

## **The complaint**

Mr F has complained about the actions of The Prudential Assurance Company Limited when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in November 2015. The QROPS was used to invest in various assets, including direct property and bonds issued by The Resort Group ("TRG"). TRG is an overseas commercial property scheme that has run into trouble.

Mr F says he has lost out financially because Prudential 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 in place at the time. Mr F says he wouldn't have suffered the losses he did if Prudential had acted as it should have done.

He is represented in his complaint by a claims management company (CMC). I'll refer to comments made by Mr F or by his CMC as being from Mr F.

## **What happened**

Mr F held two with-profits policies with Prudential – a Retirement Plan and Personal Pension Plan. Prudential had originally advised Mr F to take these policies out from 1988. He says that following an unsolicited phone call, he agreed to discuss a potential transfer of these with a representative of First Review Pension Services (FRPS). On 17 August 2015 he signed a Letter of Authority (LoA) for that firm. He was aged 57 at the time.

FRPS emailed this to Prudential on 20 August and it provided transfer packs for both policies to FRPS on 31 August. Evidently Prudential also logged FRPS as the "FA" (likely to mean financial adviser) on Mr F's plan details. On 22 September 2015, Mr F signed the transfer documents.

On 6 October 2015 Optimus Pension Administrators Limited ("OPAL") wrote to Prudential requesting it transfer Mr F's personal pensions (both policy numbers were given) 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.

OPAL's letter included Prudential's transfer payment form, an HMRC form (APSS263) and certified copies of Mr F's passport and birth certificate. It also included documents referencing the recognition of the QROPS by HMRC, and from the Malta Financial Services Authority (MFSA) confirming to the registration of the Optimus Scheme on 3 July 2014.

Mr F's identity documentation had been certified by OPAL itself on 28 September 2015, but this was insufficient for Prudential's needs. So it wrote to OPAL and him directly on 14 October to request proof of address in addition to the driving licence/passport, as well as completion of Lifetime Allowance (LTA) forms. OPAL then provided further copies of Mr F's passport and driving licence on 20 October, and additional declarations on 22 October, which this time had driving licence and passport copies that had been certified by FRPS instead.

There was evidently some confusion between OPAL and Prudential (and potentially FRPS who it's evident were also involved) over the requirements for the transfer. OPAL called Prudential on 2 November claiming it had been given wrong information on calls about the requirements and asking when the transfer would be completed. Mr F called Prudential on 3 November, upset that he hadn't been made aware of Prudential's further requirements before. The note of the call states, "[policyholder] *claims we are dragging our feet and is stated he is going to contact FOS and his solicitor in regards to the delay, explained why there was a delay I have also arranged for the forms to be [re]issued first class post.*"

Mr F signed the lifetime allowance form on 4 November 2015. OPAL faxed the form and Mr F's identity document back to Prudential after it was agreed this was sufficient. It also told Prudential on 5 November that its £50 telegraphic transfer charge would be met. The note Prudential made of this call suggests that the charge was being met from FRPS' account. OPAL subsequently clarified it didn't want the concerns about a delay treated as a complaint.

On 12 November Mr F called Prudential asking for the transfer to be made as quickly as possible – he was advised it should take between 3-5 working days. On 18 November Prudential then wrote to Mr F (and FRPS, who as I've noted above it recorded as his adviser) to confirm the transfers totalling about £60,800 had been paid.

Although we don't have the application form Mr F completed to apply for the QROPS, his CMC has contacted Optimus' current administrators and says they have confirmed that Strategic Wealth Limited, a firm regulated in Gibraltar, was recorded as Mr F's investment adviser on the QROPS from 2015 to 2018.

Mr F says he was able to withdraw his 25% tax-free cash sum from the Optimus scheme. After administration costs were paid, investments then appear to have been made in a fractional share in a TRG property, a 'TRG III' investment bond and to provide some diversification, a portfolio of other investments (the details of which at outset are unclear in this case – but I will make some observations later on the contents of suitability reports other investors in Mr F's position received from Strategic Wealth Limited).

As at 31 December 2018, Mr F held a total remaining in cash of about £1,200 in the QROPS cash account and an 'IIP' cash account (which is likely to refer to the International Investment Platform (a Slovakian based investment provider)). The TRG fractional share was worth £12,391 and his investment in TRG Bond III £8,238. By this point Mr F's appointed investment adviser to the Optimus scheme had changed to 'Templar EIS Ltd', a Maltese-regulated adviser.

