Financial Ombudsman Service

The complaint

Mr K has complained about a transfer of his personal pension with The Prudential Assurance Company Limited to a small self-administered scheme ("SSAS") in 2016. Mr K's SSAS was subsequently used to invest in overseas hotel property with The Resort Group (TRG). The investment now appears to have little value. Mr K says he has lost out financially as a result.

Mr K says Prudential failed in its responsibilities when dealing with the transfer request. He says that it 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 required of transferring schemes at the time. Mr K says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Prudential had acted as it should have done.

What happened

On 12 August 2014, Mr K signed a letter of authority for Consumer Money Matters (CMM) to obtain details and transfer documents for his pensions with a number of providers including Prudential. CMM sent Prudential this letter of authority on 20 August 2014. CMM were registered with the Financial Conduct Authority (FCA) as an appointed representative of an authorised firm.

A firm was incorporated – Firm A – with Mr K as director, on 23 September 2014. A SSAS was subsequently set up for Firm A with Cantwell Grove as the administrator. I will refer to this as the Firm A SSAS.

On 15 October 2014 Cantwell Grove sent a request to Prudential to transfer to the Firm A SSAS. The request included: completed transfer discharge forms; confirmation letter from Mr K; copy of SSAS Trust Deed and Rules; HMRC registration confirmation. Prudential did not process this transfer at that stage.

On 31 March 2015, Mr K signed a letter of authority allowing First Review Pension Services (FRPS) to obtain details, and transfer documents, in relation to his pension. Mr K says this followed an unsolicited approach. FRPS wrote to Prudential, enclosing Mr K's letter of authority. It requested information on Mr K's pension and discharge forms to allow a transfer. FRPS was authorised by the Financial Conduct Authority (FCA).

On 9 April 2015 Prudential wrote directly to Mr K to confirm that it had sent pension information to FRPS and sent him a copy of TPRs leaflet about pension liberation fraud.

On 17 September 2015 Mr K wrote to Prudential providing the following information in response to a letter it sent him on 3 September 2015:

- He received a call from FRPS in respect of a pension transfer;

- After that he decided to establish a SSAS, and FRPS introduced him to Cantwell Grove.

On 15 February 2016 Prudential wrote to Mr K to explain that it hadn't yet complied with his transfer request because of its regulatory obligations with regards to guidance from The Pensions Regulator (TPR) and the FCA. The letter highlighted the following concerns about the transfer: Mr K was under 55; he had established his own employer in order to set up a SSAS; he was investing his pension fund into an unregulated overseas investment. The letter suggested that Mr K read the 'Pension Scam Alert' published in October 2015 by the National Fraud Intelligence Bureau, referring specifically to investments like hotel developments in Cape Verde (and provided the link to that).

The letter also enclosed the booklet from TPR on pension scams. And included a declaration that Prudential asked Mr K to sign to acknowledge Prudential's warnings, confirm he'd read TPR's booklet, and state whether he'd sought advice on the transfer. Mr K returned this form having signed the declaration confirming he had not sought advice.

Mr K's pension was transferred after this. His transfer value was around £50,600.

Mr K's representative in this complaint explains that his pension fund was invested, in part, with TRG. Although there is no documentary evidence or any SSAS statements to corroborate this investment. However, the issues with investments that were made with TRG are well documented. The investments were made in fractional ownership of hotel rooms in Cape Verde. These were speculative, high risk investments that failed to produce the advertised returns and have no secondary market, meaning any money that was invested with TRG cannot be realised.

On 1 February 2022, Mr K complained to Prudential. Briefly, his argument is that Prudential ought to have ensured that he understood the advice which was provided to him and that he was aware of the higher fees in the SSAS. Prudential failed to determine whether the investment in the SSAS was suitable for Mr K. Although Prudential sent Mr K TPR's liberation leaflet it still failed him by allowing the transfer to take place and to be invested in unsuitable investments which he is now unable to access

Prudential didn't uphold the complaint. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time. It said that it provided Mr K with TPR's Scorpion insert (explained later) on more than one occasion. Prudential considered that the receiving scheme was genuine so Mr K's complaint was mostly about the investments that were chosen for the SSAS which was not its responsibility. Mr K had a statutory and contractual right to transfer so it didn't consider it had a right to deny the transfer. It explained that it highlighted the relevant concerns to Mr K in its letter dated 15 February 2016.

Our investigator was unable to resolve the dispute informally, so the matter was 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.

