DRN-5273796

The complaint

Mr P has complained about a transfer of his pensions with the Prudential Assurance Company (Prudential) to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Malta in August 2014. Mr P's QROPS was subsequently used, in part, to invest in Dolphin Capital (which later became the German Property Group). The investment now appears to have little value. Mr P says he has lost out financially as a result.

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

What happened

On 17 February 2014, Mr P signed a letter of authority allowing Global Partners Limited (GPL) to obtain details, and transfer documents, in relation to his pension. Prudential was sent Mr P's letter of authority by GPL and a request for transfer information. Prudential sent GPL the requested information on 11 March 2014. GPL was a financial adviser regulated in a European Economic Area (EEA) member state.

Mr P subsequently received a financial recommendation report from a different firm, Servatus, a financial adviser authorised in another EEA member state. Servatus additionally held passporting rights to provide services within the UK. Servatus provided Mr P with the following recommendation: transferring his pensions to a QROPS with Harbour Pensions Limited in order to invest 60% of the funds in Dolphin Capital and the remainder with SEB. Mr P says he was attracted by the prospect of the improved investment returns of 9%.

Mr P subsequently applied to start a QROPS with Harbour Pensions. The application form, signed by Mr P on 24 April 2014, named Servatus as the Advice Firm, with an initial advice fee of 0.5%.

On 7 May 2014 Harbour Pensions sent Prudential Mr P's transfer papers. Included in the transfer papers were: Mr P's letter of authority; completed and signed transfer discharge forms; completed HMRC forms APSS263 and CA1890; HMRC letter confirming registration of QROPS.

Mr P's pensions were transferred on 4 and 25 August 2014. His combined transfer value was around £84,000. He was 55 years old at the time of the transfer. On 27 August 2014 a payment was made to Mr P for around £21,000.

The investment in Dolphin Capital was a loan note to the company. The loan was to be repaid with pre agreed interest from the profits made by the property company. Dolphin Capital later changed its name to the German Property Group (GPG). GPG went into administration having allegedly failed to use investors' money to develop properties. There is no secondary market for these loan notes and, where they have failed to realise the intended returns, investors are unlikely to get their investments back.

In March 2020, Mr P complained to Prudential via a claims management company (CMC). Briefly, his argument is 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: the transfer involved an adviser that wasn't regulated in the UK; the catalyst for the transfer was an unsolicited call offering a free pension review; the involvement of an overseas investment.

Prudential didn't uphold the complaint. It said it had checked that the QROPS was recognised by HMRC. And that the loss Mr P experienced was due to the investments chosen rather than pension liberation.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

My provisional decision

I issued a provisional decision to explain why I didn't think that Mr P's complaint should be upheld and offered both sides the opportunity to provide further argument or evidence. In summary, the reasons I gave for my provisional outcome were:

- I summarised what I thought the relevant rules, legislation and industry best practice meant for the way Prudential should have approached Mr P's transfer request.

- I considered Mr P's testimony in his complaint and in a call with our investigator as well as documentary evidence. Inconsistencies between the complaint submitted and his verbal testimony with our investigator didn't persuade me that Mr P had been cold called. Or that he was likely offered a 'free pension review' when there was evidence that implied an agreed and paid advice fee.

- I decided that Mr P had been advised to transfer by Servatus who were regulated in an EEA member state.

- I explained that I thought Prudential should have sent Mr P the Pension Regulator's Scorpion insert (explained in more detail later) when it received his transfer request in February 2014. And that I wasn't satisfied that it had. This meant Mr P was denied the warnings that were included in the Scorpion insert of that period, which was the one published in February 2013. I considered the warnings in that, but didn't think they warned of the type of harm that Mr P was at risk of. So I didn't think that Mr P would have reconsidered his transfer if he'd received it.

