

The complaint

Mr H, through a professional representative, has complained about the transfer of his Prudential Assurance Company Limited (“Prudential”) group personal pension to a Qualifying Recognised Overseas Pension Scheme (“QROPS”) in April 2016. Mr H’s QROPS was subsequently used to invest in inappropriate assets, including The Resort Group (“TRG”), an overseas hotel venture that has since run into trouble.

Mr H 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 H 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 H has said that in 2015 he was in touch with a regulated firm called Profile Financial Solutions Ltd (“PFSL”). They were looking into his pension situation and made contact with Prudential seeking information around November 2015.

The options that were put forward by this firm did not eventually take place and there is no evidence of PFSL’s further involvement in the subsequent transfer to the QROPS that Mr H made.

At the time Mr H held three pensions with three different providers – only one of which was transferred to the QROPS – the subject of this complaint.

Around the same time, Mr H has said he was cold called by First Review Pension Services (“FRPS”) – an unregulated firm – who offered him a free review of his pension. Mr H agreed to this taking place and was visited by a representative at his home.

He has said he was strongly recommended to transfer his pension to a QROPS based in Malta – The Optimus Retirement Benefit Scheme No.1 – (“the Scheme”), and then invest in part in TRG.

FRPS introduced Mr H to a firm his representative has referred to as “Strategic Wealth” which was an advisory firm based in Gibraltar. His representative has said Strategic Wealth advised on the investments within the QROPS. Mr H was also put in touch with Integrated-Capabilities (Malta) Limited who were the Scheme’s administrators and Optimus Pensions Administration Limited (Optimus) who carried out some administrative functions on behalf of the scheme administrators.

FRPS sent Prudential a letter of authority on 2 October 2015 and also requested information about Mr H’s pension to which Prudential responded on 20 October 2015 providing the requested information and the relevant transfer forms.

Mr H has said that either Optimus or FRPS organised for Mr H’s signature on a number of

transfer documents and Optimus sent these to Prudential in a letter dated 9 March 2016 along with the transfer request.

On 6 April 2016 Prudential actioned the transfer of Mr H's pension – a total of around £21,000. Mr H was 47 years old at the time of the transfer. Subsequently around £10,000 was invested in TRG and a fixed rate bond which Mr H says are now both illiquid. The balance was invested in various equity funds and currently have a value of around £5,000. In September 2022, Mr H complained to Prudential. Briefly, his argument is that Prudential ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Prudential didn't uphold the complaint. It explained that upon receipt of the transfer request it checked the Scheme was registered on HMRC's list of recognised overseas pension schemes (ROPS) and also checked the legitimacy of the administrators of the scheme. It also said that it had sent Mr H directly a copy of The Pension Regulator's (TPR) Scorpion insert (dealt with in more detail below) on two occasions – once following contact by FRPS in a letter dated 20 October 2015 and again in a letter dated 13 November 2015 following contact by PFSL.

It felt none of the information it had about the transfer at the time gave it cause for concern. And overall it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

I issued a provisional decision in March 2025. An extract of it is set out below and forms part of this decision:

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), 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.

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

At the time of transferring Mr H was employed as a building contract and services manager earning around £44,000 per year. His representatives have told us that he had savings of around £5,000 but had no experience of investments or pensions.

Mr H said he was cold called by FRPS and offered a free review of his pensions. He was then visited at his home by FRPS and was told his pension was “frozen” and was strongly recommended to transfer to the Scheme and then invest in TRG. He says FRPS told him TRG was a very good company that invested in a resort in Cape Verde which would perform very well. On this basis he decided to proceed with the transfer.

Mr H signed a letter of authority with FRPS on 2 October 2015 and Prudential provided them with the requested information about his pension in a letter dated 20 October 2015. So FRPS are clearly involved here. It also seems likely to me that the process was initiated by a cold call by FRPS. I say this because while I don't have much information about Mr H's wider circumstances, based on the information we do have he doesn't strike me as someone who had the requisite pension and investment knowledge to initiate this type of pension transfer enquiry and investment arrangement unaided.

Furthermore, given the wider evidence this Service has about FRPS, we know they were commonly involved in encouraging individuals to transfer to a variety of schemes that ultimately invested in TRG – there were directorial links between FRPS and TRG – I think it's also likely that it was FRPS who met with Mr H and who pitched it as an attractive investment opportunity.

However, it is also our experience that QROPS providers such as Optimus in this case either preferred or they required there to be an adviser associated or linked with the QROPS who was regulated somewhere in the EEA. In this case Mr H's representative has not provided any of the documentation from the time used to set up the QROPS which we're used to seeing on other cases such as the application form and the initial investment statements. However, the investments Mr H made correspond closely to other cases we've seen where a transfer was originally encouraged by FRPS to this scheme.