Neither party have provided evidence of the exact date that the transfer completed. But it would only have occurred after Prudential received Mr K's declaration. And he signed that on 19 February 2016. Given that his complaint was made less than six years after that date I am satisfied that the complaint was made to Prudential in time for our service to be able to investigate it.

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.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

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

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. (I noted the contents of some of those alerts earlier in my decision.)

- 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 evidence in this case indicates that Firm A was established shortly after Mr K signed the letter of authority with CMM. Who were regulated by the FCA. Nothing in the request for information from CMM would have appeared unusual for Prudential. The subsequent letter of authority from FRPS ought to have caused concern to Prudential when it was received. FRPS were not regulated and the Code indicated this as a warning sign. But it is apparent that Prudential didn't proceed to make the transfer without conducting further due diligence, which I will go on to consider.

I note Mr K's account that he was acting on the recommendation of an unregulated party. And that it was on the direction of that unregulated party that he ticked the box – on Prudential's warning letter of 15 February 2016 – to say he hadn't sought advice in relation to the transfer. But I am not persuaded that it's reasonable for me to conclude that Mr K would have signed a form to tell Prudential he hadn't sought advice if in fact he thought he had. That would mean that Mr K had intentionally misled Prudential in its efforts to understand the circumstances of his transfer. I think it is more likely that Mr K would have signed this because he didn't consider that he was acting on financial advice.

I think that Mr K was clearly introduced to the idea of setting up a SSAS to transfer by either CMM or FRPS. And given that Firm A was set up following the evidence of CMM's involvement, it was most likely CMM. But being introduced to an investment idea is not necessarily the same as being given a recommendation by someone purporting to be providing a personal recommendation. Overall, for the above reasons, I am not persuaded that Mr K considered that he was receiving advice to make the transfer. But, even if he was, what's more important is what he led Prudential to understand at the time. Which was that he wasn't being advised.

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 received two requests for information that have been shared with us. The first of these was from CMM, who were a regulated party. I have not seen Prudential's response to that request. And it isn't clear at that stage whether direct contact was made with Mr K.

In response to the second request for information, that Prudential received from FRPS, the evidence is clearer. Prudential have shown us the letter it sent directly to Mr K on 9 April 2015. It referred to TPRs "*leaflet about pension liberation*" as being enclosed. And asked

Mr K to read and retain that leaflet. I think this, more likely than not, referred to the inclusion of the Scorpion insert which TPR, and the Code, suggested was sent direct to its member following requests for transfer information. So I think Prudential acted appropriately in this.

Prudential wrote to Mr K on 15 February 2016 as I have referred to above. I have seen this letter and, under a heading 'further information', it asked Mr K to, "*please read the enclosed booklet from The Pensions Regulator on pension scams."* And also included a link to TPR's website. This letter was correctly addressed to Mr K, and he signed and dated the declaration to say he had read it. So I think that Mr K had seen the longer Scorpion booklet that was intended to be sent to customers where concerns were identified. Which I also think is evidence that Prudential was complying with the guidance at that stage.

It means that Mr K had, by that stage been provided with the Scorpion insert which had been published in February 2013. But that particular document was focussed on the risks of making unauthorised access to pension funds before age 55. Which wasn't something that I think Mr K was doing. So I don't think it's reasonable to infer that reading the Scorpion insert of that date would have caused someone in Mr K's position any specific concern.

But the Scorpion documents were updated in March 2015. Which means that the Scorpion booklet Mr K received in February 2016 was the updated version. The scope of that document was broader and focussed on pension scams. Page 2 of the booklet included a section headed "*How to spot the warning signs".* This included: a cold call offering a free pension review or one-off investment opportunity; the promise of investment returns over 8% on your investment; overseas transfer of the funds. These were warning signs that were highlighted by TPR to alert consumers in Mr K's position to the possibility of a scam. I think that these warnings should have struck a chord with Mr K and ought reasonably to have led him to consider some of the actions in the section entitled "*how to scamproof yourself*". There were simple steps that were highlighted to help consumers avoid becoming victims of scams. I think that it would be reasonable for someone in Mr K's position to follow those steps before proceeding with the transfer. Had he done this it would likely have caused Mr K to question the transfer himself and change his mind.

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 Mr K'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've firstly looked at what due diligence Prudential carried out in this case to consider whether it was sufficient. Prudential hasn't provided a detailed audit of the due diligence that it carried out. Where evidence is incomplete, as in this case, I need to determine what most likely happened on a balance of probability.

