSAs and qualifying recognised overseas pension schemes (QROPS). The 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 the interest of both parties.

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?

Mrs R told us that her husband required pensions advice and a friend recommended CFS. Subsequently, Mrs R wanted advice about releasing tax free cash from her pension at age 55. She was aware that this isn't always possible from DB schemes. She contacted CFS and it introduced her to NFP. NFP recommended she transfer her DB funds to the Prudential personal pension. Mrs R confirmed that she was aware that the advisers were appropriately FCA registered.

Shortly afterwards CFS advised Mrs R that she should transfer again. It told her that her current investments were 'vanilla'; and would eventually be eroded by fees. Mrs R confirmed that CFS was not offering any bonus or incentive to transfer and it didn't say she could access her funds before age 55 by transferring.

In 2022 Mrs R was told that the funds she'd invested in were being liquidated. She also found out that the firms who had advised her had been dissolved. As of 2023 provider S had assessed her investments as having no value.

What did Prudential do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Prudential told us that it was its standard practice to include the Scorpion information when sending documents to clients wishing to transfer. It said it's paperwork might not always reflect that.

In this case Prudential didn't receive a request for transfer information directly from Mrs R. It only received those requests from CFS and provider S. So, if it included the Scorpion inserts when sending transfer information to CFS and provider S it had no way of knowing if Mrs R would receive them.

Prudential does have a record of writing directly to Mrs R on 20 March 2018 when it asked for further forms to be completed. It sent the same request to CFS at the same time. But this letter wasn't a standard letter and so may not have had the Scorpion insert included as a matter of standard practice. So I can't be certain that it was included. And Mrs R said she had no memory of receiving it. In those circumstances I'm not convinced that Prudential did send the Scorpion information to Mrs R before going ahead with the transfer.

Due diligence:

Prudential told us that it would have checked provider S's HMRC certificate, Companies House information and also that provider S didn't appear on its 'caution list'. It said that all of those were fine. So it appears that Prudential, after checking those points, has essentially fast-tracked the transfer without additional due diligence.

As I've indicated above the PSIG code does allow for fast-tracking transfers in certain circumstances. One of those situations is where the receiving scheme does not present a risk of pension scam activity. It would appear that, as provider S has been appropriately FCA/FSA registered for many years, and its SIPP was established from 2006, then Prudential believed those circumstances applied in this case.

However, while that might be a reasonable argument I note that PSIG refers to ceding schemes fast tracking transfers where the ceding scheme holds a list of providers it considers safe. It doesn't appear that Prudential had such a list. So, I've gone on to think about what would have happened if Prudential had moved to the next step in the PSIG code and asked Mrs R further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions") of the Code.

What could Prudential have found out

The Code recommends that ceding schemes address six questions relating to the transfer. Had Prudential asked those questions it would have quickly learned that the pension liberation warning signs did not apply to Mrs R's situation: That is she was not planning to take her pension funds early; nor had she been promised any cash or other incentive to transfer, nor promised a specific guaranteed rate of return on her investments.

However, one of the Code's questions would have returned a yes answer, which could potentially be a cause for concern. That question was whether Mrs R had been informed of an overseas investment opportunity? But, in the specific circumstances of this case, I don't think that was enough to require Prudential to do further due diligence.

As I've already said, a firm needed to take a proportionate approach to transfer requests. And in this case the overseas investments concerned were not of a type identified in the Scorpion guidance as presenting a risk. That is the investment funds weren't in "*exotic sounding investments like hotels, vineyards or other overseas where the money is all in one place.*" Instead the product information indicated the investment were suitable for retail customers like Mrs R; were spread across a diverse range of asset classes; did not offer guaranteed returns; and were regulated in its home nation.

I also need to consider that it was a regulated firm, CFS, which was advising Mrs R to make the transfer and invest in the Luxembourg funds. That's significant because, where a ceding scheme like Prudential thought a regulated adviser had provided appropriate financial advice it's unlikely it would intervene further even where the chosen investment products might otherwise give rise to a risk warning.

That's because Prudential's role was not to give Mrs R advice about the suitability of a transfer or her chosen investments. Its role in doing due diligence would principally have been to ensure Mrs R was transferring to an appropriately registered scheme (she was) and to give her the warnings associated with pension liberation or scams and transfer risks in general.

So, if Prudential understood that Mrs R was being advised by an appropriately authorised adviser, it's extremely unlikely that Prudential, which wasn't acting – nor was it authorised to act – in an advisory capacity, would have told Mrs R that she might be putting her pension at risk if she followed the advice given by a regulated adviser.

I'll also add that Prudential was clearly aware that CFS had advised Mrs R to transfer to a long established SIPP. That's significant as while the PSIG code advises ceding scheme to be on the look out for newly registered schemes that clearly wasn't the case here.

Further, Prudential could reasonably have believed that the involvement of a fully authorised and long established SIPP provider could give it confidence that the transfer was unlikely to be for the purpose of liberation or a scam. I say that as the FCA requires authorised SIPP providers to do their own due diligence on the scheme members' advisers and intended investments.

So the onus rested with Provider S, and not Prudential, to establish whether Mrs R's investments and the firm or individuals that were advising her met the required standards and were in her best interests. And where a SIPP provider fails in its due diligence requirements, as Mrs R is aware then the consumer may bring a complaint about that provider to the Financial Ombudsman Service. And in fact that's what Mrs R did.

Also, as I've said above, I'm not convinced that Prudential did send Mrs R the Scorpion insert. So I've thought about what's likely to have happened if it had sent it. But I don't think that any of the information the Scorpion insert contained would have resonated with Mrs R. She hadn't been cold called, clearly didn't think she was being scammed, wasn't planning on investing in 'exotic' one off overseas investments and had taken advice from an FCA authorised adviser. So I don't think any of the points the insert made at that time would have caused her to change the path she was on to transfer.

Mrs R told us that if she'd seen the insert she would have phoned one of the agencies mentioned on it. However, even if she'd done so, I don't think the outcome would have been different. That's because Mrs R was following the advice of a fully FCA authorised financial adviser to a long established and regulated SIPP. She was not planning on any activity that would raise concerns. And I think it's more likely that not that any third party agency she spoke with would have advised her to discuss the matter with her authorised financial adviser.

For completeness I'll add that Mrs R suggested that Prudential should have identified the risks of 'churning'. My understanding of churning, is that this refers to the *suitability* of a series of transactions for the consumer concerned. And the FCA's guidance on the matter¹ is focused on advising firms and not on ceding scheme like Prudential. As I've already said Prudential's role was not to give Mrs R advice about the suitability of a transfer or of her chosen investments. And churning is not a warning sign given in the PSIG code, Scorpion guidance or anywhere else as something for ceding schemes to be on the look out for. So I don't think this is something that Prudential should have considered.

It follows that while I think that Prudential could potentially have done more than it did, I don't think those actions would have made a difference to the outcome. And, while I have great sympathy for the position Mrs R finds herself in, I don't think that Prudential is responsible for any losses she's suffered.

My final decision

For the reasons given above I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 19 March 2025.

Joe Scott
Ombudsman

¹ COBS 9.3.2G