

## **The complaint**

Mrs D has complained about a transfer of her personal pension with The Prudential Assurance Company Limited ("Prudential") to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in May 2016. Mrs D's QROPS was subsequently used to invest, for the most part in investments provided by The Resort Group ("TRG"). The investment now appears to have little value. Mrs D says she has lost out financially as a result.

Mrs D says Prudential failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs D says she wouldn't have transferred and therefore wouldn't have put her pension savings at risk, if Prudential had acted as it should have done.

## **What happened**

When Mrs D's complaint was initially referred to this Service she was being represented by a professional representative. It told us that in 2015 Mrs D had been cold called by an unregulated introducer firm called Capital Facts Ltd ("Capital Facts") who offered her a free review of her pension. When Mrs D agreed, she was then introduced to Hamilton Rose Wealth Management Ltd ("Hamilton") who the representative told us provided her with the advice to transfer her pension to the Optimus Retirement Benefit Scheme No.1 QROPS ("the QROPS"), based in Malta. Mrs D was told that in doing so she would receive better returns on her pension funds. The representative also told us that on 11 November 2015 Hamilton requested information about Mrs D's pension along with a signed letter of authority from Mrs D for the information to be disclosed from Prudential.

However, documentation from the time of the transfer doesn't support the involvement of Hamilton. Instead, it shows that on 9 March 2016 Capital Facts emailed Prudential requesting information about Mrs D's pension as well as transfer and discharge papers. This contained a signed letter of authority from Mrs D for the information to be disclosed. Prudential sent Capital Facts this information on 21 March 2016.

The documentation also shows that on 12 May 2016 Prudential received another information request about Mrs D's pension from St Pauls Marketing Limited ("St Paul's"). Again, this also asked for the transfer and discharge papers and also contained a signed letter of authority from Mrs D for the information to be disclosed. Prudential sent this information on 24 May 2016.

On 19 April 2016 Mrs D was sent a Suitability Report from Strategic Wealth Limited based in Gibraltar which set out the recommendation made to Mrs D to transfer her pension and the reasons why. Its important to make clear that neither Mrs D nor her representative has mentioned this document or the fact this firm was involved in the transfer in any way in the making of this complaint.

On 16 May 2016 Prudential received a letter from Optimus Pension Administrators Limited requesting that Mrs D's pension be transferred to the QROPS.

Mrs D's pension was transferred on 30 May 2016. Her transfer value was around £42,000. At the time Mrs D was forty-seven years of age. She was single with no dependants. She was unemployed with no income and held a modest amount in savings. She was an unsophisticated investor having no experience in investments or pensions.

Upon completion of the transfer Prudential sent Mrs D, Capital Facts, First Review Pensions Service ("FRPS") (although no letter of authority for FRPS has been provided in the information) and St Pauls all confirmation of the completion of the transfer.

Mrs M has said the investments in TRG are entirely illiquid now and incapable of sale on the open market and therefore considered to be of nil value.

In March 2025, Mrs D complained to Prudential. Briefly, her argument is that Prudential ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: Mrs D was in receipt of advice from an unregulated firm; Mrs D had been cold called initially and offered a free review of her pension; the proposed transfer was to a QROPS but Mrs D wasn't planning to relocate abroad.

Prudential didn't uphold the complaint. It said that it checked the list of Recognised Overseas Pension Schemes (ROPS) published by HMRC to make sure the receiving scheme was included, which it was; it also had sent the Scorpion insert as required; it appeared at the time that Mrs D was in receipt of advice in relation to the transfer; and that Mrs D had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. Overall, it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter has been passed to me to decide.

### **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.

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I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive, (as it is here), I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

### The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Prudential was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

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

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

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

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

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

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by “pension freedoms” (which were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

### The March 2015 Scorpion guidance

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

### The PSIG Code of Good Practice

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

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

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

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

- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.
- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.
- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

The investigator asked Mrs D through her representative at the time further questions about the transfer and what led her agree to it. She repeated much of what her representative stated when making the complaint – that she was cold called by Capital Facts who then sent an adviser from Hamilton to visit her at her home.

She also explained that she wasn't offered any incentives or cash back to transfer but she was told the returns would be better than if she stayed with her then current pension provider.

She also told the investigator that she did initially have some doubts, but the adviser came across as very professional and informed her that her pension wasn't performing and if she invested into the QROPS she would be better off at retirement.

I have considered what Mrs D has said about the events leading up to her transferring. And having reviewed all of the evidence provided I cannot see anything that confirms the presence of Hamilton in anything to do with the transfer process. It is also clear from the information earlier in this decision that it seems Mrs D was in contact with several introducer firms in 2015 and 2016. But apart from the initial stage of the process I have no further evidence that indicates any of these firms were involved in the latter stages of the transfer process.

However, given the nature of this transfer, the fact it was to an overseas scheme in a QROPS, I consider it is more likely than not that Mrs D was advised throughout this process by some firm or another. I also think it's unlikely that she would have found her own way to deciding to transfer to an overseas scheme as she was not financially experienced or a sophisticated investor.

As mentioned briefly above, while neither Mrs D nor her representative mentioned it in the evidence provided to me, I have seen a suitability report that was sent to Mrs D in April 2016 by a firm called Strategic Wealth Limited, based in Gibraltar. This report stated at the beginning that Strategic Wealth Limited had been engaged by the trustees of the Optimus Scheme (the QROPS) in order to give the recipient 'information' on their options. However, it appears to then contradict itself by suggesting that the report is based on a 'Limited Advice Fact find' and risk profiling around their pension but "No other areas of advice will be covered" – i.e. suggesting advice is being given on a limited basis. So it looks to have been a condition of the QROPS trustees accepting funds that this advice was given beforehand, and Mrs D would have been asked to sign to acknowledge receipt of this report

The report then goes on to compare the benefits under Mrs D's existing schemes and various alternative schemes she could transfer to, including the Optimus QROPS and includes comments such as "...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 Mrs D should 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.