In those other cases, the adviser associated with the QROPS from outset worked simultaneously for two firms called 'Strategic Wealth': Strategic Wealth UK Limited (regulated by the FCA) and Strategic Wealth Limited (a firm incorporated in Gibraltar and regulated by the Gibraltar Financial Services Commission). The latter also passported into the UK financial services regime on a 'services only' basis Mr H's representative will be aware of these features, including a suitability report that Strategic Wealth Limited issued to its clients looking to transfer to the Optimus Scheme and a fee it took from the QROPS in return for the advice it gave, as I know they have submitted them for other customers and we have provided a sample letter to them on other cases.

Another consumer whose complaint we've dealt with has been able to recall meeting the author of this suitability report in the UK before they transferred. This individual was authorised to hold a controlled function in the UK for Strategic Wealth UK Limited and was also, it seems, a director of Strategic Wealth Limited in Gibraltar. The reports say copies will be provided to Optimus. And while the representative hasn't provided anything similar in relation to Mr H, given the similarities in the circumstances surrounding Mr H's transfer and the other complaints we have seen involving the same QROPS and the same firms, I have no reason to believe that Mr H didn't receive the same report and documents that we have seen on other complaints or that the contents of them would be different.

So, on the basis of what we already know, I consider it likely, on the balance of probabilities, that Strategic Wealth was involved in the transfer and either sent the individual from FRPS to visit Mr H at his home, or gave advice in conjunction with that individual. I'm fortified in that conclusion by evidence that has also been accepted by the Maltese Arbitrator for Financial Services of Strategic Wealth's involvement (alongside FRPS) in Optimus QROPS transfers involving UK individuals¹.

Because it had passported into the UK, Strategic Wealth Limited appeared on the FCA register (alongside its sister company, Strategic Wealth UK Limited). Its services passport meant it didn't operate from a physical presence in the UK – but a complicating factor in these cases is that Strategic Wealth UK Limited was operating in the UK, and this is likely to have facilitated the close working arrangement between FRPS and Strategic Wealth. The anonymised report said Strategic Wealth Limited had been engaged by the trustees of the Optimus Scheme in order to give the recipient 'information' on their options. However it appears to then contradict itself by suggesting that the report is based on a 'Limited Advice Factfind' and risk profiling around their pension but "No other areas of advice will be covered" – i.e. suggesting advice is being given on a limited basis. It looks to have been a condition of the QROPS trustees accepting funds that this advice was given beforehand, and Mr H would have been asked to sign to acknowledge receipt of his report. (For clarity, a transfer request wasn't made for the individual in the anonymised copy until about six weeks after the date of the report).

However, the report compared the benefits under the existing schemes and various alternative schemes they could transfer to, including the Optimus QROPS. On the assumption that Mr H received a similar letter, I note that it does clarify that a 25% tax-free cash sum is also available from a UK pension. The comments conclude that "...in view of your personal circumstances and objectives a QROPS would be more cost effective and less complex".

The report also highlighted some of the key features of a QROPS and some risks it wanted them to be aware of, including the risk that the Financial Services Compensation Scheme (FSCS) may not offer protection in relation to the transfer. The information on the proposed investments also included some of the associated risks. So in my view this constituted providing advice.

With the above in mind, I make the following findings of fact based on the evidence currently available to me:

- *Mr H was likely cold called by FRPS.*
- *His motives for transferring were to seek better returns for his pension monies rather than to receive unauthorised payments. He was also likely attracted to what he was*

¹ Arbitrator's decisions ASF130/2021 and ASF 078/2023

told about potential tax advantages of the QROPS.

- An individual representing FRPS and/or Strategic Wealth pitched TRG amongst other funds as being an attractive investment with the funds received in the QROPS.*
- FRPS wasn't itself regulated but they would have been able to assure Mr H of the regulatory backing of the advice process. This is because Strategic Wealth UK Ltd was authorised by the FCA, and/or Strategic Wealth Limited (the Gibraltar arm) was also on the FCA register with passporting rights into the UK.*

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.

I am satisfied in this complaint that Prudential sent the Scorpion insert directly to Mr H before the transfer. I have seen the two letters it sent to Mr H directly in October and November 2015 which referred to the insert that was enclosed with the letter, and the text of the letters urged Mr H to read and retain the information contained in it.

Also looking at the timeline of the transfer I think the version of the Scorpion insert he should have received would have been the version issued in March 2015 and I have no reason to think Prudential would have sent a different one.

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. Prudential's due diligence appears to have been limited to using this and carrying out certain checks to satisfy itself that the scheme was a legitimate destination to transfer funds. Checking the status of the scheme was 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 Mr H's best interests. The Scorpion guidance and PSIG Code show there was more that Prudential should reasonably have done here. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr H'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.