In December 2019, Mr F (with the help of his CMC) complained to Prudential. Briefly, his argument is that Prudential failed to carry out adequate due diligence on the receiving scheme, those who introduced Mr F to it, and Mr F's intended investments. He alleged that only FRPS had advised him, and he had received no other regulated advice. In Mr F's view, if Prudential had done more thorough due diligence, it would have established that the transfer was high risk and not in his best interests.

Prudential responded that the checks it carried out were adequate for the time. It had confirmation that the Optimus Scheme was recognised by HMRC and therefore a legitimate destination for transfer payments. It explained that it wasn't responsible for the advice Mr F had received; wasn't satisfied that he'd been scammed; or if he had taken any steps to mitigate his investment losses. But if there were issues with the scheme or investments it suggested he raise his concerns with the scheme administrator or the MFSA.

Whilst our investigator was considering the complaint, Prudential asked for it to be noted that in March 2014, Mr F had received a marketing leaflet from Prudential Financial Planning and was able to evidence that he completed a form asking for someone to contact him. It could be seen that its Financial Planning Partner prepared quotations with regard to taking the pension benefits as an annuity. It said in order to take benefits in a more flexible form – including just taking the tax-free cash and leaving the remaining fund invested – he would have needed to transfer to a newer type of product. The meeting was due to take place on 7 April 2014, but no notes were added by the Prudential financial planner to confirm if the meeting took place and what the outcome was.

Prudential noted it also received a LoA from Moneywise Financial Advisors, an FCA regulated firm, in October 2014 – and it also sent policy information to that firm including details of the 25% tax-free cash entitlement. In its view this meant Mr F was actively looking to draw his benefits and wasn't likely to have been cold called.

#### My provisional decision of 20 January 2025

My findings, in brief, were that Prudential failed to send a two-page leaflet warning about scams (designed to be included in transfer packs) to Mr F, because it issued the transfer packs to third parties in this case. However, I thought it likely Strategic Wealth Limited (which his CMC has now confirmed was recorded as the QROPS adviser) would have sent Mr F a suitability report detailing its advice to transfer to the QROPS. And that suitability report would have referred to the leaflet being included as part of an 'information pack' Mr F received. So, Mr F would have received the warning about scams that Prudential should have given him, from another party.

I also concluded that Prudential fell short in its due diligence into Mr F's transfer request itself. The correct application of industry guidance and codes should have led to it asking a range of questions including why he was transferring to a QROPS, and who was advising him to do so. This would likely have identified both that Mr F wasn't intending to move abroad but rather was using a QROPS to invest in a property scheme that was at risk of a scam. But I also considered it likely that by the point Prudential should have been asking these questions, Mr F would have received the above-mentioned suitability report from Strategic Wealth Limited. That meant he would likely have named Strategic Wealth as having given the advice to transfer to the QROPS.

As Strategic Wealth was a regulated firm, I thought this would have provided adequate reassurance to Prudential that the transfer proposal was overall at low risk of being a scam – despite the nature of the investment being made. Prudential wouldn't have had grounds to give further warnings to Mr F and overall, I didn't think the process of questioning him would have led to him changing his mind about the transfer. I reached these findings accepting that *"Mr F may or may not [have] felt he had been cold-called, but the enquiries he was making to access his pension benefits [from 2014 onwards, when Moneywise and Prudential's own adviser was involved] seem to have resulted in him being put in touch with FRPS."*

Prudential had no further comments to make. After his CMC requested further information from Optimus and examined the result of a Prudential Data Subject Access Request (some details from which I've referred to above, where relevant), Mr F responded to disagree with the Provisional Decision on 19 March 2015. In summary, he said:

- The details of whoever witnessed Mr F's signature on Prudential's discharge forms were redacted in the DSAR. However, the date FRPS certified Mr F's passport and driving licence (22 September 2015) is the same date Mr F signed the transfer forms, suggesting FRPS was present with Mr F at the time.