In this case the correspondence that Prudential has shared makes it clear that it made enquiries prior to processing the transfer. It is evident, from the letter that Mr K sent (dated 17 September 2015) that Prudential had made enquiries of Mr K. From the information Mr K provided, it appears likely that Prudential was trying to establish facts about the transfer including how he came to be aware of it.

And the letter that Prudential sent to Mr K on 15 February 2016 provides evidence that Prudential had developed a good understanding of the circumstances surrounding Mr K's transfer. For instance, under the heading "*Reason for our concern*" it explained that Prudential continued to have concerns about the transfer. Including that Mr K was under age 55, he had established an employer to set up a SSAS, and he was investing in an

unregulated overseas investment.

Overall, I think that Prudential did conduct a reasonable level of due diligence in order for it to identify these concerns. It is evidence that Prudential established that Mr K was transferring overseas and that an employed had likely been set up in order to open the SSAS. These were warnings that corresponded with those highlighted in the Scorpion Action Pack and the PSIG Code.

Prudential didn't appear, at that stage, to have made a decision on whether or not Mr K had been advised by a third party to transfer his personal pension. It had contact from CMM and from FRPS so I understand that the position may not have been clear. But it's letter of 15 February 2016 asked Mr K if he had received advice, and Mr K ticked 'No' and signed the form. The form included a section for Mr K to name his adviser, if advised, which was left blank. I therefore think it was reasonable for Prudential to accept the answer Mr K provided. And it would not have considered Mr K to have been acting on unregulated financial advice.

I am aware that Mr K has explained that he ticked this box because he was advised to by the regulated party. But that doesn't alter the fact that, even if that were the case, Prudential wouldn't know that. It was entitled to accept the information it was given.

For these reasons I think that Prudential's due diligence was sufficient to have uncovered the relevant risks present with Mr K's pension that were highlighted by the relevant guidance. As I explained previously, the guidance wasn't mandatory. The evidence that Prudential has provided may not make it clear that it followed the Code exactly. But I think that the evidence shows that it followed the spirit of the guidance, which was to put in place a process to consider and address the risks of pension scams.

Was Prudential's response to the risks sufficient?

It is evident from Prudential's response to the transfer request that it had concerns about the risk of a pension scam in Mr K's transfer. It's letter of 15 February 2016 spells that out very clearly. So I need to consider whether Prudential did enough to bring those risks to Mr K's attention. And for the following reasons I think that it did.

Prudential sent Mr K the Scorpion booklet focussed on pension scams. It independently highlighted the risks, including of following a recommendation from an adviser who was not regulated. I've explained why, in this case, that should have made a difference.

It was included as part of, what I consider was, a strongly worded warning letter. It informed Mr K of the concerns Prudential had and why. Which I think was a reasonable approach to take. It specifically referred to the setting up of the SSAS and the intended overseas investment.

That letter also referred Mr K to the 'Pension Scam Alert' that had been published on 26 October 2015 by the National Fraud Intelligence Bureau and City of London Police. It explained that it referred to cold calls to customers to transfer their pension and specifically mentioned hotel developments in Cape Verde. This, in particular, ought to have chimed with Mr K given his circumstances.

The letter, the Scorpion booklet, and other information referred to, provided Mr K with the options available to him to look into the matter further. But, more than that, Prudential made it clear that it wouldn't proceed with his transfer unless he signed the declaration to say he still wanted to proceed with the transfer.

The Code set out options for ceding schemes where they determined that there was a

material risk of a scam. Which I think Prudential had determined in this case. In that, among other options, it explained what ceding schemes ought to do where it considered that its member had a statutory right to transfer. As Prudential (correctly) said was the case in Mr K's request. The Code suggested that, where the ceding firm doesn't think it can decline a transfer request, it should obtain a suitably robust discharge declaration from its member. I think that the declaration Mr K signed on 19 February 2016, in response to Prudential's warning letter of 15 February 2016 met that requirement.

In spite of all of the combined warnings, some of which were very specific to what Mr K was about to do, he signed and returned the declaration directing Prudential to proceed with the transfer. In light of this, I think it was fair and reasonable for Prudential to proceed with the transfer. I think it had taken reasonable steps to give Mr K sufficient warnings, information and opportunity to change his mind. So I don't think it's fair or reasonable in these circumstances to hold Prudential responsible for the transfer and investment losses that followed.

My final decision

For the above reasons I am not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 December 2024.

Gary Lane
Ombudsman