DRN-5285958

The complaint

Mr K has complained about a transfer of his Prudential Assurance Company Limited personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in March 2016. Mr K's QROPS was subsequently used to invest in various assets including a bond and fractional property operated by The Resort Group (TRG), an overseas property scheme. Some of these investments now appear to have little value. Mr K says he has lost out financially as a result. He is represented by a Claims Management Company (CMC).

Mr K 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 K 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

Mr K says that he was cold called and offered a free pension review, during which he was encouraged to transfer from his Prudential personal pension so that he could access the tax-free cash sum (legitimately – he was age 58 at that time) and make the investments noted above. He was interested in this offer as he wanted to take his children to America on a long-awaited holiday. He was led to believe that the transfer wasn't a risky proposition, and the new investments would produce a return of between 7 to 9% per year.

On 13 November 2015 Prudential says it wrote to Mr K with a letter captioned 'Transferring your benefits to another provider'. This letter said that it was enclosing a leaflet from the Pensions Regulator (TPR) about pension liberation fraud. Although I haven't see this letter, Mr K's CMC agrees it was sent having seen a copy following a Subject Access Request it previously made to Prudential. But it disagrees Mr K actually received the leaflet referenced in the letter.

It appears this letter was sent because Prudential had received a request from an unregulated introducer (Capital Facts Ltd) on 5 November, asking for information on his policies and forms to make a QROPS transfer. The authority Mr K had provided to Capital Facts suggests that it had been authorised to collate information on his pension policies. Prudential wrote to Capital Facts on 13 and 18 November 2015 to explain what its requirements were to make a QROPS transfer. This letter focused on what HMRC forms were needed and verification of Mr K's identity.

On 27 January 2016 Mr K signed paperwork to appoint Felicitas Management Investment Services Ltd, a Cypriot regulated firm, to be his financial adviser on a newly-proposed Bourse Retirement Scheme QROPS. At that time Felicitas provided financial services in the UK through the EEA passporting system. Felicitas would take a 4% initial fee from Mr K's transfer. On Felicitas's advice, Mr K specified the specified the following Investment choices to be made through the Moventum SCA (Luxembourg regulated) fund platform:

TRG Property	25%

TRG Corporate Bond	25%
Canaccord Genuity Wealth Select Opportunities Fund	19%
Prudential Dynamic Portfolio Fund	30%
Cash	1%

As part of the 'member declaration' part of the application, Mr K did not tick either box to say if he had or had not received independent tax advice. But his signature on the form was below a statement confirming he had received independent financial advice regarding the proposed transfer and future investment, as this was a condition of joining the QROPS. It doesn't appear that Prudential would have known at the time of the involvement of Felicitas or what investments Mr K would be making.

Mr K also signed an authorisation letter on 27 January giving Bourse permission to approach Prudential about a transfer. This gave Bourse's administration address (the Bourse Trust Company) in Guernsey.

On 16 February Bourse made a formal transfer request to Prudential which also enclosed the above HMRC forms. This letter confirmed its registration with the Malta Financial Services Authority. As the transfer request contained a different spelling of Mr K's first name, Prudential asked the QROPS administrator to confirm whether its records were incorrect. On 24 February Bourse called back to confirm Mr K's first name was the same as Prudential had on its records. The transfer of about £42,300 completed on 7 March 2016.

During 2017 Mr K was receiving property rental income for an apartment in TRG's Llana Beach hotel complex. However the gross revenue of £589 per quarter was reduced to £153 after occupancy costs and management fees. My understanding is that some or all of the other investments have also suffered from poor performance and/or lack of liquidity.

In April 2020 Mr K's CMC complained to Prudential on his behalf. Briefly, their 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 QROPS was relatively recently established and had no regulatory protection as it was overseas, the catalyst for the transfer was an unsolicited call from an unregulated introducer, and he had then been advised by another firm that wasn't regulated in the UK to make investments that exhibited typical signs of a scam including promised high returns.