- I explained that, even though Prudential received the transfer request prior to The Pensions Regulator ('TPR') update to the Scorpion guidance on 24 July 2014, it was still considering the transfer after the update. So I thought it should have been aware of and incorporated the changes in that updated guidance when it came to conducting due diligence.

- I was of the view that the transfer of money or investments overseas ought to have triggered further due diligence by Prudential. And that it didn't do that. So I considered the Scorpion Action Pack from July 2014 in considering industry best practice.

- I considered what Prudential would have found out and thought that it would have found that certain warning signs were present. But that the majority would have been eliminated.

- I weighed up what I thought a fair and reasonable response would have been to the information that Prudential would likely have uncovered. Which included that Mr P had been advised by Servatus – a firm regulated to provide advice. And I was of the opinion that Prudential would, more likely than not, have considered the risk of a scam to be minimal. And therefore would not likely have gone on to provide any specific warnings to Mr P. Which meant that Prudential's failing regarding due diligence was not likely to have had any impact on Mr P's decision to transfer.

Responses to my provisional decision

Prudential had no further comment to make in response to my provisional decision.

Mr P responded, via his CMC, to disagree with my provisional decision. I summarise the issues of dispute as follows:

- It questioned why I hadn't considered the updated Scorpion guidance of July 2014. And queried why I hadn't considered the content of the Scorpion insert from July 2014.

- It didn't agree that it was reasonable to decide Mr P hadn't been cold called based on the account he gave our service in 2022. It asked me to instead consider the account it obtained from him in 2020 where he said he had been cold called.

- It argued that Prudential ought to have inferred that GPL had advised Mr P because it had received a letter of authority from it.

- It argues that the warning signs that ought to have been uncovered from any due diligence should have caused Prudential to be concerned about the potential of a scam. And therefore fundamentally disagreed that Prudential were unlikely to have gone on to give more specific warnings to Mr P.

- Because it thinks that the finding should have been that Prudential should have warned Mr P about the risk of a scam, it states that I should have therefore considered whether those warnings would have made a difference. And argued that it would be reasonable to determine that any such warnings would have made a difference and prevented the loss.

- It says that it should be relevant to note that Mr P was actually falling victim to a scam.

- It questions whether I have adequately considered whether Mr P would have still gone on with the transfer if he'd been given the Scorpion insert and been subject to the process of being asked about the factors behind his transfer by Prudential.

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 consider that the arguments made by Mr P's CMC are not new, but are things that I had already considered prior to making my provisional decision. For instance, it queries the relevance of the July 2014 Scorpion update when I clearly made reference to its relevance in determining the extent of due diligence that should have been expected of Prudential. Overall, Mr P's arguments have not persuaded me to change my mind. My final decision is therefore that I am not upholding Mr P's complaint for similar reasons given in my provisional decision and revisited below.

<u>The relevant rules and guidance</u>

Before going on to give my determination I'll start by setting out my decision on what it is reasonable to expect of a business handling a pension transfer request at the time in question.

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

An overseas pension scheme is defined in HMRC regulations as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. To become a QROPS it must also be:

- Recognised, meaning in short that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.
- Qualifying, meaning it must notify HMRC that it is a recognised overseas pension scheme; provide appropriate evidence of this; undertake to adhere to HMRC's requirements; and not be otherwise excluded by HMRC from being a QROPS.

Overseas schemes that have notified HMRC that they qualify to be a QROPS are included in a published list on HMRC's website.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme, which is either registered with HMRC for tax purposes or is a QROPS. And indeed they may also have a right to transfer under the terms of the contract.

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

The Scorpion guidance was launched by The Pensions Regulator (TPR) on 14 February 2013 and was initially focussed just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum retirement age). It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

It is this guidance that was relevant when GPL sent Prudential its request for a transfer pack. Among other things, this guidance provided an insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.

In my provisional decision I also referred to the updated Scorpion guidance of July 2014 because I considered this became relevant after that date. And Prudential didn't complete the transfer of Mr P's pensions until August 2014.