- Prudential was also aware that FRPS was meeting the telegraphic transfer fee.
- Prudential exchanged no correspondence and had no conversations with Strategic Wealth, either prior to the transfer or to confirm the transfer had taken place.
- Prudential had never instigated the argument that Mr F hadn't been cold called, only that this didn't appear to be the first time he considered transferring his pension.
- Even its contact inviting him to take advice in March 2014 was unsolicited, so none of this suggests he was actively looking to transfer his pension at the time.
- Our service well knows that FRPS and its associated companies sourced clients through cold calling. Why would Mr F's situation be different?
- I had ignored the clear phone discussion between our investigator and Mr F that he considered he had been advised to transfer his pension by FRPS. Mr F made brief reference to another firm in this phone call, so he was clearly trying to be open and honest with the investigator. If he genuinely thought he had been advised by a firm other than FRPS, he would have mentioned this.
- Similarly, when Mr F spoke to the CMC about his complaint in 2019, he only mentioned FRPS as having advised him and made no mention of Strategic Wealth.
- Optimus hasn't provided the CMC with the specific date of Strategic Wealth's appointment, but on other cases the CMC has seen that was after the decision had been made on FRPS's advice to transfer and what to invest in.
- Strategic Wealth may have sent a suitability report to Mr F, but the weight of evidence shows that it was FRPS's advice that he acted on and therefore who he would have told Prudential was advising him, if it had asked.
- Even if Mr F received a warning leaflet as an enclosure to an "information pack", this would have been presented to him (as part of a large bundle of information) by a firm encouraging him to go ahead with the transfer and investment – and designed to give the impression that the warnings contained in the leaflet weren't relevant.
- Even if detailed investigations by Prudential had identified some involvement from Strategic Wealth, this was just one potentially positive factor out of numerous scam factors. In addition to investment in overseas property, these included that Mr F was cold called, FRPS was *also* advising him, and he was using a QROPS registered in Malta but administered from the Isle of Man with an adviser in a third jurisdiction.

The CMC says it hasn't yet received full DSAR documentation from Optimus, but I can see Optimus has sent a reply – and from the summary provided it's not clear what further documentation (if any) Optimus has promised. That may depend on Optimus' interpretation of what Mr F is entitled to in a DSAR, and I'm aware that the CMC's previous DSAR of the QROPS administrator in February 2019 didn't yield a response.

What Optimus has said does confirm that, as suspected in my Provisional Decision, Strategic Wealth Limited was associated with the Optimus QROPS – just as it was in the other complaints we've reviewed where investments similar to Mr F's were made, and where FRPS was also involved. Whether or not the CMC is eventually able to obtain a copy of the suitability report from Strategic Wealth for this case from Optimus, Mr F's arguments now concede that one may well exist – which I consider to be a reasonable assumption given that Mr F's transfer follows a pattern of other very similar sales.

As detailed arguments covering these points have now been made in response to my Provisional Decision, I don't consider there will be further benefit in waiting for the possibility that Optimus will provide any further information. I'm not able to compel Optimus to provide information.

Mr F also says that I should ask Prudential for unredacted copies of his discharge forms, to confirm who acted as the witness. Given we already have the evidence of FRPS' involvement in witnessing Mr F's identity documents close to the point the discharge forms were signed, I don't think that will be necessary. My Provisional Decision already acknowledged FRPS's involvement, and I will return to that in my Final Decision below.

### **What I've decided – and why**

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

#### The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Prudential was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing 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 to 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 2000 (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 was 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 PSIG Code of Good Practice. The intention of the 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

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short “insert”, intended to be sent to members when requesting a transfer, and a longer booklet intended to be used where appropriate (for instance, when members requested more information on the subject).

The March 2015 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 where appropriate. 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, which suggests that 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, SIPP, SSASs and QROPS. The 2015 Scorpion guidance doesn’t distinguish between receiving schemes 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 PSIG 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 a member’s interest.

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 F was working as a driver earning £20,000pa. He says he had no savings or investment experience and was cold called by FRPS and offered a free review of his pensions. It says Mr F gave no other name of a firm when it spoke to him at the inception of the complaint in 2019.

When FRPS met him at home, Mr F says he was advised to transfer to a QROPS in pursuit of “*significantly better returns*” than his Prudential policy, by investing in things like hotels and bonds. But he thought was a good opportunity to improve his pension provision (although no precise figures were given, from his recollection). The adviser left him some time to think about it and then returned to collect the paperwork, which he told us he was willing to sign as it all tied up with what the adviser had been saying.