Prudential didn't uphold the complaint. It said Mr K had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued a Provisional Decision in 26 March 2022, much of which was the same as the findings I will be going on to reach here. I apologise to both parties for the extensive delay since that point; they will both be aware that the approach taken by the Financial Ombudsman Service to complaints of this nature has developed over that period. In particular, we have been thinking very carefully about the CMC's main objection to the outcome of my Provisional Decision: namely, that the existence of Felicitas' passport to provide financial services into the UK from Cyprus should have satisfied Prudential's enquiries into whether Mr K was taking regulated advice.

Mr K's CMC's disagreement with my Provisional Decision went further than this: it sent me a 10-page letter on 25 March 2022. I've revisited the outcome of my Provisional Decision given the time that has passed and considered everything it has said carefully. Where relevant, I'll refer to the points it made as I go through my findings in the Final Decision which follows.

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.

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) 2000, 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 were 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

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.

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 pack 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, SIPPs, SSASs 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 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.

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

In late 2015 Mr K was employed as a delivery driver on about £25,000pa. He was separated from his wife and living in rented accommodation. He had one other small occupational pension scheme but no other savings or investments. He told our investigator that someone called him on the back of a PPI claim he made to say he had a lump sum with his pension that he didn't know he had, and as a result he wanted to use this £10,000 (approx) to take his children on a luxury holiday to America while they were still young.

Mr K explained that he doesn't read or write very well, and acted on the adviser's assurance that he would still be able to use the rest of his pension when he retired. He wasn't fully aware that his transfer would be invested in a hotel, and it was only when he saw a BBC Panorama programme about TRG after the transfer that he realised. The person who had dealt with just said they were a financial adviser – there was no reference to regulation.

Mr K didn't name any of the parties involved in the call, but it isn't in dispute that the person who called him was connected in some way with Capital Facts, because that firm initially wrote to Prudential to request a transfer pack. That person then seems to have referred him on to Felicitas – his CMC agreed in response to my Provisional Decision that if Prudential had asked Mr K (in response to the transfer request) who was advising him, Mr K would have named Felicitas.

The Financial Ombudsman Service is now more familiar with Felicitas' advice process, as a result of suitability reports that Mr K's CMC sent us for other individuals who had been advised to transfer to a Bourse QROPS. We don't have Mr K's report and I don't need to go into detail here – except to say that the reports do clearly make value judgements about transferring to a QROPS and investing in TRG and other assets, so they have the characteristics of advice. As a result, I've seen nothing to indicate the CMC's submissions aren't plausible: that is, Mr K would likely have thought from what he was told verbally and/or in writing, that he was being advised by Felicitas to transfer to the QROPS.

<u>What did Prudential do and was it enough?</u>

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. The parties seem to be in agreement that Prudential wrote to Mr K on 13 November 2015. Mr K's CMC doesn't think he received the insert with this letter. But as he told our investigator he could recall a letter checking if he wanted to transfer the money, I think is likely to relate to receiving the insert. In any event the letter with its noted enclosure was correctly addressed, and I'm therefore satisfied the enclosure was likely received.

I said in my Provisional Decision that I couldn't be sure whether Prudential enclosed the 2014 or 2015 insert version. But Mr K would either have been alerted to risks (under the 2014 version) of offers of cash from a pension, or (under the 2015 version) of transfers overseas. And in both, he was warned to be suspicious of cold calls.

Mr K's CMC said it's not surprising that Mr K wouldn't have reacted to this leaflet, as it was only about schemes that were purely used for pension liberation purposes. Whilst the description they've given of Prudential's letter suggests it might not have updated its terminology from the word 'liberation', both the 2014 and 2015 inserts had done so, and were about pension scams in a wider sense. On balance, I think it's most likely Mr K did get the 2015 insert. I say this as in writing to him, Prudential was clearly aware of the Scorpion campaign – and there had been a substantial period of time since this insert was updated in March 2015 before it wrote that November.

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 K'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.

