DRN-5306898

Financial Ombudsman Service

The complaint

Mrs S, with the help of a professional representative, has complained about a transfer of her deferred annuity pension policy with The Prudential Assurance Company Limited (Prudential) to a Qualifying Recognised Overseas Pension Scheme (QROPS) in February 2016. The QROPS was subsequently used to invest in, amongst other things, direct property and bonds issued by The Resort Group (TRG). TRG is an overseas commercial property scheme which has since run into trouble. The investment now appears to have little or no value.

Mrs S says Prudential failed in its responsibilities when dealing with the transfer request. She says it should have done more to protect her and to warn her about the potential dangers of transferring her pension. Mrs S says as a consequence of Prudential's failings, she proceeded with the transfer and says she has lost out financially as a result.

What happened

Mrs S held a deferred annuity pension policy with Prudential arising out of membership of a defined benefit occupational pension scheme. Following an unsolicited call during June 2015, Mrs S agreed to a free pension review and was referred to First Review Pension Services (FRPS). On 22 July 2015, Mrs S signed a letter of authority with FRPS allowing it to request information about her pension from Prudential. Mrs S was aged 52 at the time.

On 14 August 2015, FRPS emailed Prudential requesting a transfer pack and on 2 October 2015, Prudential provided the information to Mrs S. Its letter said that the pack had been requested by her financial adviser and the letter of authority from FRPS had been added to her record. The letter said that if Mrs S wanted to transfer her benefits to a scheme that was not a defined benefits pension scheme, and not transferring for the purpose of an immediate annuity purchase, she was required to take regulated advice from an adviser authorised to advice on pension transfers. The letter included a website link to www.unbiased.co.uk/find-an-adviser

At the end of the letter, reference was made to two enclosures: a leaflet produced by The Pensions Regulator (TPR) about pension scams and one produced by the Financial Conduct Authority (FCA) dealing with the risks associated with pension transfer activity.

On 24 November 2015, Prudential received a letter from Gerard Associates Ltd referring to Mrs S' wish to transfer her safeguarded pension benefits.

It said it had provided her with advice referring to an 'advice confirmation' letter which confirmed that its advice had been provided specific to the type of transaction proposed by Mrs S and that it had the necessary regulatory permissions to provide her with the advice. The 'advice confirmation' letter referred to was 'part three' of the transfer authority forms Prudential had provided.

On 3 December 2015, Prudential wrote to Mrs S. It said that it couldn't proceed with a transfer because it required parts one and two of the transfer authority forms, which it enclosed. It said it hadn't disclosed any information to Gerard Associates as it hadn't received a letter of authority from her.

On 9 December 2015, Prudential received a transfer request from Optimus Pension Administrators Limited (OPAL) asking it to transfer Mrs S' pension to the Optimus Retirement Benefit Scheme No.1 – a Maltese QROPS. OPAL was providing certain administrative functions on behalf of Integrated Capabilities (Malta) Limited, the administrators for the Optimus Scheme. Enclosed with the transfer forms were certified copies of Mrs S' birth certificate, HMRC forms CA1890 and APSS263 and a letter from HMRC confirming the Optimus scheme was on its list of Recognised Overseas Pension Schemes.'

Following correspondence between Prudential and OPAL clarifying some details, on 2 February 2016, Prudential transferred the benefits of Mrs S' pension to the QROPS – an amount of around £95,800. Shortly afterwards, an investment then appears to have been made with TRG for an amount of £27,000. A further amount of around £63,800 also appears to have been invested. A policy statement from Integrated Capabilities showing a summary of assets Mrs S held as of January 2020 refers to a direct investment with TRG (41%), a TRG bond (41%), two further bonds (total around 10%) and a holding in cash.

In September 2021, Mrs S complained to Prudential. Briefly her argument is that Prudential ought to have carried out due diligence, spotted and told her about a number of warning signs or risks in relation to the transfer despite there being later involvement from an IFA, including being contacted unsolicited, promised significantly better returns and advised by an unregulated adviser recommending investments outside the FCA regulatory regime.

Prudential didn't uphold the complaint. In summary it said it carried out due diligence on the transfer, which included checking the scheme was on the list of ROPS published by HMRC.. It said Mrs S received the Scorpion leaflet and had received advice from an FCA-regulated firm. It said it therefore assumed she was in receipt of all the facts and the implications of what she was doing – it wasn't its role to question the actions of a regulated firm. It said Mrs S had a contractual as well as a statutory right to transfer.

