

The complaint

Mr B has complained, through his representatives, that The Prudential Assurance Company Limited ('Prudential') undertook insufficient due diligence when transferring his personal pension worth around £50,000 to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in 2015.

Mr B's QROPS - the Optimus Retirement Scheme No 1 ('Optimus') - was based in Malta. Funds from his Prudential pension plan were subsequently used to invest into various investments including overseas property with The Resort Group ('TRG') and TRG corporate bonds which now seem to have little value.

What happened

Mr B says around late 2014 he was cold called and offered a free pension review. He was told, if appropriate, he would be recommended a new pension that would maximise his returns. He says he was persuaded to receive more information and was sent some in the post. After a follow up call, he met someone at his home to complete the review and go through the process of next steps. Mr B says the person he spoke to was very "anti-Prudential" and said his pension would go nowhere if he left it with them.

Mr B says he can't recall the company who spoke to him. His representatives say it likely was First Review Pension Services ('FRPS') as they were involved in promoting TRG and they also certified copies of Mr B's identity documents at the time.

Mr B signed a letter of authority for a firm called Carrington Mitchell to request information about his pension from Prudential in November 2014. Prudential say Mr B's address on the letter of authority didn't match the one on their records, so they wrote to Mr B in late November 2014 and sent a chaser in early January informing him of this. Prudential says Mr B replied on 12 February 2015 confirming his new address which matched the authority. Prudential then sent the requested information to Carrington Mitchell.

In April 2015 a firm called Strategic Wealth Limited issued an advice report to Mr B which he signed. It referred to a fact find and risk profile that had been completed with Mr B which was the base of their recommendation. It set out the advantages and disadvantages of a QROPS, information about Optimus and information and risk warnings about the selected investments.

In June 2015 Prudential received a transfer request from the Optimus Scheme administrators. They included transfer forms signed by Mr B in May 2015 as well as scheme registration documents from the Maltese Financial Services Authority and confirmation from HMRC it had been notified of the scheme's recognised status. After requesting a few more administrative documents from Mr B including a lifetime allowance form, the transfer was eventually confirmed as completed on 25 September 2015. The TRG investments Mr B made subsequently failed and he has lost a large amount of his pension funds.

Mr B complained to Prudential in 2024. His representatives said Prudential failed to engage with Mr B to find out more about the reasons for the transfer. They didn't identify existing

warnings signs in the transfer and inform Mr B about the possible consequences if he did transfer. They should have advised Mr B on the importance of seeking advice from a UK based and regulated adviser. They also should have provided him with a Scorpion leaflet from the Pension Regulator (which warned about signs of a pension scam). If this had happened Mr B wouldn't have proceeded with the transfer and wouldn't have suffered the financial losses he did. Mr B would like to be compensated for his financial losses and the trouble and upset those losses have caused him.

Prudential rejected the complaint. Mr B referred his complaint to this service where one of our investigators also rejected the complaint. Mr B's representatives disagreed and so the complaint was referred to me for an ombudsman's decision.

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 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.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age.

At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance. The Scorpion guidance was launched by The Pensions Regulator (TPR). It 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. 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 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

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 for members looking for 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 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.

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 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?

Mr B said he was cold called but can’t recall the name of the firm he was talking to. There is evidence that Mr B was in contact with Carrington Mitchell (even if he doesn’t remember this) and I’ve seen evidence that FRPS certified copies of his identification documents. FRPS was connected to TRG and promoted the investments through cold calls. So I think it’s plausible that Mr B was cold called and it’s likely FRPS was somehow involved.

Whoever Mr B spoke to and met at his house, it seems information was collected by an unregulated party to ultimately pass on to Strategic Wealth who provided a written advice report. Many QROPS providers would not accept any transfers without the involvement of a regulated firm. I understand Mr B can’t remember Strategic Wealth or reading their report either. However, given that he signed it and paid adviser fees to Strategic Wealth, I think he likely would have known at the time that he had received advice from them. In order for them to receive the advice fees he also would have had to appoint them as advisers and complete appropriate forms. I have seen examples of these on other cases.