Under the "Initial analysis" section of the PSIG Code, Prudential couldn't have considered the entire receiving scheme/administrator as being free of scam risk. I say this because the focus of scam activity had moved away from pure pension liberation by the time of Mr K's transfer. So, Prudential could no longer be satisfied that the transfer presented little risk from Bourse being regulated in another EEA jurisdiction, recognised by HMRC for more than a year and undertaking to adhere to the QROPS requirements.

As a result, the initial triage process should have instead led to Prudential asking Mr K 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. And I'll note that based on Mr K's recollections about being called on the back of a PPI claim he was already making, it's unclear to what extent he would have regarded the contact he received as unsolicited. Suffice to say, I think at least two if not three of the following questions would most likely have been answered "yes":

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?

- Have you been promised a specific/guaranteed rate of return?

- Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) notes, *"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..."*

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 providers to choose the most relevant questions (including 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 K in order to help with this.

<u>What should Prudential have found out</u>

Prudential did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mr K's rationale for transferring. If Prudential had asked Mr K about this, it would have found out he was transferring to a type of arrangement more commonly used by people living overseas - even though he wasn't intending to do that. But that it was the means for him to be able to take tax-free cash from his pension and make further investments on the advice of Felicitas.

There was some diversification in the investments being recommended (I note that there are specific warnings about lack of diversification in both the 2015 insert and Scorpion action pack). But about half was going to be invested in TRG, an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

Some of these features on their own amount to warning signs under both TPR's guidance and the PSIG Code. Others, however, would provide some reassurance that Mr K was not likely to fall victim to a scam. In my Provisional Decision, I took the view that the most important source of reassurance here was that Mr K was getting advice from Felicitas. Whilst regulated by the Cyprus Securities and Exchange Commission, this firm had also exercised its right under freedom of services to passport into the UK – and therefore had appeared as such on the FCA register since June 2012.

Mr K's CMC says it would have been wrong of Prudential to take comfort in this, because he would have had no right to complain to either our service or the Financial Services Compensation Scheme about Felicitas' advice unless it had passported via a branch office in the UK ("freedom of establishment", rather than "freedom of services"). But I consider that making such a distinction involved more of an investigation into the advice Mr K was getting than entailed by the guidance Prudential was expected to follow.

The Scorpion checklist recommends that in order to identify advice from a non-regulated adviser, the transferring scheme should consult the FCA's online register of authorised firms. Prudential should have taken that step, which is not difficult. Had it done so it would have discovered that Felicitas appeared on the FCA register as a firm that had passported from Cyprus to the United Kingdom. This means that for UK purposes throughout the period of this transfer Prudential was an authorised person under s.31(1)(b) of the FSMA and Schedule 3 to that Act. That was the extent of the check it was expected to carry out.

<u>What should Prudential have told Mr K – and would that have made a difference?</u>

A ceding pension scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high-risk investments. So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mr K's transfer, viewed overall in that way and if Prudential had taken the steps it should, I don't consider that would have been the case.

Mr K's CMC suggests Prudential should have warned him that he wouldn't have the same regulatory protections as from a UK-based adviser. Yet I note that the FCA register at that time wasn't definitive on the extent of compensatory coverage. It would have said that both the UK and host state compensation schemes 'may' be able to consider complaints/claims. I think all of this shows that it would have been expecting too much for Prudential to explain the differences in coverage. The Code and the TPR checklist also didn't at that time contain any warnings about using overseas advisers that are on the FCA register.

The right to passport financial services from one EU country to another is a feature of the EU's internal market, which applied to the UK at the time. The right was underpinned by the introduction of EU wide standards of investor protection and harmonised conduct of business rules. The UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under FSMA.

As a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction), the regulatory protections included the fact that Felicitas would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, it would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under the oversight of its regulator. It therefore would have had to meet certain required standards in all of its dealings and subject to whatever investor recourse existed under those regulations. These standards were accepted for the purpose of authorisation under UK law.