The involvement of FRPS is clearly indicated both from its LoA close to the point of transfer, and also the indication on Prudential's file that it subsequently covered the telegraphic transfer fee. 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.

Our investigator spoke directly to Mr F about this, at a time when we were unaware of the wider connection between FRPS, Strategic Wealth and Optimus. So she wasn't in a position to ask Mr F directly at the time if he'd heard of Strategic Wealth. In the call Mr F didn't disagree when the investigator named FRPS as having advised him – and nor would I expect him to, as it's consistent with what we know above. He also gave us a different name of a firm he thought he had been dealing with, whose name he wasn't completely sure about but was similar to “First Alliance”. He said that firm has since gone bust but was in Leicester. So already, I think there are some signs here that there may have been more firms than just FRPS involved – but Mr F could recall all of the specifics.

I don't find this surprising: these events took place in 2015 and Mr F was being asked about them 4-6 years afterwards in these discussions. Not all of the details will stand out as clearly after that length of time. And in terms of the involvement of “First Alliance” it wasn't uncommon in my experience for other firms to source potential clients for FRPS. For the avoidance of doubt here, there's no evidence that any business with a name similar to First Alliance (or Moneywise Financial Advisors, who had contacted Prudential on Mr F's behalf in 2014) went on to have further involvement with this transfer.

It's understandable that the firm Mr F actually met in the UK (FRPS) might stick out more in his recollections 4-6 years later, than another firm (Strategic Wealth) who we now know was associated with the QROPS – and from whom advice was typically given (in other cases we've seen) in writing, from Gibraltar. And I accept that Mr F may well also have considered that FRPS was advising him, because that firm is likely to have been positive about making the transfer – for the reasons I've given above. However, I don't think any of this proves that the *only* firm Mr F would have been able to recall in 2015 as having an involvement in advising him was FRPS.



It is the experience of this service that Optimus either preferred or required there to be an adviser associated with the QROPS who was regulated somewhere in the EEA. The investments Mr F made are consistent with those Strategic Wealth usually recommended. And Optimus has now confirmed that Strategic Wealth Limited (a firm incorporated in Gibraltar) was the adviser assigned to the QROPS from outset. This firm was regulated by the Gibraltar Financial Services Commission but also passported into the UK financial services regime on a 'services only' basis.

The director of Strategic Wealth Limited was also authorised to hold a controlled function in the UK for Strategic Wealth UK Limited (an FCA regulated firm). His standardised suitability reports (a copy was provided with my Provisional Decision) say they will be copied to Optimus. So I have little reason to doubt that was what likely happened in this case – with, as Mr F accepts may have happened, a copy of that report going to him too.

I accept I can't know how the FRPS adviser might have explained FRPS' connection to Strategic Wealth: they wouldn't necessarily have said that they were an agent directly representing that firm. However, I think it's plausible that they would have indicated that they were gathering details of Mr F's circumstances so that Strategic Wealth could then produce a written report. If anything, to prepare Mr F for the contact he was then going to receive from Strategic Wealth. This was clearly a well-polished operation and there's no persuasive reason for me to conclude that Mr F's case would not likely have followed the same process as others.

Mr F says his CMC has seen other cases where Strategic Wealth's suitability report was issued after the client had decided (on FRPS' advice) both on the transfer and what investments to make. I haven't seen the case(s) being referred to, but I don't consider that is most likely to be the order in which things happened – and it isn't consistent with the case I used as an example in my Provisional Decision. In that case a transfer request wasn't made for the individual who received Strategic Wealth's suitability report until about six weeks after the date of the report. It would be reasonable in my view to expect a decision to transfer to directly precede the transfer request. Even if FRPS was witnessing documents associated with the transfer request, and was also in favour of Mr F making the transfer and the investments, that doesn't change the likelihood that Mr F was already in receipt of advice from Strategic Wealth.

#### *Cold calling and Mr F's prior inclination to access his benefits*

My Provisional Decision noted, *"Mr F may or may not [have] felt he had been cold-called, but the enquiries he was making to access his pension benefits [from 2014 onwards, when Moneywise and Prudential's own adviser was involved] seem to have resulted in him being put in touch with FRPS."*

I accept Mr F's point that this is blurring together two separate things, one of which was whether the contact Mr F received from FRPS was unsolicited – and the other was whether he had a desire to access his pension benefits: in particular the tax-free cash sum which he subsequently took after the transfer.