In my view this constitutes providing advice.

Furthermore, from information gained within this Service it is our experience that QROPS providers such as Optimus in this case either preferred or they required there to be an adviser associated or linked with the QROPS who was regulated somewhere in the EEA. And in other complaints of a similar nature that we have seen this firm was more often than not Strategic Wealth. And again, from our wider knowledge of this matter it seems likely that Strategic Wealth was involved in the transfer and either sent the individual to visit Mrs D at her home, or gave advice in conjunction with that individual.

With the above in mind, I think its more likely than not, that Strategic Wealth Limited gave Mrs D the advice to transfer her pension to the QROPS. I am fortified in my thinking by the decision made by the FSCS in June 2019 to a complaint Mrs D raised against Strategic Wealth which confirmed that Strategic Wealth was responsible for the advice

What did Prudential do and was it enough?

*The Scorpion insert:*

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

Prudential has said that while there is no longer any evidence available to confirm the insert was sent it was its standard process to include the insert as an attachment as part of its print fulfilment process. However, I haven't seen any letters that were sent to Mrs D before the transfer completed. The only information sent by Prudential in relation to the transfer at this time were the information packs sent to various introducer firms that had initially requested information. So in lieu of any evidence showing that Prudential corresponded with Mrs D directly I am not satisfied that it sent her the required Scorpion insert as it should have.

#### *Due diligence:*

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs D'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.

The "accepted club" part of the "Initial analysis" section of the PSIG Code isn't applicable here. Neither could Prudential have considered the receiving scheme/administrator as being free of scam risk. So the initial triage process should have instead led to Prudential asking Mrs D 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 promised a specific/guaranteed rate of return?
- Have you been informed of an overseas investment opportunity?

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

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

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

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions *not* on the list if appropriate). But the Code also makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, I think in this

case Prudential should have addressed all four areas of concern and contacted Mrs D in order to help with this.

What should Prudential have found out – and would it have made a difference?

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

However, following the framework above Prudential should also have asked Mrs D about what advice she was receiving in connection with the transfer and from whom. And based on my finding earlier on, by the point Prudential would have been asking Mrs D about the events leading up to the transfer, it's likely she would already have received a copy of Strategic Wealth's suitability report – having either met with an individual who was working for, or gathering information for, that firm.

With this information Prudential would have readily established from a check of the FCA register that Strategic Wealth Limited (or Strategic Wealth UK Limited as its sister firm) were on the register. Neither the Code nor the checklist contained any warnings about using overseas advisers that are on the FCA register. They also did not at that time ask ceding schemes to determine the precise nature of an adviser's involvement or the precise nature of an adviser's regulatory permissions – just that they were on the FCA register.

It's possible that Mrs D might also have mentioned Hamilton as being involved in advising her as she has done in making this complaint (although given the lack of any evidence that names Hamilton I think it's unlikely). But even if she had, I think it's unlikely Prudential should have become concerned about this because had this happened and Prudential searched for Hamilton it would have found that it was registered with the FCA but it didn't carry any permissions to advise on pension transfers. So, I think it would have appeared – and in my view reasonable for it to hold the view – that the extent of Hamilton's involvement was to refer Mrs D on to Strategic Wealth for regulated advice.

So, once Prudential understood that a regulated adviser was involved (it was not Prudential's role to question or scrutinise the advice Mrs D received) and having confirmed the legitimacy of the receiving scheme, I don't think it needed to look any further. I think Prudential could reasonably have taken comfort from this fact and deemed the risk of the transfer was minimal. Prudential needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs.

So, while I accept it would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the guidance, I think overall, the knowledge the scheme was legitimate, and that Mrs D was being advised by a firm that was on the FCA register, in this case would have reasonably indicated to Prudential the transfer was unlikely to be a scam. So, in these circumstances there would be no reason to halt the transfer or provide Mrs D with any explicit warnings. So, I don't think Mrs D would have been given any reason to question what he was doing.

I accept that Prudential contacting Mrs D and asking her questions about how things came about and her motivation for transferring might have caused her to think a little more about if she was doing the right thing. But in my view, nothing more than that. And as I've explained



above, there were no explicit warnings Prudential should reasonably have given to her. So, in these particular circumstances I cannot see how the act of asking Mrs D questions as part of its due diligence, as Prudential ought to have done, would have put Mrs D off transferring – I think she would still have gone ahead.

I appreciate that it appears that Prudential failed to send Mrs D the Scorpion insert that it should have done upon receiving notification of her intention to transfer her pension. However, while some of the warning signs set out in that relevant insert may have resonated with Mrs D, the fact that she was dealing with an advisory firm which had the correct permissions to provide her with the advice would have in my view allayed any concerns that she may have had had she received the insert. At the very least I think had she been concerned by the insert its very likely she would have mentioned it to her advisers who would have put her mind at rest about the transfer. So, I don't think that even if she had received the insert that she would have acted any differently.

Ultimately, a ceding pension scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high-risk investments. So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mrs D's transfer, viewed overall in that way and if Prudential had taken the steps it should, I don't consider that would have been the case because of the presence of an overseas regulated adviser which carried the correct UK passport permissions.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 21 August 2025.

Ayshea Khan  
**Ombudsman**