I'm satisfied all of this would have provided sufficient comfort for Prudential not to need to discuss this issue specifically with Mr K. And that then has implications for whether it was necessary to discuss any *other* features of the transfer that Prudential might have noticed before it realised Mr K was taking appropriately regulated advice.

My Provisional Decision considered the awareness Prudential would likely have had that Mr K was still making a transfer that was atypical for most UK residents and where at least some of the investments within the QROPS looked to be unregulated. Although he was now using a regulated adviser, Prudential might also have discovered (or suspected) that Mr K had initially been in contact with Capital Facts – who would have appeared to be an unregulated introducer of some sort.

I went on to consider what might have happened if Prudential had cautioned Mr K about these aspects. Mr K's CMC said my findings on causation were unclear, because I hadn't set out what precisely Prudential should have told Mr K first. So I want to be clear here that I can't fairly say Prudential was required by any of the guidance (which encourages a proportional approach to be taken), or its regulatory obligations, to give Mr K a separate rundown of all the other warning signs it had found and then dismissed as a result of establishing that Mr K was getting regulated advice. And that is my primary finding here.

As I said in the Provisional Decision, Mr K was taking advice from a regulated firm. So I can't fairly say it was for Prudential to second-guess what their advice was, as that it was not authorised to provide advice to Mr K itself. In some respects, given that Mr K was transferring to a QROPS, it wasn't surprising that the advising firm was also located in a jurisdiction more familiar with this type of arrangement.

Nevertheless, I do have to consider the possibility that Prudential asking questions about these matters might in itself have had the effect of causing him to think more carefully about what he was doing. And it's also possible that in the process of asking Mr K questions – particularly if that happened in real time – Prudential would have given explanations to Mr K about the risks of cold-calling, unregulated investments and so on. I can also see that in response to my Provisional Decision, Mr K's CMC would like me to argue that Prudential should have highlighted to Mr K that he could still access the tax-free cash he wanted but leave his pension arrangements in the UK.

Much of what might have been discussed would depend on how any conversation developed. However, for the reasons I'll explain next, I don't think it would have made a difference even if Prudential had emphasized that there were other ways of Mr K accessing his tax-free cash via regulated investments in the UK.

Would Prudential asking/commenting about Mr K's situation have changed his mind?

I've thought about this aspect carefully but I'm not persuaded on balance that the due diligence questioning process itself - and any potentially helpful explanations from Prudential to put what he was doing in context - would have altered what Mr K planned to do.

I've taken into account that Mr K would, most likely, have already received the 2015 version of the TPR insert. This contained many of the same warning signs as would likely have come up when Prudential was asking him questions, yet it evidently didn't put Mr K off transferring when he received it. I think the fact that Mr K was getting regulated advice – something it appears he didn't know before, but which would actually have been confirmed by Prudential – would have given him increased confidence in Felicitas' recommendations. There was also some diversification in the investments being recommended, which was a feature highlighted in the insert.

As I've already explained in my Provisional Decision, it seems Mr K had been very pleased to find out that he could access this lump sum from his Prudential plans, and was evidently already prepared to use a part of his pension (normally earmarked for planning his retirement) on a present for him and his children.

The Prudential plans were older-style policies originally provided by Scottish Amicable. So he would have needed to transfer from them to access the tax-free cash if he wanted to continue investing the remainder. The advice from Felicitas, which was regulated, gave him a way to do that. And as I mentioned in my Provisional Decision, he had already signed a declaration for Bourse disclosing that he was aware TRG was not covered by the compensation arrangements in the UK.

So I think I can fairly say Mr K did acknowledge the lack of protection with the investments he made, and still went ahead although he had been sent TPR's warning material about the risk of scams. In all of these circumstances, I'm not in a position to conclude that Prudential going through a proper due diligence process – as it should have done – would have made a difference to Mr K's decision to transfer.

My final decision

For the reasons I've given above, I've decided that Mr K's complaint is not upheld.

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

Gideon Moore
Ombudsman