I understand the point being made that Prudential's comments only referred to the latter. But equally, I think Mr F's suggestion that Prudential itself sent an unsolicited invitation to see one of its financial planners mischaracterises the nature of his existing client relationship with Prudential. That organisation had sold Mr F the pension in the first place, operated the pension for him, and even today (now that cold calling about pensions is banned in the UK) would have been free to approach him on this basis. Mr F was likely interested in having that meeting with Prudential with a view to taking benefits, as he had passed the minimum pension age of 55. So I would be surprised if he would genuinely have considered Prudential's invitation for him to fill in a form at the time to be unsolicited.

We can't be completely sure how Mr F came into contact with FRPS. I understand the point being made that FRPS sourced most of its leads through cold calling, but that doesn't mean this happened in every case. Here, we don't know why Mr F's enquiries with Prudential faltered. Prudential hasn't been able to provide any further evidence in response to my Provisional Decision than the CMC has already seen in its Prudential DSAR. We know that Prudential generated annuity quotes for Mr F in preparation for a meeting but that meeting may or may not have taken place.

So there are a variety of possibilities in terms of what happened next, which range from Mr F deciding what Prudential was offering (an annuity at the same time as accessing tax-free cash) not being right for him and then actively looking elsewhere for an alternative proposal; to him coincidentally getting a cold call from FRPS at a time when he was already looking into what to do with his pension (or when the meeting with Prudential had failed to take place). For obvious reasons, I doubt FRPS would have turned down a lead to arrange a pension transfer, however that had come about.

Prudential would obviously not have passed Mr F on to an unregulated introducer (FRPS) itself, and wouldn't have recommended he use one particular regulated adviser (Moneywise) over another. I'm also aware of a connection between Moneywise and FRPS where business was referred between the two firms, although the timescale for that is somewhat elongated over the course of a year in this case. So in my Provisional Decision I was questioning whether Mr F would have considered the LoA he signed for FRPS in August 2015 to be a continuation of steps he had already been taking (for example with Moneywise) to access his pension, or an entirely new approach. But ultimately I appreciate this still leads to the question of whether Mr F was *originally* cold called (by FRPS or Moneywise) in October 2014 to set off this chain of events.

The main way of corroborating Mr F's recollection that he was cold called is that we know this often did happen where FRPS was involved. For the avoidance of any doubt, and as my Provisional Decision indicated, I would have reached the same outcome even if Mr F did consider that he'd been cold called – as this is only one feature of the overall transfer proposition. So I'll proceed in the rest of this decision on the basis that he was cold called, as it is in Mr F's favour for me to do so.

When our Investigator spoke to Mr F, he referred to the attraction of getting a 25% tax-free cash sum from his pension, clarifying that he wasn't offered any other form of cash incentive. He says that once he had transferred everything, Prudential wrote to him four weeks later and said they could provide him with a 25% tax-free cash sum if he remained with them. But it was too late by then for him to reverse the transfer. I should note that for its part Prudential says it has no evidence of sending such a letter, and I haven't seen any letter saying this. I think it's possible Mr F may be confusing his dealings with another pension provider: the LoA also refers to an unnumbered Scottish Life policy.

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

- I will assume (as it is in Mr F's favour) that he would have considered the contact he received from FRPS to be unsolicited.
- His motives for transferring were to generate higher returns for his pension rather than to receive unauthorised payments from it. He already had a motive, which he'd been interested in exploring previously with Prudential, of accessing the tax-free cash sum at the same time.
- An individual representing FRPS pitched TRG amongst other funds as being an

attractive investment with the funds received in the QROPS, and would likely have indicated that they were gathering information for – or referring him to – Strategic Wealth to receive further advice.

#### What did Prudential do and was it enough?

##### *The Scorpion insert:*

Even if Prudential had issued this insert with the transfer pack, it's evident that this would have gone to Moneywise and then later, FRPS. There is no evidence of any separate letters issuing this to Mr F directly, even though other letters to Mr F (such as that confirming the transfer completion) do appear on Prudential's file.