Prudential hasn't argued that it was reasonable for it to 'fast-track' Mr H's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. So, the initial triage process should have instead led to it asking Mr H 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 also states 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 H to help with this.

So while I think Prudential had sufficient information about the scheme not to be concerned about its legitimacy, it didn’t address Mr H’s rationale for transferring. If it had asked Mr H about this –which it should have done, using the framework outlined above – it would have found out he was likely transferring his pension following an unsolicited approach and that he was transferring to a type of arrangement more commonly used by people living overseas even though he 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. And its likely it would also have learned from Mr H that he hadn’t been offered early access to his pension nor had he been offered any cash incentives.

However, again following the framework above, Prudential would also likely discovered that Mr H had been advised to transfer his pension away from Prudential. And following the findings I have made earlier in this decision, I think Prudential would have likely found out that he had been cold called and first contacted by FRPS and that he had then been referred to Strategic Wealth for advice.

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 Strategic Wealth appeared on the FCA register as a firm that was passported from Gibraltar to the United Kingdom. This means that for UK purposes throughout the period of this transfer Strategic Wealth was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act. 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.

What should Prudential have told Mr H – and would it have made a difference?

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 H'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.

I think it's reasonable that the involvement of Strategic Wealth would have provided some comfort to Prudential, at that time. Neither the Code nor the checklist contained any warnings about using overseas advisers that are on the FCA register. They also did not at that time ask ceding schemes to determine the precise nature of an adviser's involvement or the precise nature of an adviser's regulatory permissions – just that they were on the FCA register.

Furthermore, the fact Mr H was transferring to a legitimate scheme and wasn't planning to access his pension in an unauthorised manner would have reinforced this comfort so that despite the presence of some warning signs (a cold call and an overseas investment) overall the scam risk in this situation was minimal.

It's possible that Mr H might also have mentioned FRPS as being involved in advising him as well as Strategic Wealth. He did sign a letter of authority with them, and Prudential were aware of their involvement having acted on their request for information about Mr H's pension. But I think it's unlikely Prudential 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 Mr H on to Strategic Wealth for regulated advice.

So, in these circumstances there would be no reason to halt the transfer or provide Mr H with any explicit warnings. So, I don't think Mr H would have been given any reason to question what he was doing.

I accept that Prudential contacting Mr H and asking him questions about how things came about and his motivation for transferring might have caused him to think a little more about if he was doing the right thing. But in my view, nothing more than that. I'm mindful Mr H had already by this stage overlooked or perhaps ignored some warnings in the Scorpion insert about the steps he was about to take. Or perhaps instead Mr H was reassured by the regulated entity he was dealing with having checked the FCA register himself as the insert recommended. And as I've explained above, there were no explicit warnings Prudential should reasonably have given to him. So, in these particular circumstances I cannot see how the act of asking Mr H questions as part of its due diligence, as Prudential ought to have done, would have put Mr H off transferring – I think he would still have gone ahead. It follows that I don't intend to uphold Mr H's complaint. And I realise this will come as a disappointment to Mr H. But I think there appears to be more to this transfer than he might be able to remember or that he or his CMC has provided. In reaching a fair and reasonable outcome, it is appropriate for me to consider the wider evidence – particularly the pattern of advice that seems to be a feature of these transfers to the Optimus scheme introduced by FRPS and also involving Strategic Wealth.

Prudential agreed with the provisional findings and made no comments.

Mr H's representative, on his behalf, didn't agree with the provisional decision and its comments are summarised below:

- It is incorrect to say that exactly the same advisory structure was involved in every transfer, particularly it isn't the case that SWL was involved in every situation, from

the outset as a regulated adviser. And to make this assumption is going against specific evidence.

- The application form supplied doesn't mention SWL Limited and was witnessed by a representative of FRPS. This is clear and contemporaneous evidence that it was FRPS who recommended the transfer and investments and secured Mr H's signature on the documents putting into effect the transfer and confirming the investment selection on 1 March 2016.
- It isn't disputed that SWL were involved after this point in Mr H's situation. However, the information from the QROPS confirms the appointment date for SWL was 3 March 2016, clearly after the date on which he had signed the form confirming his intention to transfer to the QROPS and which also included his investment selection. So how could SWL have been advising Mr H on the transfer and investment before they were appointed?
- QROPS transfers like Mr H's followed a similar model. Initial contact and advice on both the transfer and investment intentions were provided by the unregulated firm FRPS. Following the agreement to go ahead, based on this unregulated advice, the evidence for Mr H shows that SWL became involved but that was after the substantive advice had been given and his decision made to go ahead based on unregulated advice.
- The evidence in Mr H's case is clear that the person who had visited him at home and had been instrumental in the advice to transfer and invest was from FRPS not SWL. And had Mr H been asked who he was relying on for advice he would, without any reasonable doubt, have said FRPS.
- There were numerous signs of a scam in Mr H's transfer which wouldn't have been outweighed by the presence of the involvement of SWL.
- Even if detailed investigations by Prudential had identified some involvement from SWL. It would not have been acceptable for Prudential to ignore all of these scam factors, in reliance only on the involvement of an EEA authorised firm in Mr H's transfer, evidenced to have occurred after the decision to go ahead with 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.

