DRN-5425366

The complaint

Mr W has complained about the actions of The Prudential Assurance Company Limited ("Prudential") when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2016. Mr W's QROPS was used to invest in various assets, including those managed by The Resort Group ("TRG"). Investors in TRG have suffered significant losses.

Mr W says Prudential failed in its responsibilities when dealing with his transfer request. He says 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 he says was in place at the time. Mr W says he wouldn't have suffered the losses he did if Prudential had acted as it should have done.

What happened

I have already issued a provisional decision in which I set out, in detail, the background to this complaint and my preliminary findings. Both parties have been sent that provisional decision so I won't repeat what I said here. My provisional decision is, however, attached and forms part of this final decision.

In my provisional decision, I concluded Mr W's complaint shouldn't be upheld. Prudential had nothing further to add. Mr W, through his representatives, made a number of comments which I address 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.

Rather than repeat everything I said in my provisional decision, I will focus on what Mr W's representatives have said, where relevant, in response to my provisional findings (Prudential having had nothing further to add). For the avoidance of doubt, I have considered everything that has been sent to me.

In my provisional decision, I concluded that it was likely Mr W would have told Prudential that his adviser was Strategic Wealth. Both the UK arm of that business (Strategic Wealth UK Limited) and the Gibraltarian arm (Strategic Wealth Limited) would have been on the FCA register at the time of the transfer. I therefore concluded that Prudential wouldn't have had reason to think Mr W was likely falling victim to a scam. I said:

"So not only was Mr W transferring to a legitimate scheme – one that hadn't done anything over the preceding 18 months to attract the attention of HMRC – but there was also the involvement of parties on the FCA register. As such, there would have been no reason, and it would have been disproportionate, to have provided Mr W with any specific warnings about his transfer."

The involvement of Strategic Wealth wasn't the only reason I didn't think Mr W's complaint should be upheld. Because the evidence and arguments provided by Mr W's representatives on Strategic Wealth's involvement were sparse, I also explored what should have happened had Mr W *not* referred to Strategic Wealth during a due diligence process. But even in that scenario, I didn't think Mr W's complaint should be upheld.

In response to my provisional decision, Mr W's representatives have confirmed Strategic Wealth was likely involved. This simplifies matters considerably because it means I need only consider Mr W's transfer through the lens of what would have happened had he told Prudential about Strategic Wealth in addition to, rather than instead of, FRPS. As such, I'm satisfied Prudential wouldn't have considered Mr W was likely falling victim to a scam because it would have been reasonable for it to have taken the view that he had engaged the services of a relevant, regulated, professional acting in his best interests and therefore not someone likely to allow, or be involved with, a scam. There wouldn't, therefore, have been a need, and it wouldn't have been proportionate, for Prudential to have given Mr W any warnings beyond the warnings contained in the Scorpion insert, which I discuss below. But that's all it would have needed to have done given the comfort it could have drawn from Strategic Wealth's involvement. With that in mind, I see no reason why Mr W would have changed his mind about the transfer even if Prudential had conducted further due diligence.

Mr W's representatives have said Strategic Wealth was appointed after Mr W had been advised by FRPS and after he had decided to transfer and invest, in part, in TRG. Their point here is that Prudential wouldn't have been able to take comfort from Strategic Wealth's involvement because its involvement was peripheral at best, and it was FRPS that advised Mr W – which ought to have been concerning given it wasn't authorised to do that. I disagree with this analysis for three reasons.

First, Prudential's role here wasn't to examine the precise role played by Strategic Wealth, or review the work it produced. Prudential's role was to establish the scam threat facing Mr W. Given Mr W had been referred to a regulated adviser ahead of transferring, it would have been reasonable for Prudential to have thought he had engaged the services of a relevant professional acting in his best interests.

Second, I'm satisfied Strategic Wealth's involvement was, in any case, more substantive than Mr W's representatives have argued. Given they now accept Strategic Wealth was likely involved, then it would follow that its involvement followed a similar pattern to what I (and Mr W's representatives) have seen in other cases, which is for Strategic Wealth to have (at the very least) sent a relatively detailed written report to Mr W for which it was paid a percentage of the transfer value (typically 3%). So its role wasn't as peripheral as has been suggested.