The updated Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

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

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

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's legal rights.

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

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

<u>What did personal pension providers need to do?</u>

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

1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

2. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

3. From July 2014 the Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

4. These were additional requirements over and above what a ceding scheme would always have needed to do when processing a QROPS transfer. Those requirements included checking whether the QROPS was on HMRC's published list, and ensuring the necessary HMRC forms were completed.

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

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

I stated in my provisional decision that Mr P's written complaint stated that he received a call, offering a free pension review, and was put in touch with Servatus. In this case however our service also had the opportunity to call Mr P in order to obtain his account first hand. When our investigator spoke directly with Mr P he was unable to recall whether he was cold called or whether he had searched for advice. I understand that Mr P's CMC argues that it obtained its account from Mr P in 2020, and our investigator did not speak with Mr P until 2022. But both accounts were obtained years after the events.

I have listened to Mr P's call with our investigator and that is what persuades me that Mr P was, in fact, far from certain that he was 'cold called' when asked. He provided further context in that call that was absent in the written complaint from his CMC. He explained that he had received a yearly statement from Prudential and was disappointed with the projected pension in retirement of £1,000 a year. This testimony, coupled with the fact Mr P took a tax-free lump sum after the transfer, persuades me, on a balance of probability, that it was more likely that Mr P was seeking guidance on how to access money from his pension and to improve on his income in retirement.

In this case I can see that Mr P gave authority to GPL to find out about his pensions with Prudential. But there is compelling evidence that corroborates Mr P's account about being advised by Servatus. Who, as I explained previously, were a firm that was regulated in an EEA country. And who had passporting rights to provide financial services in the UK. Mr P has provided us with a copy of a written recommendation from Servatus. It set out a recommendation that he transfer his existing personal pensions to a QROPS in order to invest in Dolphin and SEB. Which was the transfer and investment strategy that Mr P went on to follow.

The transaction history for the QROPS shows that a payment around £420, described as "*Advisor Fees*", was made from the QROPS on 25 May 2015. This equated to 0.5% of the combined transfer value. As previously mentioned, the application for the QROPS had a section entitled "*Professional Adviser and Fees*" which indicated that Servatus was the adviser and that an initial fee of 0.5% would be paid from the QROPS. So I think that this collectively supports Servatus being the financial adviser. And, rather than being free advice, that Mr P was paying for that advice.

Overall, the evidence in this case causes me to think that GPL was, more likely than not, acting as an introducer for Servatus who were an EEA regulated financial advice firm. And that it was Servatus that provided the advice that Mr P acted upon. I note however that this finding is agreed by Mr P.

I think that Mr P was motivated to transfer in order to release his tax-free cash, and to invest in a way that he was advised could provide better returns.

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 have said that it would have sent a copy of the relevant Scorpion insert with its Transfer Pack. But hasn't provided evidence that its process at the time of this request would have meant its inclusion. But in this case I don't think that matters because Prudential can provide no evidence that it corresponded directly with Mr P in the run up to this transfer. The evidence indicates that the only request for a transfer pack that Prudential received was the one from GPL. It responded to that by writing directly to GPL on 11 March 2014. That letter doesn't indicate that any insert or warning material was included. So it isn't persuasive evidence that Prudential sent the Scorpion insert at all. But, even if it did, sending scam warning information that was intended for its customer to a third party wasn't good enough to ensure that Mr P would receive it.

Had Prudential contacted Mr P with the Scorpion insert in response to the request for the transfer pack, as I think it should have done, then it would have sent him the Scorpion insert that was in use at the time. Which was the version published in February 2013.

On this point, I explained earlier where I think the Scorpion insert was intended to be used. Which was at the point that a transfer pack was requested. Which is why I don't consider the July 2014 insert to be relevant in this case. Even if I was to determine that a Scorpion insert ought also to have been sent when the transfer request was received from the receiving scheme, that was in May 2014, which was still prior to the update. So, whilst I accept that Prudential failed to send Mr P any warning material, it was the 2013 Scorpion insert that he'd have received if Prudential had done what I think it should have.

