

complaint

Ms P says she did not agree to The Prudential Assurance Company Limited (“Prudential”) transferring her pension to a Qualifying Recognised Overseas Pension Scheme (“QROPS”).

background

Ms P lived overseas with her husband. When they separated Ms P returned to the UK.

Ms P then asked Prudential about her pension. It said she transferred it in 2010 to a QROPS. It was on Her Majesty’s Revenue and Customs (“HMRC”) list of recognised QROPS. But Ms P says that she did not authorise this. The scheme seems now not to exist.

Earlier, in 2005, Ms P asked Prudential to cash in her plan. Prudential said she was too young. In 2007 Ms P repeated her request. For the same reason as before, Prudential said this was not possible.

Later in 2007, Ms P’s parents sent Prudential a letter from Ms P, again asking for funds from her plan. Prudential again said that Ms P was too young to do this.

Prudential also got a message in 2011. It said:

“:..... last year I cashed in my personal pension, I would like to know if the account is still open, or has it been closed, if this has been closed, how can I re-start this?”

Ms P says that she did not send it. Her former husband probably did.

Ms P complained to Prudential about the transfer in 2010. But Prudential said that it had then acted properly. Ms P did not agree. She referred her complaint to this service.

Our adjudicator did not uphold this complaint. He agreed that based on the information then available, Prudential had acted in line with what it reasonably thought were Ms P’s instructions. Ms P then said:

“.....my policy was Prudential's responsibility and they paid out to someone other than myself, despite informing me in previous correspondence this could not happen until I turned 55 (clearly my 55th birthday has not yet happened).

It is therefore, their responsibility to recover the transferred funds, not mine. Also, why were they using companies who were not FSA accredited and who had been involved in other scams. These are questions Prudential should be answering, surely?”

The adjudicator said:

- Prudential paid a *transfer* value to a QROPS. It did not pay *benefits*.
- FSA/FCA does not regulate QROPS. Their local regulator does.
- Prudential dealt with an unregulated intermediary. But it understood Ms P to be abroad at the time. As non-UK regulated firms often advise expatriates it reasonably thought it was acting on Ms P’s instructions.

- Even if Prudential told the intermediary it could not deal with it, Prudential would probably have then received a direct instruction, apparently from Ms P. So there would be no causal link to any loss; it would have happened anyway.
- Pensions are often moved overseas to access funds. Whilst unfortunate that we cannot contact the overseas scheme or intermediary this does not mean Prudential should redress Ms P.

my findings

I have carefully considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It is only necessary for me to consider here whether Prudential acted appropriately in transferring Ms P's funds. In other words, based on the information available to it at the time, was it reasonable for it to have proceeded to transfer the funds to the overseas scheme.

It is not for me to decide if, as Ms P alleges, fraud has been committed and if so, by whom. It may well be that there *has* been fraud committed by a third party. I note that both the intermediary who dealt with Prudential and the receiving scheme cannot be traced.

But the role of this service is to consider only the actions of the firm complained of. Ms P has not said that Prudential acted fraudulently but rather were negligent in transferring her funds.

So I only consider here Prudential's process that led to the transfer. And the available information on which it made its decision. But irrespective of my findings, I do not doubt that both Ms P and Prudential are – and did – act in good faith.

So I understand Ms P's distress. The evidence I have seen, particularly discrepancies in respect of Ms P's purported signatures on the transfer forms and correspondence with other parties, leads me to conclude that on the face of it, there was something untoward about this transfer. But it does not follow that Prudential should be held to account for this.

At the time the transfer was arranged, Ms P was apparently, as far as Prudential knew, represented by an intermediary. Although Ms P is concerned that the intermediary was unauthorised, this would not itself then have raised concern. There was no regulatory barrier to Prudential dealing with an unauthorised intermediary in these circumstances. And it was not unusual for expatriate customers to be represented.

I also note the intermediary correctly submitted all the necessary documents for Prudential to make the transfer. These included a letter of authority and the necessary tax declarations and transfer forms, all apparently signed by Ms P.

With hindsight, it would have been better if Prudential had contacted Ms P directly, to verify these documents were authentic. But it was not obliged to do so. And it is not fair or reasonable to apply hindsight using information only known now. And I am also particularly mindful of the overall context in which the transfer was made.

Apart from apparently correctly completed documentation, HMRC confirmed to Prudential that the receiving scheme was approved for such transfers. Ms P had lived overseas and had not told Prudential that she would be permanently returning to the UK. Ms P had asked several times for funds to be released from her plan whilst living overseas.

Taking all this into account, I do not think it would be reasonable to say that Prudential were negligent in making the transfer. It was entitled to deal with an intermediary; the transfer documents were correctly completed; Ms P had apparently given the necessary authority for the intermediary to act on her behalf; the receiving scheme was approved by HMRC; Ms P was then living overseas which meant the transfer to a QROPS would not seem untoward.

I note there was a further attempt to access Ms P's funds in 2011. But that is not relevant to my decision here; it was after the transfer which is the crux of Ms P's complaint.

I understand why Ms P will be disappointed with my decision. She remains in a difficult position. She says someone has fraudulently benefitted from her funds. But she may want to consider if this specific issue is better dealt with by the courts.

In my view, Prudential's process and actions in the transfer were reasonable. It acted in good faith given the information then available to it. If there was fraud, then it was an unwitting party. In my view, it was not negligent in making the transfer.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms P to accept or reject my decision before 14 March 2016.

Terry Connor
ombudsman