Third, it wouldn't have seemed unusual for an unregulated party to introduce someone to a regulated party for advice. And that's how it would have looked to Prudential had Mr W mentioned FRPS in addition to Strategic Wealth. Prudential would have considered FRPS as having introduced Mr W to Strategic Wealth and that it was Strategic Wealth that went on to advise Mr W. So Prudential could, reasonably, have considered Mr W was ultimately in the hands of a regulated adviser.

On a similar theme, Mr W's representatives have pointed to other elements of the transfer which would have been concerning enough to outweigh any comfort derived from Strategic Wealth's involvement (comfort that in any case would have been minimal according to Mr W's representatives). For instance, Prudential ought to have found out the transfer followed an unsolicited approach and the reason for the transfer 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.

However, this misreads the purpose of the due diligence process. It was a means to an end: to establish the likely risk of a scam. If that risk could, reasonably, be discounted then the reasons why someone came to be interested in transferring in the first place, or why they wanted to do so, reduce in significance. And that applies here. Mr W had engaged the services of a relevant, regulated, professional meaning Prudential could, reasonably, have taken the view that his interests were being looked after.

As I said in my provisional decision, Prudential should still have sent Mr W the Scorpion insert when he asked for transfer papers. There were two opportunities for Prudential to have done this: 24 April 2015 and 3 December 2015, which is when it sent transfer information to FRPS. I haven't seen any evidence that it sent the Scorpion insert to Mr W on either occasion.

The relevant (March 2015) version of the insert included an infographic that highlighted the following warning signs for someone to be on the lookout for:

- Unsolicited contact and being offered a 'free pension review', 'one-off investment opportunity' or 'legal loophole'.
- Accessing a pension before the age of 55.
- Overseas transfer of funds.
- Convincing marketing materials that promise returns of over 8%.
- Paperwork delivered by courier that requires an immediate signature.
- A proposal to put money in a single investment.

Mr W wasn't attempting to access his pension before the age of 55, he wasn't putting his money in a single investment and he hasn't mentioned the involvement of a courier or being subject to any sort of pressure to transfer. So three of the six warning signs presented in the infographic didn't apply to him. But he was cold called and offered a free pension review. He was offered returns of over 8%. And he was transferring funds overseas. And the insert warned about scams in general so, at the very least, that was a warning to all readers – Mr W included – to proceed with caution.

However, on balance, I don't think the March 2015 insert would have changed Mr W's mind about transferring. I say this because he had previously been sent significant warnings when he tried to transfer to a Cantwell Grove SSAS. Those warnings were included in a letter Prudential sent to Mr W which detailed its concerns and told Mr W that his transfer request wouldn't be actioned. Prudential also enclosed the July 2014 Scorpion booklet.

I covered the contents of Prudential's letter, and the July 2014 Scorpion booklet, in my provisional decision. There is no dispute as to their contents and whether Mr W received them, so I won't cover what they said here other than to point out the July 2014 Scorpion booklet included many of the same messages as the March 2015 Scorpion insert. More specifically, the July 2014 Scorpion booklet warned readers about being taken in by phrases like "one-off investment opportunities" and "free pension reviews". It warned about unsolicited contact. And it warned about overseas transfers and investments. So my starting point here is to note that the relevant warnings in the March 2015 Scorpion insert had largely been given to Mr W previously.

Furthermore, the letter from Prudential was dated 22 August 2014. And yet on 20 March 2015, Mr W had signed a letter of authority in favour of FRPS, which is the business Mr W's representatives say started the transfer process to the Optimus Scheme by cold calling him and offering a free pension review. Logically that cold call must have happened before 20 March 2015, so it can't have been much more than half a year after Prudential's letter. In itself, this is telling. Mr W had previously been told by Prudential that its concerns about his transfer request were significant enough for it to decline the request and to provide him with various potential actions and sources of information for him to consider. And yet not much more than half a year later, Mr W was responding to a cold call and an offer of a free pension review – just as he had done before.

Further similarities followed. As before, Mr W was told his pension could earn better returns if it was transferred. And he was told that those better returns would be achieved by investing in TRG, which was his intended investment for the aborted Cantwell Grove transfer as well.

