DRN-5286170

The complaint

Mr R, with the help of a professional representative, has complained about a transfer from his The Prudential Assurance Company Limited (Prudential) deferred annuity pension policy to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in Malta in October 2014. The QROPS was subsequently used to invest in, amongst other things, Dolphin Capital Loan Notes and the investment now appears to have little value.

Mr R says Prudential failed in its responsibilities when dealing with the transfer request. He says it should have done more to protect him and to warn him about the potential dangers of transferring his pension. Mr R says as a consequence of Prudential's failings, he proceeded with the transfer and says he has lost out financially as a result.

What happened

I issued my provisional decision of 10 January 2025 in which I said I was likely to not uphold this complaint. This set out the background and circumstances of the complaint as well as my reasons for reaching my conclusions. I've included the relevant extracts from my provisional decision below, which forms part of my final decision.

Copy of my provisional decision

What happened

As a helpful summary, the available documentation shows the involvement of the following businesses or firms in Mr R's transfer:

- Servatus Ltd (Servatus) – an advisory firm regulated by the Central Bank of Ireland and an approved introducer to the Harbour Pensions QROPS. Servatus was at the relevant time also shown on the Financial Conduct Authority's (FCA) register as authorised in the UK with passporting rights.

- Harbour Pensions (Harbour) – a pension trustee regulated by the Maltese Financial Services Authority.

- SEB Life (SEB) - the trading name of SEB Life International Assurance Company Limited, part of the SEB Group, regulated by the Central Bank of Ireland. It is a life assurance company incorporated and regulated in Ireland, engaging in the cross-border distribution of insurance-based investment products.

- Portia Financial Services Limited (Portia) – There is no exact match on the FCA's register. There is a record of Portia Financial Services, but this ceased to be authorised in 2007. There is also an entry for a Portia Financial Services Ltd and this was, for a time, an appointed representative of a regulated firm. But it ceased to be regulated as an appointed representative in 2011, well before the transfer in question.

- Global Partners Limited (GPL) – a Gibraltar based advisory firm regulated by the Financial Services Commission (Gibraltar.) The firm became Tourbillon Limited after June 2014 who were again an EEA regulated financial adviser and entered on the FCA register as having passporting rights to provide services within the UK.

- Dolphin Capital (Dolphin) (now called German Property Group) – a German business which offered high yielding Loan Note investments often offering over 10% investment returns per year. Its underlying business was described as the renovation of derelict properties in Germany to provide residential accommodation.
  Dolphin Capital is now in insolvency proceedings in Germany, having collapsed in 2020 owing significant amounts to investors. There has been a total loss on all non-matured Loan Notes.

Mr R has a separate but linked complaint about a pension policy he held with another provider, which he transferred to the same QROPS around the same time as this one. I've considered both complaints together as the evidence provided on each one has relevance to both.

In 2014, Mr R held a personal pension policy with Prudential. He was 35 years old at the time. Mr R says he was cold called by Portia who offered him a free pension review.
In April 2014, Mr R signed a letter of authority to allow GPL to request information from Prudential about his pension.

On 20 May 2014 GPL requested a transfer pack from Prudential, which it provided (following a chaser from GPL) on 7 July 2014.

Mr R says he was then referred to Servatus with whom he met at his home. Mr R says the eventual transfer and subsequent investment of his funds was made on the advice of Servatus. Mr R says he was told an offshore investment strategy would produce far greater (guaranteed) returns than his current arrangement, and it was on this basis he agreed to go ahead.

On 6 August 2014, Servatus issued a financial recommendation report, which Mr R signed on 12 August 2014. Servatus recommended transferring Mr R's pension to a QROPS with Harbour Pensions Limited in order to invest in a balance of Dolphin Capital and investment funds with SEB.

On 12 August 2014, Mr R completed the QROPS application form in which the name of a Servatus adviser was recorded as being his professional adviser. It also recorded the SEB investment platform would be used for the investments as per the recommendation report.