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, (as it is here), 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.

Mr H's representative is correct in saying that the same advisory structure was not always involved in every transfer to the Optimus QROPS. But it is also aware that I cannot ignore the wider knowledge we have as a service about this QROPS and the other firms that were involved in arranging transfers into it.

So, in this case we know that SWL was involved – this isn't disputed. And as set out in my provisional findings our wider knowledge is that where SWL was involved in transfers to this QROPS it was SWL that advised transferring members on the transfer as well as the investments within the QROPS – evidence we have seen on other cases supports this. It also important to note that while the same evidence as we have seen on other cases hasn't been provided in this case this isn't because the evidence doesn't exist, it's because Mr H's representative was not able to get a response to the information request it made to the administrators of Optimus.

Therefore, given what we know SWL did when it was one of the parties involved in a transfer it is very likely that SWL performed the same role in this particular transfer.

I appreciate the representative feels that there is evidence that confirms SWL was appointed after the application to the QROPS was signed (just two days) but I am not satisfied with this. I don't find this point persuasive because in my view this doesn't conclusively confirm the date SWL became involved in the transfer – especially in light of the wider information we have about SWL's activities and the arrangements around a transfer into the Optimus QROPS. In fact, what this evidence suggests to me is that this was merely the date that the QROPS completed the required forms and formally registered SWL's involvement.

The transfer happened just under a month after this date so again its more likely that SWL had been in contact with Mr H about the transfer before this time.

Furthermore, even though the information has not been provided in this particular case I am aware that the terms and conditions for this particular QROPS made it a condition that the transfer could only go ahead if a regulated adviser had been involved in advising about the transfer into the QROPS. And in this case, that could only have been SWL.

In terms of the point made about the submitted statements not showing that any fee was paid to SWL therefore SWL didn't provide any advice, again this doesn't persuade me that this categorically indicates that SWL didn't advise Mr H on the transfer because the fee could have been paid through a different account - the details of which have not been provided. So this point is not conclusive in itself.

Overall, despite what the representative has said I cannot ignore the wider knowledge we have about this QROPS. I must, in my role of deciding this complaint, take account of wider information and evidence I deem to be relevant and in this case I think the wider evidence is prevalent. The fact is that for transfers to this QROPS where there is evidence of the involvement of SWL, in one way or another, we have evidence that indicates SWL most likely was there to provide regulated advice in relation to the transfer into the QROPS and the investments within it, as per the terms and conditions of the QROPS. And the fact that SWLs' appointment wasn't formally recorded until two days after the QROPS application form was completed is largely irrelevant because it doesn't conclusively prove that SWL wasn't involved earlier on in the process.

I appreciate the evidence is not as overt as I have seen on other cases involving this QROPS but the fact remains that SWL was involved in this transfer and therefore because of the reasons set out above and in the provisional findings – knowledge that I cannot ignore - I am more persuaded than not that given it is accepted that SWL was involved in Mr H's transfer it was SWL that had provided Mr H with the advice to transfer away from Prudential and into the QROPS.

It therefore follows that the representative's points about what Prudential should have found out through its due diligence and that it should have been concerned and made these concerns known to Mr H fall away because as explained in the provisional decision 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. And for Mr H'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 because it's reasonable that the involvement of Strategic Wealth would have provided enough comfort to Prudential, so that despite the presence of some warning signs (a cold call and an overseas investment) overall, the scam risk in this situation was minimal.

The representative also knows that at the time if this transfer the presence of a firm that carried the correct passporting rights is enough to give a ceding scheme comfort that a regulated adviser was involved. Therefore, despite there being some factors in the transfer that would have caused Prudential to be concerned it isn't unreasonable that Prudential didn't feel it needed to highlight this to Mr H assuming (reasonably) that the adviser would have addressed these and covered them off with Mr H's agreement and knowledge.

I therefore remain of the view that this complaint cannot be upheld.

My final decision

For the reasons set out above my final decision is that I don't uphold the complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 May 2025.

Ayshea Khan
Ombudsman