That would have warned Mr P of the risk of companies telling consumers that they could access cash from their pensions before age 55. Which wasn't what Mr P was being told and wasn't his reason for transferring. In short, the type of risk being warned about at that time wasn't something that was relevant to Mr P's circumstances. He had not been offered any cash incentives, and does not appear to have been rushed into the transfer.

For the above reasons, even though I think Prudential should have sent the Scorpion insert to Mr P, I don't think that it would have made any difference to what Mr P went on to do. It simply wasn't warning about the type of harm that Mr P was about to suffer from. And the content would not, reasonably, have caused him to be concerned about the advice he'd received.

Due diligence:

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

Prudential received the following information from Harbour Pensions with the transfer request: transfer discharge forms; HMRC forms APSS263 and CA1890; confirmation that HMRC recognised the QROPS in April 2013. It also checked that the receiving QROPS was on HMRC's published list. This step ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr P's statutory right, and potentially other legal rights, to transfer.

It is worth pointing out that, when Prudential received the transfer request, the 2013 Scorpion guidance was in place and ought to have been observed. Whilst Prudential can provide no evidence that it did anything beyond checking that the QROPS was recognised by HMRC, even if it had followed the Scorpion Action Pack I don't think that any of the initial warnings in it would have caused it to have thought it needed to look into the transfer further. The QROPS had been recognised since April 2013. That was more than a year at that time so would not have been considered as recently registered. And it would not have been aware of any other reasons to be concerned.

However, the Scorpion guidance was updated on 24 July 2014. Prudential ought to have been aware of this and incorporated the changes within it. As it was still processing Mr P's transfer I think it would have been fair and reasonable – and good practice – for Prudential to delay Mr P's transfer in order to consider the impact of the updated Scorpion action pack.

Page three of the Scorpion action pack had added: "*transfers of money or investments overseas…*" as a common feature of pension scams and recommended following up where any of the listed features were present. Given the information Prudential had at the time this feature would have clearly been relevant in the case of Mr P's transfer. The transfer to a QROPS obviously involved moving money overseas. I think that Prudential should therefore have followed up on it to find out if other signs of a scam were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Prudential to look into the proposed transfer further and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

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

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly recognised by HMRC, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

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

3. The scheme member

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

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

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

Had it done so, I think it likely that Prudential would have identified the following warning signs (that I explained in my provisional decision) were present in the transfer:

- Mr P was transferring his pension funds to a scheme not authorised by the FCA.
- Mr P's transfer funds would be invested overseas.
- The transfer hinted at unusual investment techniques with 60% of the fund destined for the Dolphin Capital loan note according to Servatus' recommendation.

Against this, I am still persuaded that Prudential would also have eliminated the following relevant warning signs:

- The QROPS was not a recently recognised scheme.
- The QROPS was not associated with an unregulated investment company.
- Prudential would not likely have identified reference to loans, savings advances, or cash incentives in any promotional material or in the written suitability report that Mr P could have provided it.
- Mr P wasn't going to be accessing his pension benefits before the age of 55.
- Mr P was getting advice from Servatus which was regulated in an EEA member state and had passporting rights to the UK.
- Mr P had not been pressured or rushed to transfer having had time to consider the recommendation he'd been given.
- Mr P had full documents from a legitimate QROPS scheme that he could have provided to Prudential on request.

To be clear, I don't think the fact that GPL had made earlier contact would have meant Prudential should reasonably have inferred that it was the adviser. I still think that it should have asked Mr P who his adviser was. For the reasons I've outlined already, I think he'd have explained that was Servatus. Other than to verify that Servatus was regulated to provide advice, I don't think Prudential would then have had cause to question the involvement of GPL any further.