On 1 September 2014, Harbour sent Prudential the completed transfer paperwork requesting the transfer of Mr R's pension to the QROPS. Included in the transfer papers were: Mr R's letter of authority; completed and signed transfer discharge forms; completed HMRC forms APSS263 and CA1890; a letter from HMRC confirming registration of the QROPS from 9 April 2013; and Mr R's two forms of identification certified by Servatus. It appears Prudential received the paperwork on 10 September 2014.

On 7 October 2014, Prudential transferred an amount of just over £62,100 to the QROPS. With the amount received from Mr R's other pension provider policy, on 14 October 2014, the combined funds of just under £62,500 (after the deduction of fees) were sent to SEB to be invested in a SEB Asset Management Bond – around 40% was invested in Dolphin Loan Notes, and the remainder was invested in two more mainstream investment funds.

The Dolphin investment is now illiquid with the company being placed in administration in 2020. Investors are unlikely to get their money back. My understanding from the statements provided, is that the bond contains some liquid funds, although Mr R says he has still lost money.

In July 2020, Mr R complained to Prudential. Briefly his argument is that Prudential ought to have carried out due diligence, spotted and told him about a number of warning signs or risks in relation to the transfer including being contacted by an unregulated introducer and being advised by an unregulated adviser regarding an unregulated high-risk investment.

Prudential didn't uphold the complaint. In summary it said it carried out due diligence on the transfer, which included confirming the QROPS had been in existence for more than two years, it didn't appear on an industry 'blacklist' of scheme, it remained on HMRC's list of QROPS at the time, and a number of transfers had been made previously to the scheme, which didn't raise any issues. It said there were no warning signs to indicate a potential risk in this case – had there been it would've carried out further due diligence. It said it believed it had acted fairly and in Mr R's best interests.

Mr R then referred his complaint to us. Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

What I've provisionally decided – and why

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

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. Where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

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

Before I explain my reasoning, it will be useful to set out the environment Prudential was operating in at the time with regard to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- The Pensions Schemes Act 1993 and Personal Pension Schemes (Transfer Values) Regulations 1987 generally give 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.

- A QROPS must already be an overseas pension scheme, defined in short as being one which is subject to specified regulatory and taxation restrictions in the country of establishment.
  Then it must be recognised, meaning that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.

- To be a QROPS a scheme must notify HMRC that it is a recognised overseas pension scheme, provide appropriate evidence of this to HMRC, undertake to adhere to HMRC's requirements and not be excluded by HMRC from being a

QROPS. Schemes that have notified HMRC of this are included in a published list on HMRC's website.

- On 10 June 2011 and 6 July 2011, the Financial Services Authority (FSA) issued two announcements in quick succession to consumers about the dangers of "pension unlocking" and "early pension release schemes". At around the same time TPR put up a notice on its website termed 'pension liberation', referring to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan. However, it was designed to raise public awareness about pension liberation, and remind trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow.

- TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the FCA which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

- Prudential was subject to the 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:

    - 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.

<u>The Scorpion campaign</u>

Overview

As I've said above, the Scorpion campaign was launched in February 2013 and the guidance was updated regularly over the next few years. The guidance published in 2013 and the 24 July 2014 update are relevant in this case because, from enquiry to completion, the process by which Prudential transferred the pension to Harbour ran from early July 2014 until October 2014.

The 2013 Scorpion campaign comprised the following:

- A Pensions Advisory Service insert (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or 'introducers' who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These included background searches online, pointing out that any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.

- A longer insert issued by The Pensions Advisory Service (TPAS) which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer insert was intended to be sent to members who had queries about pension liberation fraud.

- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “look out for” various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

The 2014 update to the Scorpion campaign

This update reiterated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from pension liberation specifically, to pension scams. The action pack for trustees and administrators was entitled “Pensions Scams” whereas the action pack from 2013 was entitled “Pension Liberation Fraud”. And, on the front page of the 2014 insert that was to be sent to members, it said “Pension scams. Don’t get stung.” The 2014 update also made references throughout to “scammers” and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

Other features of the 2014 guidance:

- It stated pensions scams in the UK were on the increase. With one-off pension investments, “pension loans” or upfront cash being used to entice savers.