It's therefore difficult to see how the March 2015 Scorpion insert would have made a difference here. It wouldn't have given Mr W substantively new information. And Mr W had evidently put aside Prudential's earlier concerns, and had embarked on a new transfer in similar circumstances, which doesn't suggest he would have engaged with further warnings given by Prudential anyway.

I recognise Mr W's representatives point to the fact that he *didn't* proceed with the Cantwell Grove transfer as being evidence of him "listening to" and "engaging with" Prudential's earlier warnings. And they also make the comparison with other individuals who made complaints about being prevented from transferring – which Mr W didn't do – in order to highlight the fact that he wasn't especially set on transferring and was, instead, ready to listen to Prudential and change his mind as a result. Given he changed his mind before, there's an argument to say he would have done so again had he been given the Scorpion insert.

It's not an argument that withstands scrutiny. If, as his representatives say, Mr W listened to, and engaged with, Prudential's earlier warnings then he must have forgotten about them by the time he responded to FRPS's cold call – otherwise he wouldn't have taken things any further such were the parallels with what had happened before. But it seems doubtful Mr W would have forgotten those warnings so quickly. And whilst the transfer took until February 2016 to complete, that's still a relatively short period of time for Mr W to have forgotten all about the parallels between the two situations – especially as the initial transfer was blocked because of concerns on the part of his pension provider, which strikes me as being too significant an event to forget so quickly.

Alternatively, Mr W may have considered the earlier warnings given by Prudential as being of limited relevance to the transfer to the Optimus Scheme. But this seems doubtful too. Yes, the type of destination scheme was different and, yes, the businesses involved were different too. But the overall pattern of the transfer to the Optimus Scheme was remarkably similar to the blocked Cantwell Grove transfer. They both started with a cold call from an unknown business. They both involved the offer of a free pension review. They both involved Mr W being told he could improve his pension by transferring it. And they both involved a proposed investment in TRG. The similarities, in my view, are more significant than the differences.

It's true Prudential's earlier warnings were given in the context of the threat posed by pension liberation. So there's an argument to say that's why Mr W continued to engage with FRPS – because the earlier warnings from Prudential were narrow in scope and not relevant to his transfer to the Optimus Scheme. But, again, this doesn't bear much scrutiny.

Partly this is because the warnings Prudential gave extended beyond just liberation, especially when one considers the Scorpion booklet it provided. And partly it's because Mr W wasn't intending to liberate his pension when he tried to transfer to a Cantwell Grove SSAS. So if, as his representatives argue, he engaged with Prudential's warnings then he must have had concerns beyond just the threat posed by liberation – otherwise he wouldn't have considered the warnings as being applicable and he would have continued with the transfer. So I don't think concerns about pension liberation can really explain why Mr W didn't pursue the transfer to a Cantwell Grove SSAS but did pursue the transfer to the Optimus Scheme.

The most likely explanation for what happened is that Mr W didn't pay too much attention to Prudential's warnings in August 2014 and the reason for the transfer to his Cantwell Grove SSAS not progressing was because that was the default position. Prudential blocked the transfer and Mr W, as his representatives have said, didn't do anything to challenge that decision. That would seem a more reasonable explanation than Mr W engaging with those warnings but then forgetting all about them and embarking on a similar transfer not long afterwards or thinking there were no parallels between the two transfers.

With the above in mind, I don't consider it likely that Mr W would have reconsidered his actions had Prudential sent him the Scorpion insert. It didn't contain any substantively new information that he hadn't already been sent. And his actions in pursuing the transfer to the Optimus Scheme despite Prudential's earlier warnings don't suggest Mr W would have taken on board further warnings provided by Prudential.

Having reviewed the case once again, including responses to my provisional findings, my decision is unchanged. I'm not upholding this complaint.

COPY OF PROVISIONAL DECISION

What happened

On 3 June 2014, Mr W signed a letter of authority allowing Consumer Money Matters Limited ("CMM") to request information from Prudential about his personal pension. Mr W says this followed a cold call in which he was offered a free pension review. CMM forwarded the letter of authority on to Prudential shortly afterwards. Prudential wrote to CMM with the information it requested on 20 June.

In August, Mr W requested Prudential transfer his pension to small self-administered scheme ("SSAS") administered by Cantwell Grove Limited. Not long beforehand, a company had been incorporated which became the sponsoring employer of the SSAS. Mr W had also signed Prudential's transfer paperwork along with documents to open the SSAS. He also signed a letter to say he had been made aware of, and understood, the dangers of "pension liberation" and that he wasn't engaged in such activity. Mr W's intention was to use his SSAS to invest in TRG.