The Strategic Wealth report did explain that The Pension Advisory Service had issued a warning leaflet to warn UK pension members about the risks of moving to an overseas scheme and that they had included a copy of it with the information pack. They say it warned about pension liberation schemes, high pressured selling tactics and bogus investments. I'm satisfied this is a reference to the Scorpion leaflet. I think on balance Mr B likely received this leaflet from Strategic Wealth. As the report was dated April 2015 I think it's likely any leaflet would have been in the version of March 2015.

In summary, I think based on the evidence provided Mr B was likely cold called by either Carrington Mitchell or FRPS and then referred to Strategic Wealth for advice. The individual who signed Strategic Wealth's report was a British national who was also working as an adviser for a connected regulated UK firm, Strategic Wealth UK Ltd. So it's not implausible that Mr B might have spoken to this individual at some point too. We have seen on other cases that this Strategic Wealth adviser did speak and advise customers directly. It's likely all parties involved were speaking in favourable terms about the transfer.

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 say it was their common practice to provide Scorpion leaflets with every transfer pack, however copies weren't retained on every file.

Unfortunately, there is no reference to the Scorpion materials in any of the letters I've seen. So I'm not satisfied that Prudential sent the leaflet to Mr B.

Due diligence

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the telltale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

As explained above, I consider the 2015 PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr B'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.

I see no reason why Prudential reasonably could have considered the receiving scheme/administrator as generally being free of scam risk, especially as they had received a request for transfer information from an unregulated party. So the guidance should have instead led them to asking Mr B further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions") which included questions about being cold called or being offered overseas investment opportunities. I'm satisfied Mr B would have confirmed both of these being features of his transfer.

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 B in order to help with this.

I think Prudential had sufficient information about the scheme not to be concerned about its legitimacy, however Mr B’s motivation for transferring to a QROPS should have been queried with him as well as how the transfer had come about and if he had received advice. I think had they done so they would have learned that Mr B had no plans to move abroad. I think he also would have likely mentioned that he was told he could have better investment returns than in his Prudential plan. Prudential would likely also have found out that he was intending 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. Based on what I said earlier, I think Prudential would have likely found out that he had been cold called and first contacted by FRPS and/or Carrington Mitchell, both unregulated parties, and that he had then received advice from Strategic Wealth. I also think it’s likely Prudential would have learned from Mr B that he hadn’t been offered to access his pension early nor had been offered any cash incentives.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA’s online register of authorised firms. Prudential should have taken that step, which is not difficult. Had it done so it would have discovered that Strategic Wealth appeared on the FCA register as a firm that was passported from Gibraltar to the United Kingdom. This means that for UK purposes throughout the period of this transfer Strategic Wealth was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act. The right to passport financial services from one EU country to another is a feature of the EU’s internal market, which applied to the UK at the time. The right was underpinned by the introduction of EU wide standards of investor protection and harmonised conduct of business rules.

Mr B’s representatives have made detailed arguments that Strategic Wealth didn’t have the correct permissions to advise on Mr B’s pension and that it wasn’t enough for Prudential just to check that they were on the FCA register but also that they had the correct permissions. They say if they had done so, they would have found that Strategic Wealth didn’t have the correct permissions and so acted illegally and in breach of FSMA. Even though Mr B said he trusted the adviser, such significant information from Prudential and warnings that his pension would be at risk, would have changed Mr B’s mind about the proposals and he would not have proceeded or alternatively sought regulated advice from a UK adviser which unlikely would have resulted in a recommendation to proceed.

I understand the arguments put forward and I acknowledge that information provided by the FCA in response to enquiries by Mr B’s representatives show that Strategic Wealth only had permissions to undertake insurance mediation in the UK. The Gibraltar Financial Services

Commission confirmed that Strategic Wealth held permissions to act as a life insurance intermediary.

I agree that Strategic Wealth didn't have the right permissions to advise on the QROPS. However, I don't think this would have been immediately obvious to Prudential at the time. EEA passporting has never been a straightforward matter and Strategic Wealth would have been able to apply for appropriate top up permissions. Any passport would also include activities as defined under EU directives which would look different to regular FCA permissions. Pensions can also be contracts of long-term insurance. It's unlikely that without further investigation or enquiries with the regulator it would have been clear that Strategic Wealth didn't have the right permissions.