So for the reasons given previously, Prudential fell short of what I'd expect in this respect. It should have sent the Scorpion insert directly to Mr F so he could decide for himself the risks he was facing. However, I think that Mr F would have been sent the insert by Strategic Wealth or FRPS as part of an 'information pack'. I say this because the example report I've attached said the following on page 4:

*"The Pensions Advisory Service has issued a warning leaflet to members of UK pension schemes to inform clients of the risks of moving a pension to an overseas scheme. A copy of this guide has been provided with your information pack..."*

This describes the Scorpion insert (if not the longer booklet – the description isn't specific enough to tell). On balance, therefore, I'm satisfied Mr F is likely to have been sent at least this insert – just not by Prudential.

Mr F says that the insert/booklet would have been presented to him as part of a large bundle of information and was designed to give the impression that the warnings contained weren't relevant. I've seen the checklists of documents (including the insert/booklet) that FRPS provided to people who were transferring to other receiving schemes such as SSAS, and I accept that FRPS's approach with Mr F may well have been similar.

The March 2015 version of the insert refers to cold calls offering free pension reviews, overseas transfers and convincing marketing materials promising over 8% returns. As I'll go onto explain, these are subjects that Prudential ought to have been asking Mr F about in any case, when it carried out due diligence into the transfer. So even if, as Mr F suggests, their significance would have been downplayed by FRPS, I will be considering below what impact it would have had for Prudential to have revisited these matters with him.

##### *Due diligence:*

Prudential appears to have relied on the Optimus Scheme being a QROPS, appropriately regulated in Malta and recognised on HMRC's website. The scheme was therefore a legitimate destination to transfer funds. The steps Prudential took were a necessary part of the due diligence process. However, I think Prudential has overlooked a key part of its obligations to conduct its business with due skill, care and diligence and act in Mr F's best interests.

The Scorpion guidance and PSIG Code show there was far more that Prudential should have done. As the PSIG Code was a reasonable starting point for most ceding schemes dealing with transfer requests, I've considered Mr F'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 fast-tracked Mr F's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. The transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Prudential hasn't shown that it already identified the receiving scheme/administrator as being free from scam risk. In fact, other than the destination, it's apparent that Prudential knew very little about Mr F's transfer.

So the initial triage process under the Code should (if deployed) have led to Prudential asking Mr F 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 likely have been answered "yes":

- Have you been informed of an overseas investment opportunity?
- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?

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 Mr F in order to help with this.

Prudential did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mr F's rationale for transferring. If it had asked Mr F about this – which it should have done, using the framework outlined above – it would have found out Mr F was looking to access tax-free cash from his pension and that he was transferring to an arrangement that was designed for people living overseas even though he wasn't intending to do that. It 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.

I appreciate that if Prudential had spoken to Mr F then the due diligence process wouldn't have necessarily followed a neat, linear, path. But I think it is fair to say that Prudential wouldn't have needed to progress too far through the Code, or asked too many questions of Mr F, for various warning signs to have become apparent. And if Prudential had followed the Scorpion action pack, similar findings would have followed. Indeed, the action also included

a case study, in which the victim – like Mr F – transferred in order to invest in an overseas hotel development.

However, Prudential should also have asked Mr F about what advice he was receiving and from whom. Had Prudential asked Mr F who had advised him, and bearing in mind the background I've already set out above, I'm not satisfied that he would only have mentioned FRPS. That's because by the point Prudential would have been discussing this with him, it's likely Mr F would already have received a suitability report from Strategic Wealth – having been told by FRPS that they were gathering data for, or putting him in touch with, that firm.

The suitability report Mr F likely received would have said Strategic Wealth Limited had been engaged by the trustees of the Optimus Scheme in order to give the recipient 'information' on their options. Soon after that it contradicts itself by suggesting that the report is based on a 'Limited Advice Factfind' and risk profiling around the client's pension, but *"No other areas of advice will be covered"* – i.e. suggesting advice *is* being given but on a limited basis. Mr F would have been asked to sign to acknowledge receipt of his report.

The report would have compared the benefits under the existing schemes and various alternative schemes he could transfer to, including the Optimus QROPS. The template we have makes adverse comments about the attraction of an annuity (which it appears Mr F's originally intended meeting with Prudential was to discuss) and recent unfavourable changes to the taxation of death benefit lump sums in the UK. I note that it does clarify that a 25% tax-free cash sum (which was a part of Mr F's motivation in transferring) is *also* available from a UK pension. But it concludes 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, it's clear to me that overall the message was one of advice to transfer. And although FRPS wasn't itself regulated, I think they would have been able to assure Mr F of the regulatory backing of this advice process – because Strategic Wealth Limited was on the FCA register, having passported into the UK – and it had a fully UK authorised subsidiary.

