Ombudsman's Determination

Applicant	Mr T
Scheme	Prudential Personal Pension Plan (**the Plan**)
Respondent	Prudential

Outcome

1. I do not uphold Mr T's complaint and no further action is required by Prudential.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained that Prudential did not carry out appropriate checks when transferring his benefits from the Plan. His complaint arises as it has transpired that the scheme he transferred into is a pension liberation scheme.

4. He says his complaint is reinforced by the fact that around the same time, he requested to transfer separate benefits he held with another provider (**Provider 2**) into the same pension liberation scheme, this being the 5G Futures Pension Scheme (**the 5G Scheme**) however, Provider 2 refused this request.

Background information, including submissions from the parties

5. On 17 January 2013, Portland Wealth Associates (**Portland**), a financial advisory firm, wrote to Prudential explaining that it was representing Mr T and had been given authority to approach Prudential. It asked Prudential to forward Mr T's pension policy details, transfer documentation and discharge forms.

6. On 28 January 2013, Prudential sent Portland a letter in which it provided the Plan's policy details and transfer value. It said it was unable to provide a transfer quotation as the date of birth cited on the letter of authority did not match its records.

7. On 8 February 2013, Mr T telephoned Prudential to ask that it send transfer paperwork to Portland.

8. On 14 February 2013, The Pensions Regulator (**the Regulator**) published guidance on pensions liberation fraud directed at pension professionals. This is commonly

referred to as “the Scorpion Guide” due to the imagery used within and is entitled “Pension liberation fraud – The predators stalking pension transfers.”

9. On page 8 of the Scorpion Guide, the following was stated:

“Looking out for pension liberation fraud

When processing a transfer request, trustees and administrators may be in a position to identify the warning signs that suggest that pension liberation fraud is occurring. If you are a trustee or administrator, and any of the following criteria apply to a transfer request you have received, then you may be about to transfer a member’s pension to a scheme designed to liberate their funds.

Here are some of the things to look out for:

- Receiving scheme not registered, or only newly registered, with HM Revenue & Customs
- Member is attempting to access their pension before age 55
- Member has pressured trustees/administrators to carry out transfer quickly
- Member was approached unsolicited
- Member informed that there is a legal loophole
- Receiving scheme was previously unknown to you, but now involved in more than one transfer request

If any of these statements apply, then you can use the check list on the next page to find out more about the receiving scheme and how the member came to make the request.”

10. The next two pages contained a checklist of activity characteristic of pension liberation fraud, along with suggestions on the enquires to make in respect of these.

11. On 18 February 2013, Portland telephoned Prudential to chase the transfer out paperwork.

12. On 21 February 2013, Prudential sent the requested transfer discharge forms to Portland.

13. On 26 February 2013, Mr T signed a Prudential application in agreement for the proposed transfer to the 5G Scheme.

14. On 8 March 2013, the administrator of the 5G Scheme, 5G Wealth Management Limited, sent Prudential a Pension Transfer Declaration in which it undertook that the 5G Scheme was a registered pension scheme under the Finance Act 2004.

15. On 13 March 2013, Prudential received the transfer paperwork.

16. On 14 March 2013, Prudential made a transfer payment of £53,470.09 to the 5G Scheme. It confirmed this in a letter to Portland the following day.

17. On 27 March 2013, Mr T completed a document entitled "Money Master Inc." In this, he signed a declaration which stated:

    "I confirm I wish to accept the loan offered and I have received the loan agreement which I fully understand & accept the terms therein."

18. On 12 April 2013, Prudential recorded the following call note:

    "We have received from money master inc, unable to understand its [sic] about some kind of loan. Hence tried calling PH, however call would not get connected. Tried calling the FA, however phone went to voice msg box."

19. On 8 May 2013, the Regulator suspended the trustees of the 5G Scheme and appointed Pi Consulting (Trustee Services) Limited as Independent Trustee "with powers exercisable to the exclusion of all other trustees of the Scheme."[1]

20. On 11 February 2014, Mr T telephoned Prudential. The telephone note states that he requested for all the paperwork pertaining to the transfer to be sent to him as he believed this had been done fraudulently and the police needed copies.