Dissatisfied with its response, Mrs S referred her complaint to us. Our investigator didn't uphold the complaint. In summary they said Prudential sent Mrs S a copy of the Scorpion leaflet as it ought to have done as well as a copy of the FCA's pension scams leaflet. And while it didn't look into the transfer further in line with the applicable guidance at the time, had it done so, they said the evidence showed that a regulated firm was involved in giving Mrs S advice. So they said Prudential would've seen this in a positive light and any other causes for concern wouldn't have outweighed this fact.

Mrs S' representative disagreed. In summary they said the investigator hadn't set out what Prudential would've identified had it carried out proper due diligence and contacted Mrs S as part of it. Had it done so, they said there were a number of warning signs it would have identified and although a FCA regulated firm was involved, they said Mrs S should have been told about them.

They said there is nothing in the guidance at the time which said a firm didn't need to communicate present scam warnings signs just because there was an IFA involved.

Because things couldn't be resolved informally, the matter was passed to me to decide.

For the sake of completeness, Mrs S has had a claim against Gerard Associates Ltd upheld through the FCSC and received compensation. Mrs S is seeking payment for what she considers is the remainder of her loss due to Prudential's failings.

What I've decided – and why

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

I've 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.

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, TPR issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age).

In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

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

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

COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

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

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

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

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which 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.

<u>The March 2015 Scorpion guidance</u>

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.

<u>The PSIG Code of Good Practice</u>

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.

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

Mrs S's representative has set out her circumstances at the time of the transfer – she was working earning around £20,000 a year, the Prudential pension represented her only private retirement provision, and she considered herself to be a low-risk person.

Mrs S said the transfer process was initiated by cold call and that she was referred to FRPS who carried out a review of pension. She says they recommended she transfer her pension and invest in TRG, which she was told was a very good investment opportunity. She says she was also told that she would have earlier and easier access to her pension if she transferred and that the investments would perform much better than her existing pension.

Mrs S has said that while a regulated firm – Gerard Associates Ltd – was involved and they provided a letter to Prudential confirming that they had advised her about the pension transfer, she recalls minimal, if any, contact with them and they did not advise her about the inherent risks associated with the proposals. Mrs S has also indicated that another firm, Strategic Wealth may also have been involved in connection with arranging the investments following the transfer.

Mrs S hasn't said who cold called her. But it seems likely to me that it was FRPS who both cold called and carried out the review of her pension. Mrs S doesn't strike me as someone who had the requisite pension and investment knowledge to initiate this type of pension transfer and investment arrangement unaided.

FRPS was clearly involved based on its request for a transfer pack. And the wider evidence this Service has is also that FRPS was commonly involved in encouraging individuals to transfer to a variety of schemes that ultimately invested in TRG, because there were directorial links between FRPS and TRG. So I think it was FRPS who pitched TRG as an attractive investment opportunity and that Mrs S' motive for transferring appears to have been the prospect of generating higher returns for her pension.

But FRPS weren't the only party involved here. It is not disputed that Gerard Associates – a FCA authorised firm – were involved too. Because Mrs S' pension with Prudential had guaranteed benefits and its transfer value was greater than £30,000, it was a requirement that she had to get regulated advice before transferring under the pensions freedoms legislation enacted from April 2015. Prudential made this clear to Mrs S when it sent her the transfer pack and quote. Mrs S recalls only minimal contact with this firm – but they nevertheless confirmed they'd given Mrs S the required advice and held the necessary regulatory permissions to do so.
And it is the involvement of a regulated advice firm that's key here for the reasons I will come on to below.

Mrs S' representative has referred to the possible involvement of Strategic Wealth Limited – a Gibraltar based firm – in the advice process. I'm aware from other cases we have that they were often involved in advising consumers considering transferring and investing via the QROPS. In this case, I've not seen any supporting evidence of their involvement and Mrs S says they were possibly involved *after* the transfer. So, given this and based on the evidence I do have, I don't think I need to consider the extent or otherwise of Strategic Wealth's involvement here – it isn't important to the outcome of this complaint.

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.

It is not disputed that Prudential sent and Mrs S received a copy of the Scorpion leaflet. This was included in Prudential's letter to Mrs S of 2 October 2015. I have no reason to doubt this was the relevant version at the time – the March 2015 version. In addition, Prudential also sent Mrs S the FCA's leaflet about pension scams – 'Protect your pension pot from risky investments and scams.'