I want to stress again that the guidance at the time was informational and advisory in nature and the PSIG was intended 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. Prudential were allowed to take a proportionate approach to any checks they were carrying out.

At the time of Mr B's transfer the Scorpion guidance simply told firms to check whether the adviser was approved on the FCA register. The leaflet for consumers also told them to check that their adviser was FCA regulated. No mention was made to check the specific permissions of the adviser. Whilst the permissions for a UK firms would have likely been fairly obvious on the register, for EEA passported firms this would have likely required a more thorough investigation or at least enquiries with the regulator. I don't think that not doing these further checks -which went beyond the guidance at the time- meant Prudential acted unreasonably here.

The PSIG Code was updated in 2018 and there was a specific focus on permissions and that these needed to be checked carefully and could be nuanced. Firms were also explicitly advised that EEA inward passported advisers do not have permissions to advise on pensions. From that point on I would agree that Prudential would have needed to do more here. But I don't share Mr B's representative's view that the same expectations would have applied in 2015. The guidance evolved in line with increased awareness in the industry what risk factors firms needed to be on the look out for and the lack of permissions was added in 2018.

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

A ceding pension scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high-risk investments. So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam.

For Mr B'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.

The UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under the FMSA 2000. As a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Strategic Wealth would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, they would have had to follow the applicable European regulatory standards and

conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation. So, in my view, Prudential could have been reassured that Strategic Wealth was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

I think despite the presence of some warning signs (cold call, overseas investment, transferring to a QROPS without moving abroad) the knowledge Mr B was being advised by an FCA authorised adviser in this case reasonably would have given Prudential comfort the transfer was unlikely to be a scam. They would have been further reassured by the fact Mr B hadn't been promised he could access his pension before the age of 55 and that he hadn't been offered any cash incentives.

The fact that an unregulated firm had referred Mr B to a regulated firm for advice and that an international firm was involved given the transfer went to a QROPS wouldn't have seemed unusual in my view. Overall, I don't think if Prudential had made further enquiries that this would have resulted in warnings to Mr B that he was at risk of a scam or that he was receiving inappropriate advice.

Overall, I don't think if Prudential had made further enquiries that this would have resulted in warnings to Mr B that he was at risk of a scam.

Would further enquiries from Prudential and sending Mr B the Scorpion insert have changed his mind about the transfer?

As noted earlier in this decision, I think Mr B should have received a Scorpion leaflet from Prudential. Our investigator shared a copy of the 2014 and 2015 Scorpion leaflet with Mr B and he didn't remember seeing this. He said if he had he was almost certain he wouldn't have proceeded. I don't doubt that these are Mr B's genuine thoughts now. But I have to consider that Mr B doesn't remember dealing with Carrington Mitchell nor Strategic Wealth when the evidence clearly shows he did provide his authority to Carrington Mitchell and that he signed an advice report from Strategic Wealth and paid a fee to them. This is not meant to be a criticism of Mr B. The events happened a long time ago and recollections can fade. However, equally this means Mr B not remembering seeing the leaflet doesn't mean he didn't receive it given his other limited recollections. And for reasons explained earlier, I think it's more likely he did receive a Scorpion leaflet from Strategic Wealth.

I appreciate that the leaflet would have likely been provided with other paperwork and Strategic Wealth and any other party involved would have made sure to emphasise that there was no scam risk involved in the recommended proposition. However, nonetheless I think he did likely receive it.

So I considered whether further questions by Prudential about the transfer and a further provision of the leaflet might have raised doubts about the transaction. However, just like Prudential, I think he would have been assured that he had been dealing with a regulated adviser (by an individual who was also a regulated UK adviser) and that he wasn't being scammed. In summary I don't think Prudential did enough here. However, if they had done everything they should have, on balance I still think Mr B would have transferred his pension and so he would be in the same position he is in now. So I don't think Prudential has caused the investment losses he has suffered.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 October 2025.

Nina Walter
Ombudsman