21. On 19 July 2017, over three years later, Mr T telephoned Prudential explaining that he had transferred his benefits to the 5G Scheme in 2013 and had tried to do the same through Provider 2, but it did not permit this as it did not deem the receiving scheme to be a reputable, approved company. Mr T said he was not able to access the funds which Prudential transferred to the 5G Scheme as it was currently under investigation. His concerns were treated as a formal complaint.

22. On 2 August 2017, Prudential sent Mr T its response on his complaint. This said that when it received his request to transfer, it was sent all the relevant documentation showing that the 5G Scheme was registered with HMRC; it was after the transfer had been made that doubts were raised regarding this scheme's administration. In respect to why it made the transfer and Provider 2 did not, it could not comment on another company's processes. Lastly, it said the rules of the Plan provided Mr T with a contractual right to transfer so it had no discretion to refuse a valid transfer request.

23. Mr T subsequently referred his complaint to this Office.

24. On 31 October 2017, Prudential provided its formal response. In summary, it said:-

    - The transfer was made at Mr T's request. It had received evidence that the 5G Scheme was registered with HMRC on 23 May 2008 and had been given a Pension Scheme Tax Reference (**PSTR**).

    - The rules of the Plan gave Mr T a contractual right to transfer, along with his statutory right to transfer.

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[1] As stated in the Regulator's Determination Notice of 5 July 2016.

- Concerns about the administration of the 5G Scheme had been raised after the transfer had been made.

25. The above response was shared with Mr T, who did not have any specific points to add but said he felt that Prudential could have done more to highlight the dangers of the transfer to him, as Provider 2 did.

26. On 11 June 2018, in response to an information request the Adjudicator made to Prudential, it said:-

    - In terms of the due diligence it undertook before allowing the transfer to go ahead, it had received a copy of the letter issued by HMRC confirming that it was a UK registered pension scheme and its PSTR, along with a copy of the "View Current Scheme Details" from HMRC's Pension Schemes online webpage, which confirmed it was still a registered scheme.

    - It did not identify a need for enhanced due diligence in reference to the Scorpion Guide; there was no indication that there was any such need as per the instances to look out for on page 8. For example, it had been confirmed that the 5G Scheme was set up in 2008, so it was not a newly registered scheme. It also had no reason to believe that Mr T was trying to access his money early as he was weeks away from his 55th birthday and, it had not been pressurised to make payment early. Further, it had no indication that Mr T had been approached unsolicited and at that time, the 5G Scheme was not involved in more than one request.

    - No warnings were given to Mr T on proceeding with the transfer as no cause for concern had been identified in relation to pension liberation.

27. On 22 June 2018, the Adjudicator approached Provider 2 for details on the transfer request of Mr T's which it refused.

28. On 13 July 2018 Provider 2 responded. The information it provided included:-

    - A transfer information pack dated 23 January 2013.

    - A letter to 5G Wealth Management, dated 14 May 2013. This said it had been alerted to an increase in pensions liberation activity across the pensions industry. It referred to the 5G Scheme's Trust Deed and Rules which it said 5G Wealth Management had provided in view of these concerns. It concluded that following a review of this, as well as "the circumstances of the Scheme more generally", it remained concerned about the proposed transfer and would be unable to proceed with it.

    - A letter, also dated 14 May 2013, sent to Mr T, saying that it had made a decision not to proceed with the transfer and citing the same explanation as above.

29. On 18 July 2018, the Adjudicator asked Provider 2 if it could provide further details on what in relation to the 5G Scheme's circumstances caused it to become concerned.

30. On 19 July 2018, Provider 2 replied saying that it received Mr T's completed application on 12 March 2013 but the 5G Scheme failed its due diligence test and the appointment of an Independent Trustee spoke volumes. It said the transfer value in 2013 was £988.75.