- Trustees, administrators and pension providers had to ensure that members received regular and clear information about the risk of pension scams and how to spot a pension scam.

- It asked for the Scorpion insert to be included in the member’s annual pension statement or in any other member communications.

- It highlighted some common features of pension scams such as phrases like “one off investment opportunities”, “free pension review”, “legal loopholes”, “cash bonus” and “government endorsement”.

- It stated that consumers being approached out of the blue over the phone, via text messages or in person door-to door was a common feature of a scam.

- Transfers of money or investments overseas, were also highlighted as something to watch out for and it explained this was because the money would be harder to recover.

- It said that if any of the warning signs applied, the action pack provided a checklist transferring schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.

- If transferring schemes still had concerns, they were encouraged to contact the member to establish whether they understood the type of scheme they were planning on transferring to and to send them the pension scams booklet.

- It also encouraged transferring schemes to speak to the member at risk – over the phone, via email or letter – this could help the transferring provider to establish answers to more of the questions on the checklist; or to direct the member to Action Fraud or TPAS if the provider thought it was a scam; or if the member insisted on proceeding the provider could contact Action Fraud itself.

The 2014 action pack also included two examples of real-life scams where the individuals concerned lost most or all of their pension savings. One of the examples involved an individual under the minimum pension age who wanted to access some of her pension early. And the other concerned an individual (again under the minimum pension age) who had been approached out of the blue with an offer for a free pension review who had been offered a "unique investment opportunity" for his pension savings specifically in a property development overseas.

The status of the Scorpion guidance

When it was launched in February 2013, the Scorpion guidance was described as a cross-government initiative by Action Fraud, the City of London Police, HMRC, TPAS, TPR, the SFO, and the FSA/FCA, all of which endorsed the action pack, allowing their names and logos to appear in the action pack and Scorpion insert.

So far as TPR itself was concerned, it issued the guidance under the powers at s.12 of the Pension Act 2004, which provides:

"12 Provision of information, education and assistance

(1) The [TPR] may provide such information, education and assistance as it considers appropriate to those involved in –

(a) the administration of work-based pension schemes, or
(b) advising the trustees or managers in relation to such schemes as to their operation."

So, 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. Likewise, by and large, the contents of the action pack are framed in a way that is consistent with its stated purpose, namely as points to note or suggested actions a firm might take. For example, rather than telling firms they are expected to spot the warning signs of pension liberation fraud, the action pack lists "some of the things to look out for" and, rather than say that the presence of a warning sign requires the firm to run though the checklist, it states: "If any of these statements apply, then you can use the checklist …"

The language arguably strays into the imperative under the heading "Next steps if you have concerns", stating "Contact the member to establish whether they understand the type of scheme they'll be transferring to. Then "speak to the member at risk."

But, overall, the tenor of the document is essentially a set of prompts and suggestions, not requirements. And this remained the same for the updated version of the Scorpion guidance that followed in July 2014.

Also, it would seem inconsistent to view the Scorpion guidance as representing a binding rule or legal duty on personal pension providers regulated by the FSA/FCA when such a duty didn't extend to those bodies that came under the regulator that drafted the guidance, the TPR. Furthermore, 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 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 all the above that the contents of the action pack were essentially informational and advisory in nature and that deviating from the action pack 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 statutory rights.

That said, the launch of the February 2013 Scorpion guidance 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 transfer requests. And this remained the case with all its subsequent updates. The campaign and guidance were 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 like Prudential 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. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack 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 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>

Mr R says that he received a cold call from Portia offering him a free pension review. Mr R says he agreed to the review and then signed a letter of authority with GPL in April 2014 to allow them to obtain details about his pension.

He says he was then introduced to Servatus who advised him to transfer his pension and take advantage of an offshore investment strategy, which he was told was the best option for him. He says he was told his investment would be made over five years and was guaranteed to outperform his funds with Prudential. It was on this basis that Mr R says he agreed to go ahead.

The documentary evidence in this case supports what Mr R has said that it was Servatus who provided him with financial advice. The section in the QROPS application records Servatus as the advising firm and that an initial fee of 0.5% would be paid from the QROPS. Mr R signed this form on 12 August 2014. And Servatus issued Mr R with a recommendation report detailing the transfer advice and recommended investments of his funds in Dolphin and two more mainstream investments funds, which Mr R also signed on 12 August 2014.