On 22 August, Prudential wrote to Mr W saying it had concerns about the proposed transfer and that it wouldn't carry out his instructions. I cover Prudential's letter in more detail later. The transfer to the Cantwell Grove SSAS didn't proceed.

On 20 March 2015 Mr W signed another letter of authority, this time allowing First Review Pension Services ("FRPS") to gather information about his Prudential pension. Mr W says this too followed a cold call in which he was offered a free review of his pension. Prudential wrote to FRPS with the information it requested on 24 April.

On 30 November, FRPS telephoned Prudential requesting a transfer value and overseas transfer forms. Prudential responded to the request on 3 December.

On 22 January 2016, Mr W wrote to Prudential requesting it transfer his pension to the Optimus Retirement Benefit Scheme No.1 ("the Optimus Scheme"), a Maltese QROPS. The letter also authorised Optimus Pension Administrators Limited ("OPAL") and Integrated Capabilities (Malta) Limited to speak to Prudential about the transfer. OPAL was providing certain administrative functions on behalf of Integrated Capabilities (Malta) Limited, the administrators of the Optimus Scheme.

On 8 February, OPAL wrote to Prudential requesting the transfer of Mr W's policy. Various transfer forms were attached.

Prudential requested further information from Mr W on 15 February. And on 24 February it wrote to Mr W to say a transfer value (of approximately £47,000) had been paid to the Optimus Scheme. Mr W's QROPS was used to invest in a number of funds and assets, including those managed by TRG which are now unlikely to realise any further value.

In 2020, Mr W (with the help of a claims management company) 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 following: the transfer started with a cold call; he was offered a free pension review; he had been told to expect unrealistically high returns; and a QROPS was an unusual arrangement for someone not intending to live overseas. Mr W's representatives also said he had been advised by two unregulated firms – FRPS and a firm called Strategic Wealth.

Prudential didn't think it had done anything wrong. It said, in brief, that Mr W's transfer paperwork was all in order and, as such, there was no reason to not allow Mr W to exercise his statutory right to transfer. It also said the crux of the complaint was the performance of Mr W's investments, which wasn't its concern and something that would be better addressed by the trustees and administrators of the receiving scheme and the Malta Financial Services Authority.

Mr W referred his complaint to us. Our investigator didn't think it should be upheld. Mr W asked for an ombudsman to decide.

What I've provisionally decided – and why

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

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

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 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 as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing 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 also 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.

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

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 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.

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

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: "*A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc*." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.

- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.

- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.

- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials. Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member.

Typically, I'd consider the 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.

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

Mr W made two transfer requests, one to a Cantwell Grove SSAS which didn't proceed and one to the Optimus Scheme which did go through and is the subject of this complaint. According to Mr W, the prompt for both requests was a cold call from someone offering a free pension review. Mr W says this was from CMM (in relation to the first transfer request) and FRPS (in relation to the transfer to the Optimus Scheme).

The above is corroborated by the documentary evidence in so far as I can see Mr W signed letters of authority in June 2014 and March 2015 allowing CMM and FRPS respectively to seek information on his behalf about his Prudential pension. Whilst I can't corroborate whether the appointment of both firms followed cold calls, this seems plausible given such activity was common at this time.

Mr W says both CMM and FRPS told him about investing in TRG. In respect of FRPS, he says he met someone from that firm at his home and was told that the investments that were proposed to him (which also included non-TRG investments) would generate a return of 18% p.a. Mr W's recollections are therefore that he was transferring in order to generate higher returns for his pension rather than to receive unauthorised payments from it. I've no reason to doubt this given Mr W hasn't mentioned receiving any HMRC penalties following the transfer to the Optimus Scheme and I'm not aware of the Optimus Scheme being used for the purposes of liberation.

In relation to the Optimus transfer, when Mr W complained to Prudential he referred to the involvement of another firm, Strategic Wealth:

"Prudential were clearly able to identify the involvement of FRPS because they corresponded with them and, had direct contact been made with [Mr W] to discuss his pension transfer (as the guidance confirms ought to have occurred), the involvement of other firms, being Strategic Wealth, could and would have been easily identified."