31. The Adjudicator subsequently made further enquiries of Provider 2.

32. On 25 November 2018, Mr T made the following additional points:-

- His health position, specifically a problem he had with his knees, had deteriorated such that he could only work periodically due to the pain and swelling. He would need surgery on both knees which would mean six to eight months off work, which he could not afford.

- He had also been suffering from depression and anxiety for over a year and was on daily anti-depressants and painkillers. He was worried all the time about whether he would get anything back from his pension fund with the 5G Scheme. After speaking to the trustees carrying out the investigation of the 5G Scheme and the London police department, this seemed unlikely and if he did, it would only be a small amount and at least two years before the matter was resolved.

- If Prudential had carried out the same stringent checks as Provider 2 did, he would still have these funds available, be in a position to have his knee operation and life would be more comfortable.

33. On 13 March 2019, the Adjudicator asked Prudential whether, at the time of the transfer, it sent Mr T a member leaflet (**the member leaflet**), produced by the Regulator, which explained pension liberation fraud.

34. On 15 March 2019, Prudential replied saying that the member leaflet had not been sent to Mr T as the transfer request had been in progress before the Regulator had launched its pension scam campaign on 14 February 2013. It reiterated that quote and discharge forms were issued on 21 February 2013 and said in the days between this date and 14 February 2013, it had not been able to implement the changes needed to ensure that the member leaflet was issued when its system produced transfer quotes. It added that because no pension scam concerns were identified when assessing the completed transfer discharge forms, the member leaflet had not been sent separately before the transfer was paid.

Adjudicator's Opinion

35. The complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised below:-

- In considering the very close sequence of events between Mr T's successful transfer with Prudential, and his rejected transfer request with Provider 2, it was understandable why Mr T felt that the former failed in its duties whereas the latter had acted appropriately.

- Yet suggesting fault or liability alone on such a basis would be too simplistic. The matter required careful consideration of Prudential's actions against the specific regulatory context at the time in question. Further, there was a balancing exercise to be borne in mind between the member's statutory (and in this instance also contractual) right to transfer and its regulatory/ general responsibilities to act with due care.

- Prudential received Mr T's completed transfer paperwork on 13 March 2013, at which point, the Scorpion Guidance had been published for almost a month. Prudential would have been, or ought to have been, aware of its regulatory duties in respect of pension transfers at this point.

- In considering page 8 of the Scorpion Guide, two of the "warning signs" to look out for were not present. The "View Current Scheme Details" information Prudential provided stated that the Scheme was registered on 23 May 2008. Therefore, Prudential validly had no concerns that this was an unregistered or newly set up scheme. Prudential also identified that Mr T was close to his 55th birthday, the minimum age at which he could draw benefits. Hence, there was no reason for concern that he was attempting to access his funds earlier than legislation permitted.

- In terms of whether Prudential was pressured by Mr T or Portland to make the transfer, Mr T chased the matter on 8 February 2013 and Portland did so on 18 February 2013. With the transfer period being from 17 January 2013 (when Portland requested transfer documentation from Prudential) to 14 March 2013 (when the transfer payment was made), the frequency of these chasers was not such that Prudential could have been led to believe it was being asked to make the transfer more quickly than it had intended. Further, there was no suggestion that any sense of urgency had been indicated by Mr T or Portland.

- In addition, there was no evidence Prudential was aware that Mr T had been approached unsolicited, nor was it apparent that it ought to have known this. Portland directly contacted Prudential in respect of its authority to represent Mr T in January 2013 and managed the transfer to completion. Similarly, there was nothing to suggest that Prudential was aware that Mr T might have been informed that the 5G Scheme could take advantage of a legal loophole to take his funds early. Further, such a strategy would be unusual in the circumstances when considering that Mr T was approaching his 55th birthday.