Overall, I'm satisfied Servatus provided the advice that led to Mr R transferring his pension and making the recommended investments.

<u>What did Prudential do, and was this 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.

Prudential has provided a copy of a letter it sent directly to Mr R with his surrender value paperwork dated 7 July 2014, which said that the Scorpion insert was enclosed and it listed it as an enclosure at the bottom of the letter. Mr R says he didn't receive the letter and insert because it was incorrectly addressed. But I disagree – the address it was sent to was the address Mr R had given as his residential address and which also features on other documents from the time. So, given the vast majority of correctly addressed mail is delivered safely, I think more likely than not, Mr R did receive this letter and so did get a copy of the Scorpion insert.

The version Mr R was sent was the one published in February 2013. That warned Mr R of the risk of companies telling consumers that they could access cash from their pensions before age 55. But this wasn't what Mr R had been 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 R's circumstances. Mr R had also not been offered any cash incentives to transfer.

So, while Prudential did what it should have done here, I don't think the insert wouldn't have been very impactful on its own.

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; Mr R's identification documents certified by Servatus. 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 R's statutory right, and potentially other legal rights, to transfer. Prudential also says that it checked the scheme wasn't on any industry 'blacklist' and there wasn't any cause for concern based on previous transfers.

But Prudential knew that Mr R wanted to transfer his pension into an overseas pension scheme – a QROPS based in Malta – and that this very likely involved overseas investments.

The 2014 Scorpion Action Pack which is relevant here listed overseas investment as a possible warning sign of a scam. It's worth bearing in mind that the 24 July 2014 update to the Scorpion guidance shifted the focus away from just pension liberation to pension scams more broadly. This gave more prominence to overseas investments. And the potential for a QROPS to facilitate investments which were at risk of a scam in that wider sense, rather than liberating funds back to the member, was greater.

Overall, I think that in exercising reasonable due diligence in line with its obligations under PRIN and COBS, Prudential should've followed up on the warning sign apparent to it at this time – namely that Mr R was planning to transfer his pension overseas which was a common theme of pension scams to understand more about the transfer. 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 registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, 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 R's transfer request, and the relatively limited information it had about the transfer, I think in this case Prudential should've addressed all three parts of the check list and contacted Mr R as part of its due diligence.

What would Prudential have discovered?

From a few simple questions, Prudential would have discovered a number of facts about the transfer from Mr R. Under the first section of the checklist, it would've likely found that the prompt for Mr R to transfer his pension to the QROPS was a cold call. I also think Prudential would have learned from Mr R that the transferred funds would be invested overseas. In addition to this, under the third section of the checklist, Prudential would've discovered that Mr R had been advised to transfer his pension by Servatus.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by 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 Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

So, I think it is reasonable to assume that, if Prudential had made these inquiries, the presence of Servatus, as an authorised person advising Mr R, would've indicated that the transfer was unlikely to be a scam and that Mr R would enjoy some regulatory protections in the unlikely event it turned out to be one.

I accept the regulatory protections would not come via UK's complaints and investor protection institutions, the FOS or the FSCS. But instead through its own regulator, The Republic of Ireland which also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive. Furthermore, As a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Servatus 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 some oversight by its regulator to ensure it was acting in the best interest of its client. So, it would've had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system.

In light of this, I don't think it's unreasonable that Prudential could (and would if it had checked up on Servatus' regulatory standing) have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

What should Prudential have done with this information?

Prudential needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. So, while I accept Prudential would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the Scorpion Action Pack (e.g. Mr R had been cold called and he was contemplating investing in overseas investments) I think the knowledge Mr R was being advised by a properly authorised adviser in this case reasonably would've given Prudential comfort the transfer was unlikely to be a scam. And that as his *regulated* adviser, they were likely acting in his best interests and would've made him aware of the relevant risks and issues. It wasn't Prudential's responsibility to question or scrutinise that advice.