"A check with [Mr W] about how he became aware of the receiving scheme and whether he was receiving advice on the investments would have identified that, in fact, [Mr W] had only been advised by an unregulated adviser (FRPS and/or Strategic Wealth). Contact direct with [Mr W] by Prudential would have identified these significant risk factors with the purported advice being provided to [Mr W] – advice being provided by unregulated firms, documents appearing to be advice but actually providing "information" only."

Strategic Wealth Limited was incorporated in Gibraltar and licensed by the Gibraltar Financial Services Commission. It had a sister firm based in the UK, Strategic Wealth UK Limited. Strategic Wealth Limited had passported into the UK financial services regime on a 'services only' basis. Because it had passported into the UK, Strategic Wealth Limited appeared on the FCA register. Strategic Wealth UK Limited was regulated by the FCA so it too appeared on the FCA register.

It's my experience from other complaints (some of which Mr W's representatives will also be aware of) that the trustees of the Optimus Scheme appointed Strategic Wealth Limited to act for transferring members. The link between Strategic Wealth Limited and the Optimus Scheme has also been established by the Maltese Arbiter for Financial Services. So Mr W's comments about the involvement of Strategic Wealth (but not its regulatory status) ring true. So in the run-up to the transfer to the Optimus Scheme, it's likely Mr W was cold called by FRPS and, at some point, was referred to Strategic Wealth.

Strategic Wealth Limited issued reports to clients looking to transfer to the Optimus scheme. It charged a fee for doing so. I see no plausible reason why the same wouldn't have happened here.

Mr W's representatives also refer to "*documents appearing to be advice but actually providing "information" only*". As far as I'm aware Mr W's representatives haven't attached a document along those lines for us to review, but it sounds like the report produced by Strategic Wealth Limited – another reason why I'm satisfied it was involved in Mr W's transfer.

I'm aware of cases where an adviser from Strategic Wealth UK Limited visited clients in the UK before passing them over to the Gibraltarian arm to produce its report. I'm open to the possibility that Mr W likewise met someone from the UK firm before being sent a report from the Gibraltarian arm, Strategic Wealth Limited. I haven't made a firm finding on this because, ultimately, my decision doesn't turn on this for reasons that I will come on to.

Mr W was, and remains, resident in the UK. There's nothing to suggest he was planning to move overseas around the time of the transfer. He was 49 at the time.

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

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Prudential wrote to Mr W in April 2015 after it received a request for information from FRPS. No reference is made to any attachments in Prudential's correspondence, so it doesn't look like the Scorpion insert was included. There were attachments to the transfer pack mailings Prudential sent to FRPS in April and December 2015. But it's unclear whether these attachments included the Scorpion insert. But, as outlined previously, Prudential shouldn't have relied on a third party – FRPS in this case – to forward on the Scorpion insert to Mr W anyway. So Prudential fell short here and I will proceed on the basis that Mr W wasn't provided with the relevant Scorpion insert (which was published in March 2015) in the run-up to the transfer to the Optimus Scheme.

However, Prudential did write to Mr W on 22 August 2024 to tell him it wouldn't allow his transfer to a Cantwell Grove SSAS. The Scorpion warning materials were enclosed with its letter:

"I enclose a leaflet containing information about pension liberation fraud. Further details can be found on the Pensions Advisory Service website - www.pensionsadvisoryservice.org.uk."

It's unclear whether the "leaflet" Prudential was referring to was the short two-page insert or the longer booklet. I consider the latter more likely because I'm aware that Prudential's 2016 manual for combating pension scams required its administrators to send the longer version with any letters declining a transfer request. Whilst Mr W's attempted transfer to Cantwell Grove predated the 2016 manual, there would seem little reason to suppose Prudential's approach differed between the two dates. In any event, my decision doesn't turn on this given Mr W was also directed to information provided on the TPAS website, so however I look at things it's evident he was given access to comprehensive information on how to spot, and guard against, potential scams.

With the above in mind, I make the following findings of fact:

- Prudential should have sent Mr W the March 2015 Scorpion insert when it sent out transfer packs in April and December 2015, or substantially the same information at an appropriate point. It didn't do so.