- It appeared that Mr T did take advantage of a loan connected to his pension transfer around this time, as indicated by the “Money Master Inc” loan document on file. This was indicative of suspicious pension liberation activity, as listed in the checklist (“The Checklist”) on page 9 of the Scorpion guide. It was unclear whether this document was received by Prudential shortly after it being signed on 27 March 2013, or if it was forwarded on more recently by Mr T. The direct telephone call to Prudential of 12 April 2013, however, should have given Prudential cause to be suspicious, but it was too late at this point as the transfer had taken place nearly a month before.

- Prudential had said that at the time it received Mr T’s transfer request, the 5G Scheme was not involved in more than one transfer.

- Had Prudential made some of the enquiries on the Checklist, it would have emerged that the 5G Scheme was one to be validly concerned about. However, the Scorpion Guide suggested reverting to the Checklist if any of the initial potential warning signs were apparent on the page preceding this. This was not the case; Prudential had been given no indication of pension liberation warning signs.

- Whilst Provider 2 made the right decision for Mr T, at the time it received his transfer paperwork, it had already established reason for concern on the 5G Scheme. Mr T also had no contractual right to transfer from that scheme, as he did with Prudential. It appeared that Prudential did not hold the same information at that point and, although this was unfortunate for Mr T, it would not be appropriate to consider this matter with the benefit of hindsight. Prudential fulfilled its due diligence obligations at the time of the transfer and carried out its contractual duty in enacting the transfer.

36. Prudential accepted the Adjudicator’s Opinion. Mr T did not accept the Adjudicator’s Opinion and made the following comments:-

    - Although Prudential appeared to be saying it did everything “to the book” this did not take away from the fact that it let the transfer go through when Provider 2 did not.

    - Prudential got it wrong and did not properly act on his behalf with such a large amount of money.

    - This matter was having a significant impact on his life now. Prudential should have contacted him and warned him before the transfer; Prudential got it wrong when Provider 2 got it right.

37. The complaint has now been passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr T for completeness.

Ombudsman's decision

38. I have considerable sympathy for Mr T, who appears to have been a victim of pension liberation fraud and is not able to access funds which would be of considerable help to him in the current circumstances.

39. The specific circumstances surrounding his complaint are understandably particularly frustrating for Mr T, in that for the same period of time, two very different decisions were made on the transfer of his funds. Further, the transfer which was declined concerned a lesser sum of money.

40. However, as highlighted by the Adjudicator, this matter cannot be viewed with the benefit of hindsight and it is the circumstances at the time of transfer which are of importance.

41. Essentially, Prudential had a statutory and contractual duty to transfer Mr T's funds which it was required to act upon when it received his transfer paperwork, unless there were any indications of why the transfer should not go ahead, such as those concerning pension liberation fraud. The page preceding the Checklist in the Scorpion Guide provided an outline of potential warning signs which could suggest pension liberation fraud activity was taking place. However, there is no indication that Prudential had any reason for concern and accordingly, it did not make any of the further enquiries suggested in the Checklist.

42. Although it is regrettable that Prudential's decision has not transpired to be in Mr T's best interests, it fulfilled its due diligence obligations with the information it held at the time.

43. Further, although Provider 2 had established reason for concern at an earlier point than Prudential, this is not in itself an administrative error here, as each provider holds its own data depending on internal processes and the transfer requests received, amongst other things.

44. Lastly, I have considered whether Prudential ought to have sent Mr T a member leaflet, which would have alerted him to the risks of the transfer. Although, the transfer took place after the Regulator's guidance on pension liberation was issued, I deem it reasonable to allow Prudential, as a provider, the necessary time to implement any changes arising from this. In line with previous Determinations, I consider a three-month period, from 14 February 2013, a reasonable timeframe to do so. Accordingly, I do not consider that Prudential made an administrative error in failing to send Mr T the member leaflet at the time it was considering his transfer request.

45. In conclusion, I do not find that Prudential failed in its due diligence obligations at the time of the transfer.

46. Therefore, I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
20 March 2019