So, even if Prudential had done more thorough due diligence in line with the Scorpion action pack as it ought to have done here, the end result of any such due diligence wouldn't have resulted in any warnings being given to Mr R. And I don't think the mere act of contacting him and asking questions about the transfer would have prompted a change of heart. The majority of the responses Mr R would likely have provided would not have given rise to concerns. It therefore follows that I'm satisfied Mr R wouldn't have stopped the transfer even if things had happened as they should have.

So, while I understand Mr R has lost out financially by investing in high-risk investments, which were likely unsuitable for him, in the circumstances and for the reasons I have set out above, I don't think it is fair and reasonable for Prudential to put right those losses.

End of provisional decision

Responses to my provisional decision

Prudential didn't respond to my provisional decision.

Mr R's representative replied on his behalf. They disagreed with my provisional decision and raised a number of points in response. In summary they said:

- There is no reference in my decision to the fact Mr R was the victim of a pension scam.

- They disagree that, if Prudential had done what it ought to have, it would've been reassured by Servatus' involvement. They asked me to explain why further enquiry or a warning wasn't warranted when Prudential had provided GPL with transfer documents, who said they were acting for Mr R until cancellation of the authority he signed, and yet Mr R was now being advised by a different firm from another jurisdiction where they hadn't received the cancellation of the authority.

- My decision ignored that Mr R had likely met with Portia, which was evidence Prudential had at the time.

- I implied that Portia may have had FCA authorisation at some point, which is wrong.

- They asked me to explain why Prudential had no reason to be concerned when it was aware of the involvement of two different EEA firms, that Mr R had been cold called by an unregulated firm and also most likely met with them during the transfer process.

- I hadn't addressed the point that Mr R should have been provided with the updated July 2014 version of the Scorpion leaflet which addressed pension scam risks, but wasn't.

- I'd concluded that when using the checklist from the July 2014 action pack, an answer to any single question suggestive of a scam didn't need to be treated as a likely scam, yet I'd also concluded that Prudential were entitled to rely on one single factor – i.e. the presence of an EEA authorised adviser – and conclude the transfer was unlikely to be a scam and there was no need for further warnings. It asked me to explain why.

- I'd not dealt with causation adequately because Mr R ought to have been sent the 2014 updated Scorpion leaflet and the conversation Prudential would've had with Mr R as part of the due diligence exercise would've explored things in more detail than I'd concluded – Prudential would've had to explain why it was contacting Mr R and the types of question it would've asked him, including the rationale for the overseas transfer, would have prompted most consumers to question whether they were doing the right thing.

- Ombudsman decisions have been issued upholding complaints for unsuitable transfer advice against IFA's based in the UK who provided essentially the same advice as Servatus. Had Mr R been prompted to either liaise with TPAS or any UK regulated firm as part of looking into things in more detail after the due diligence conversation with Prudential, it must be concluded that TPAS would have identified scam concerns and an IFA would've advised against the transfer.

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.

Having done so and carefully considered Mr R's representative's response to my provisional decision, I've not been persuaded to change my mind. So, I've reached the same conclusions and for the same reasons as set out in my provisional decision.

I'll now address what I consider to be the key points in Mr R's representative's response.

It looks like there were a number of businesses or firms involved here during Mr R's transfer process. And it is likely that Mr R met with Portia Financial who were not FCA authorised. I didn't set everything out in great detail in the background and circumstances leading up to the transfer because what's key here, and ultimately what gets to the heart of this complaint, is that it was Servatus – an authorised person under FSMA – who provided the transfer advice to Mr R. And as I explained in my provisional decision, which I will repeat again below, it is the presence of an authorised person advising Mr R that I think would've reasonably indicated to Prudential that the transfer was unlikely to be a scam.

Because Mr R was transferring to a QROPS, I don't think it was unusual that overseas parties were involved in the process. And just because Mr R had signed a letter of authority with GPL giving Prudential Mr R's permission to share his pension details with them, this didn't preclude Mr R from dealing with or getting advice from another firm. And I don't think Prudential would've seen this as something unusual or odd or importantly a warning sign. In my view is not uncommon for firms to refer their customers to other firms, which can happen for a number of reasons – e.g. differing expertise, regulatory permissions or perhaps time constraints. And the two firms in question here were authorised.