I'm satisfied Prudential did what I would reasonably expect of it here.

Due diligence:

Prudential received the following information with the transfer request: transfer discharge forms; HMRC forms APSS263 and CA1890 and confirmation that HMRC recognised the QROPS. This step ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mrs S' statutory right, and potentially other legal rights, to transfer.

The steps Prudential took were a necessary part of the due diligence process. But I think Prudential overlooked a key part of its obligations to conduct its business with due skill, care and diligence and act in Mrs S' best interests. The Scorpion guidance and PSIG Code show there was more that Prudential should have done.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs S' transfer in that light. I can see the investigator considered things using the 2015 Scorpion guidance as a benchmark instead albeit making reference to the PSIG code. But I don't think this matters – I'm satisfied the outcome is the same. I've simply chosen to consider things using what I consider to be the more detailed guidance at the time.

Prudential hasn't said that it fast-tracked Mrs S' transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. And the transfer request didn't come from an accepted club such as the Public Sector Transfer Club. So, the initial triage process should have instead led to Prudential asking Mrs S further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would 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 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) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

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

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

<u>What should Prudential have found out – and would it have made a difference?</u>

Prudential did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mrs S' rationale for transferring. If it had asked Mrs S about this – which it should have done, using the framework outlined above – it would have found out she was transferring her pension following an unsolicited approach and that she was transferring to a type of arrangement more commonly used by people living overseas even though she wasn't intending to do that. Prudential would also have found out that the reason for transferring overseas was to invest, in part, in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

So based on this, Prudential wouldn't have needed to ask too many questions of Mrs S to have identified a number of warning signs. And if it had followed the Scorpion action pack, I think it would've likely identified the same things.

But Prudential already knew that a regulated adviser was involved and had given Mrs S the required pension transfer advice. A check of the FCA register would have confirmed their regulatory status – it already had their FCA registration number. So, Prudential might have stopped there. But if it had asked Mrs S to clarify what advice she had received and from whom, it seems likely she would have named both FRPS and Gerard Associates.

Prudential knew FRPS was involved in the process from the letter of authority. But I can't fairly say it should have become concerned about this because, more likely than not, it would have appeared – and in my view reasonable for it to hold the view – that the extent of FRPS' involvement was to refer Mrs S on to Gerard Associates for regulated advice.
Mrs S was required to receive regulated advice because of the guaranteed nature of her benefits she wanted to transfer. And Prudential had the required completed declaration that she had received that advice.

Mrs S says she recalls minimal contact with Gerard Associates. And if Prudential had spoken to Mrs S she might have told it this. But knowing a regulated adviser was involved, and having confirmed the legitimacy of the receiving scheme, I don’t think Prudential needed to look any further. I think Prudential could reasonably have taken comfort from this and deemed the risk of the transfer was minimal. It wasn’t Prudential’s role to question or scrutinise the advice Mrs S had received.

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 it would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the guidance, I think overall, the knowledge the scheme was legitimate and that Mrs S was being advised by a properly authorised adviser in this case would’ve reasonably indicated to Prudential the transfer was unlikely to be a scam. So, in these circumstances and despite what Mrs S’ representative argues, there would no reason to halt the transfer or provide Mrs S with *any* warnings. So, I don’t think Mrs S would have been given any reason to question what she was doing.

I’ve considered that Prudential contacting Mrs S and asking her questions about how things came about and her motivation for transferring might have caused her to question what she was doing. But I’m mindful that Mrs S had already by this stage overlooked or perhaps ignored some warnings about the steps she was about to take set out in both the Scorpion insert and the FCA leaflet Prudential sent her. And as I’ve explained above, there were no explicit warnings Prudential should reasonably have given to Mrs S. So, in the circumstances I don’t think the act of asking Mrs S questions as part of its due diligence, as Prudential ought to have done, would have put her off transferring.

Overall, for the reasons above, I’m satisfied that if things had happened as they should have, Mrs S wouldn’t have changed her mind and stopped the transfer. It follows that she would be in the same position she is in now. So, I don’t think Prudential has caused the investment losses she has suffered.

I therefore don’t uphold this complaint.

My final decision

For the reasons above, I’ve decided to not uphold this complaint, so I make no award in Mrs S’ favour.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs S to accept or reject my decision before 7 March 2025.
Paul Featherstone
Ombudsman