- Prudential did send Mr W the July 2014 version of the longer Scorpion booklet when it wrote to him declining his transfer request in August 2014 and it also pointed him to the TPAS website.

Due diligence:

Prudential said it conducted due diligence on Mr W's transfer because it had evidence that the Optimus Scheme was a legitimate QROPS. I note here that a letter from HMRC to Integrated

Capabilities dated 4 August 2014 confirmed that the Optimus Scheme was going on its QROPS list and it was still on that list at the time of Mr W's transfer (and thereafter).

Whilst this was a necessary part of the due diligence process, Prudential has misread the extent of its obligations here. The Scorpion guidance and PSIG Code meant there was more that it should have done.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes dealing with transfer requests. I've therefore considered Mr W'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.

Although Prudential's due diligence was brief, it *hasn't* argued that it fast-tracked Mr W's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. Nevertheless, for completeness, it's worth noting the transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Prudential hadn't already identified the receiving scheme/administrator as being free from scam risk bearing in mind what the Code said about this in Section 6.11.

So the initial triage process under the Code should (if deployed) have led to Prudential asking Mr W further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would have been answered "yes":

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

- Have you been informed of an overseas investment opportunity?

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

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

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

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions *not* on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, I think in this case Prudential should have considered, in so far as they were applicable, the four areas of concern outlined by the Code and contacted Mr W 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 W's rationale for transferring. If it had asked Mr W about this – which it should have done, using the framework outlined above – it would have found out Mr W was transferring his pension following an unsolicited approach 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 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 Scorpion action pack.

Furthermore, Prudential should have also asked Mr W about who was advising him. Mr W has, in the main, referred to FRPS when recalling the events leading up to the transfer to the Optimus Scheme. So it's possible that he would have told Prudential that his adviser was from FRPS. As FRPS wasn't authorised by the FCA, this would have been another potential warning sign that Prudential would have become aware of.

Faced with those warning signs, I think the most reasonable response would have been for Prudential to send the longer Scorpion warning leaflet to Mr W. This is what it did in response to the transfer request to Cantwell Grove in August 2014. So I think it's reasonable to say it should have sent the relevant version in response to the transfer request to the Optimus Scheme as well – which, by this point was the one published in March 2015. Prudential should also have warned Mr W about the potential dangers of seeking advice from someone not authorised to give that advice.

However, I'm satisfied that Mr W wouldn't have changed his mind about transferring even if Prudential had undertaken more thorough due diligence and taken the steps highlighted above.

I say this because of the letter Prudential wrote to Mr W in August 2014. In that letter, Prudential said it had conducted checks into Mr W's transfer to the Cantwell Grove SSAS, the result of which caused it to be concerned that Mr W was transferring in order to access his pension before the age of 55. It went on to highlight some common concerns it had identified in other pension liberation cases such as the transferring member not being employed by the sponsoring employer of the receiving scheme, there being no evidence that anyone connected with the transfer was registered with the FCA and incomplete and unusual receiving scheme documentation. Prudential said some of those features may have been present in Mr W's transfer. It went on to say the following:

"The government has established a multiple agency task force incorporating the appropriate regulators and law enforcement to combat this issue, known as 'Project Bloom'. The Project recently announced that HM Revenue & Customs are in the process of deregistering approximately 400-500 pension schemes, the details of which are not yet public. Given our concerns outlined above and the ongoing Project Bloom, we are unable at this time to carry out your instructions to transfer your scheme. We strongly suggest that you:

- *Seek independent financial advice from an adviser regulated by the Financial Conduct Authority (FCA) as to the consequences of the proposed transfer; and*

- *Consider in any event whether you wish to proceed.*

Finally, please note that if you deal with an unauthorised financial adviser you will not be covered by the Financial Services Compensation Scheme (FSCS) or the Financial Ombudsman Service (FOS), and as well as the potential tax charges you could also lose your pension fund if things go wrong."

I'm satisfied Mr W was aware of the contents of this letter because it was sent to his home address. It also explained that the transfer wasn't going to go ahead. If Mr W hadn't received the letter, it seems likely he would have queried why the transfer wasn't progressing but there is no sign of him doing so. So it would seem Mr W was aware of, and accepted, Prudential's decision to not progress the transfer and the reasons behind that decision.