Prudential needed to consider the overall circumstances in order to determine whether Mr P's transfer presented a scam risk. This meant weighing up the facts that it uncovered. It required the use of professional judgement. In order to say that Prudential failed in this regard, I need to be persuaded that the circumstances would have made it more likely than not that Prudential should have considered there to be a risk of a scam. But my final decision is that, based on a balance of probability, Mr P's transfer request would not have seemed to be such.

Overall, Mr P wouldn't have given the impression to Prudential that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Instead, it would have established that Mr P was acting on advice from a regulated party. I haven't seen anything that Prudential would, reasonably, have been aware of that should have alerted it to the potential of Mr P being misled in this way. It's an important point that goes to the heart of this case: Mr P's actions would have appeared to be following financial advice and a business could, reasonably, have taken comfort from that.

I have considered the fact that Servatus was an overseas adviser. But as Mr P was transferring to a QROPS, it wouldn't be unusual that overseas parties would be involved. The rules in place at the time allowed firms, which were properly regulated in an EEA state to have passporting rights to legitimately provide services in the UK. I see no reason why Prudential ought to have concluded that advice from a properly regulated firm with passporting rights was inferior to that of a FCA regulated firm. Or that Servatus was not acting in Mr P's best interests. I don't think it would be reasonable to expect Prudential to scrutinise the advice that Mr P had been given. It would have been enough for it to satisfy itself that Servatus was regulated and possessed passporting rights.

I've considered if it's reasonable to expect Prudential to have done more to warn Mr P about what he was intending to do, even if the scam threat would have appeared to be minimal. But I think those arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme, and intended investments were a means to an end: to establish the risk of a pension scam. As I've said previously, a firm needed 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. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer). Where the scam threat was assessed as being minimal (as I think it would most likely have been in this case) I don't think it would be unreasonable for the transfer to proceed as normal.

I've also considered whether Prudential should have warned Mr P that it was unusual for him to be transferring a pension overseas – and checked whether the reason for doing that was because he was moving or planned to move overseas. At the time (unlike today) there wasn't a prospect of a tax charge that had to be levied by the ceding scheme in certain circumstances where someone transferred their pension overseas whilst remaining resident in the UK. I think whether it was appropriate for Mr P to be transferring his pension to Malta was a financial planning matter that it wasn't Prudential's role to intervene in. And, as I have said, it would have established that Mr P had separately taken advice on that.

<u>Causation</u>

I've found that Prudential's actions in dealing with Mr P's transfer were lacking. I have already given my decision on the impact of Prudential's failure to send the Scorpion insert. But to recap, I don't think that sending it would have made a difference. It would have been the 2013 version which focussed on pension liberation. Which was a type of scam that Mr P wasn't going to be a victim of and the warning signs in it would not likely have been impactive.

I understand that he was a retail customer without significant experience of investing. But I don't think the mere act of contacting Mr P and asking questions about the transfer would have prompted a change of heart. Prudential would have satisfied the requirements of the Scorpion Action Pack by writing to Mr P with a list of the relevant questions. I don't think the context of the questions alone would have caused Mr P to distrust the advice he'd already been given by Servatus by that point. He had a written recommendation from Servatus who were a regulated firm. In the same way that this would likely have been reassuring to Prudential, I think it would also have been reassuring to Mr P.

The majority of the responses Mr P would likely have provided to Prudential's questions would not have given rise to concerns for him. Mr P had a written recommendation from Servatus that set out the details of the Dolphin Capital investment. It highlighted, amongst other things, that: loan notes provide a high degree of risk, the investment was not protected by the Financial Regulator or by a statutory compensation scheme, loan notes are unquoted so there is no market to sell them. Mr P was able to consider these risk warnings and went ahead with the transfer. These were quite significant warnings that didn't cause Mr P to reconsider the transfer or investment. So I don't think a fact gathering exercise would have had a more significant impact than these.

My final decision

For the above reasons I am not upholding Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 March 2025.

Gary Lane
Ombudsman