I still accept, as I said in my Provisional Decision, that Mr F might also have mentioned FRPS at the same time as saying Strategic Wealth was involved: it's likely he would have considered both firms had advised him in the run-up to this transfer. In any event, Prudential would have been able to identify FRPS' involvement from receiving the LoA (and the later suggestion that FRPS was paying Mr F's telegraphic transfer fee). But I can't fairly say Prudential should have become concerned about this because, more likely than not, it would have appeared that the main purpose of FRPS' involvement was to refer Mr F on to receive regulated advice from Strategic Wealth.

With that in mind, Prudential would have established that either of the Strategic Wealth entities potentially involved (Strategic Wealth Limited or Strategic Wealth UK Limited) were on the FCA register. The former was regulated by the Gibraltar equivalent of the FCA and had passported into the UK under a services passport. But the Code and the checklist don't contain any warnings about using overseas advisers that are on the FCA register. They also didn't 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.

Once it had confirmed a regulated adviser was involved, and the legitimacy of the receiving scheme, I don't think Prudential needed to look any further. It would have substantively met the requirements of the Scorpion guidance, the Code and its wider obligations under the

## Principles and COBS 2.1.1R.

Therefore, if Prudential had conducted further due diligence, I'm satisfied it would have ultimately concluded that the threat posed by the transfer was minimal. Not only was Mr F transferring to a legitimate scheme – one that hadn't done anything over the preceding 14 months to attract the attention of HMRC – but there was also the involvement of parties on the FCA register. There would be no grounds for blocking the transfer and no reason to provide Mr F with any warnings about the transfer. In that light, I don't think Mr F would have been given any reason to question what he was doing.

Mr F disagrees with this, saying this was just one potentially positive factor out of numerous present scam factors. In addition to those I've set out above, it re-emphasises that Mr F was cold called and questions the necessity of his QROPS in Malta being administered from the Isle of Man.

I've considered everything Mr F has said carefully, but these points don't alter my findings. Even if I accept Mr F considered he was cold called, and it was unusual (albeit not illegal at the time) for regulated financial advisers to cold call people, Prudential would also have had the impression that the unregulated introducer was doing the right thing in referring Mr F to a regulated adviser. And the regulatory status of the Optimus scheme in Malta was unaffected by its choice to employ the administrative services of an Isle of Man company. It would have been difficult for Prudential to separate the connotation of these places as being low-tax jurisdictions from the fact that Mr F was transferring to a pension in another tax jurisdiction in the first place – having taken regulated advice to do that.

I recognise that Prudential asking Mr F about how he came to hear about the Optimus Scheme and his motivations for wanting to transfer may have caused him to have second thoughts. Equally, there's the possibility that if Prudential had sent him the Scorpion insert directly, it was less likely to be lost amongst the no doubt positive messages FRPS was giving him. However the steps that insert suggests that Mr F take if he spotted similar warning signs in his transfer to those Prudential would have been asking him about, included contacting TPAS or visiting its pension scams website. A key message in those channels again was, *"Before you agree to anything, make sure the adviser is approved by the FCA."*

So I think all of this comes back to the same point, which is that the involvement of an FCA registered adviser added significant credibility to the overall transfer proposal – notwithstanding that Mr F may have realised he'd been cold-called and would have appreciated he was investing outside the UK. Given that Mr F was already looking to take benefits from his pension I think, on balance, he was more attracted to the opportunity to invest funds (in excess of his tax-free cash) in the investments being marketed – rather than, for example, taking an annuity with the drawbacks highlighted in the advice Strategic Wealth is likely to have given him.

Prudential's questions would have done no more in my view than to cause Mr F to think a little more about whether he was doing the right thing. But Mr F had most likely already dismissed some warnings about the steps he was about to take in the report Strategic Wealth would have sent him. For the reasons given above, there were no more explicit warnings that Prudential could, reasonably, have given to Mr F. So I don't think Mr F would have decided against transferring had Prudential contacted him (as it should have done) as part of its due diligence.

### **My final decision**

It follows that I don't uphold Mr F's complaint. I realise this will come as a disappointment to Mr F.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 April 2025.

Gideon Moore  
**Ombudsman**