Clearly, the warning given by Prudential was pitched in terms of the threat posed by pension liberation, specifically the threat posed by Mr W accessing his pension before the age of 55. Although Mr W was under the age of 55 at the time, he doesn't appear to have been transferring for that reason – as I've discussed previously. Nevertheless, I'm satisfied the tone and contents of the letter were such that Mr W couldn't reasonably have dismissed Prudential's concerns as being irrelevant even though he wasn't planning on liberating his pension.

The Scorpion booklet was also included. This covered more than just pension liberation scams and encompassed the type of transfer Mr W was attempting. Specifically, it highlighted the following warning signs for someone to be on the lookout for:

- Phrases like ‘one-off investment opportunities’, ‘free pension reviews’, ‘legal loopholes’, ‘cash bonus’ and ‘government endorsement’.

- Victims being approached out of the blue over the phone, via text messages or in person door-to-door.

- Transfers of money or investments overseas.

- Accessing pension pots before the age of 55.

- No member copy of any documentation.

- Victims being encouraged to speed up transfers.

The first three of these were relevant to Mr W’s situation when he attempted his transfer to the Cantwell Grove SSAS, as was one of the case studies which described a victim responding to a cold call and setting up a company in order to transfer to a pension with a view to investing in overseas property. So even though Prudential had pitched its warnings in terms of the threat posed by pension liberation, Mr W would have been aware that his transfer presented a risk that went beyond that.

Despite all this, Mr W pursued a transfer to the Optimus Scheme not long afterwards. That transfer was also prompted by an unsolicited approach and an offer of a free pension review. And the rationale for transferring was the same – the prospect of high returns including those generated from the same asset as before, TRG. It’s therefore difficult to see why Mr W would have listened to further warnings from Prudential in relation to the transfer to the Optimus Scheme when the mere fact that he was pursuing such a transfer shows he hadn’t really engaged with – or was unconcerned about – previous warnings.

For the avoidance of doubt, this doesn’t mean Prudential fulfilled its obligations in relation to the transfer to the Optimus Scheme. My argument relates to what can reasonably be deduced about what Mr W would have done had Prudential fulfilled its obligations in the run-up to that transfer. And given the gravity of the warnings that Mr W had previously been given, and the fact that he nevertheless subsequently pursued a transfer that started in the same way and was for the same reasons as before, I’m satisfied Mr W wouldn’t have taken different action had he been given the appropriate warnings.

Furthermore, Mr W had already been told about the importance of seeking advice from someone regulated by the FCA and the repercussions of dealing with an unauthorised adviser. That warning went unheeded too if, as he says, he was advised by FRPS. It’s worth noting, however, that Mr W said he would have mentioned Strategic Wealth had Prudential asked about his adviser. I’ve no reason to doubt this, especially given Strategic Wealth’s involvement in other transfers to the Optimus Scheme, so this strikes me as being a more likely scenario than Mr W just mentioning FRPS. Our investigator didn’t follow that line of reasoning because she concluded – correctly in my view – that there were other reasons for not upholding Mr W’s complaint. But if Mr W had referred to Strategic Wealth – which I consider likely – then Prudential could, reasonably, have considered the scam risk as being minimal.

I say this because both the UK and Gibraltarian arms of Strategic Wealth were on the FCA register. Although the latter was regulated by the Gibraltarian equivalent of the FCA and had passported into the UK under a services passport, the PSIG Code and the checklist didn’t contain any warnings about using overseas advisers that were on the FCA register. So not only was Mr W transferring to a legitimate scheme – one that hadn’t done anything over the preceding 18 months to attract the attention of HMRC – but there was also the involvement of parties on the FCA register. As such, there would have been no reason, and it would have been disproportionate, to have provided Mr W with any specific warnings about his transfer. Prudential should still have sent Mr W an up-to-date Scorpion insert in this scenario when it sent out transfer packs. But given the extensive warnings Mr W had previously been given evidently didn’t cause him any alarm, I’m satisfied the March 2015 insert wouldn’t have made a difference to Mr W’s decision to transfer.

It follows from the above that I don't intend to uphold Mr W's complaint.

END OF PROVISIONAL DECISION EXTRACT

My final decision

For the reasons given above, my final decision is to not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 April 2025.

Christian Wood
Ombudsman