And if Prudential had contacted Mr R as part of its due diligence exercise and it had asked him about this, or Mr R had volunteered the information, he'd have likely told it what he said in his complaint submission, that he'd been referred to Servatus who provided the advice.

I think it is important for me to highlight again that, Prudential needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. I accept

Prudential would likely have (had it carried out the appropriate due diligence) found there to be some of the pension scam warning signs indicated in the Scorpion action pack. But there was also things to indicate a scam wasn't taking place – the scheme wasn't recently registered/recognised and Mr R was being advised by a properly authorised adviser providing Mr R with some regulatory protections.

So there wasn't one single factor at play here outweighing or overriding the scam warning signs. But overall, I think the knowledge Mr R was being advised by a properly authorised adviser in this case carried some weight and reasonably would've given Prudential comfort the transfer was unlikely to be a scam. I think it was reasonable for Prudential to hold the view that the regulated adviser was likely acting in Mr R's best interests. So, as a result, I think it would have been proportionate for it to undertake no further due diligence. And I think Prudential had no reason to provide Mr R with any explicit warning or delay the transfer further.

Mr R's representative has said that Prudential should have sent Mr R the updated version of the Scorpion leaflet after the July 2014 update. It also says I haven't considered causation appropriately because I hadn't considered this point (as well as the level of detail Prudential would have explored its concerns with Mr R in its conversation with him.) But for the avoidance of doubt, while Prudential should have taken the updated 2014 guidance into account when processing the transfer request, there was no requirement for a provider to send the updated Scorpion leaflet if the transfer process encompassed the period the guidance / leaflet was updated. As I said in my provisional decision, Prudential sent Mr R the Scorpion leaflet at what I consider was the appropriate opportunity to do so, and the version sent was the one published in February 2013. Prudential did what was required of it here.

Mr R's representative's argument about causation and how things would have been explored with him in a more detailed conversation with Prudential than I had suggested would have been the case – they thought where I said: "the mere act of contacting him and asking him questions" was an unreasonable summary of what a due diligence conversation with Mr R would have consisted of – and that this would have been impactful in getting across to Mr R Prudential's concerns, presupposes that Prudential would have contacted Mr R by phone.

But it wasn't a requirement for Prudential to conduct its due diligence with a member by phone. It could, and in my view would most likely have carried things out in writing or by email. So, the opportunity for a conversation about things and for Prudential to explore the transfer introduction and advisory process with Mr R in the level of detail his representative is arguing, would in all likelihood have been limited.

Had Prudential carried out the required due diligence here, it would have explained to Mr R why it was asking the questions to provide the context. But having thought about Mr R's individual circumstances, I maintain the view that the act of asking Mr R the questions in line with the action pack would not have prompted him to question what he was doing or raise concerns. As I've said, the answer to the questions overall would not have given rise to concerns and so prompted Prudential to provide Mr R with any warnings. So I don't think Mr R would've had reason to question what he was doing or therefore been prompted to contact TPAS or a UK based IFA as his representative says would've been the case.

But if Mr R had referred to the Scorpion leaflet he received and / or looked at the consumer section of TPAS' website at the time, both would have recommended to seek advice from a regulated adviser. And if Mr R had checked, he would have seen that Servatus was. So, I think just like Prudential, he would have taken comfort from that fact.

It is not disputed that Mr R has lost out financially by investing in high-risk investments, which were likely unsuitable for him. But the suitability of the advice Mr R received wasn't Prudential's responsibility. Its role was to look-out for the tell-tale signs of pension liberation and scams and undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. In this case I've concluded Prudential didn't do all that it should reasonably have done in carrying out its due diligence. But if it had, the end result wouldn't have resulted in any warnings being given to Mr R. So, I'm satisfied for the reasons I've explained, that Mr R would not have stopped the transfer even if things had happened as they should have.

My final decision

For the reasons above, I've decided to not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 March 2025.

Paul Featherstone
Ombudsman