Ombudsman's Determination

Applicant	Mr R
Scheme	Prudential Personal Pension Scheme (**the Scheme**)
Respondents	Prudential

Outcome

1. I do not uphold Mr R'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

1. Mr R has complained that Prudential transferred his Scheme account to the Beausale Limited Pension Scheme (**the Beausale Scheme**) without carrying out sufficient due diligence.

Background information, including submissions from the parties

2. Mr R says he contacted Prudential in 2012 to ask if he could cash in his pension or take some cash on transfer but was told that neither was possible until age 55.

3. Mr R also says that he told Prudential he had been approached by a company who on transfer would pay 20% of the transfer value to him. At the time he was in mortgage arrears and filled in the transfer application thinking there was little chance that Prudential would release the money. But the transfer did go ahead and he received 20 percent of the transfer value. He did not understand that he would lose all of his pension fund money. Mr R wants Prudential to reinstate his pension fund with interest.

4. The Beausale Scheme is one of a group of pension schemes identified as a pension liberation arrangement by the Pensions Regulator. An independent trustee has been appointed by the Pensions Regulator who is attempting to recover what money it can for members.

5. Prudential say that in response to a request from Mr R it issued a transfer pack to him in November 2012.

6. On 20 February 2013, Prudential received a request to transfer Mr R's fund to the Beausale Scheme. The papers received from the Beausale Scheme included Mr R's signed authority, completed transfer discharge forms, the Beausale Scheme's HMRC Registration document and its receiving scheme policy declaration. Background checks were completed in accordance with its processes at the time and as all the documents were in order a transfer payment of £11,986.94 was made on 21 February 2013.

7. Prudential also say that it acted in accordance with the authority and instructions received. Mr R elected to exercise his legal right for a transfer to a pension scheme that was registered with HMRC and had provided the appropriate information and declarations. Whilst it had a duty of care to Mr R, it made the transfer in accordance with his wishes and its regulatory and contractual obligations to him. It was not until February 2013 that the Pensions Regulator issued its guidance on pensions liberation and the danger of pension scams.

Adjudicator's Opinion

8. Mr R's 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.

9. This case is similar to one that was determined relating to Mr Hughes and Aviva (PO-6375), which concerned a transfer to the Capita Oak Scheme in March 2013. We have also determined several other cases involving similar transfers from around that time, relating to different receiving schemes which, unfortunately, have met the same end. These can be found on our website, www.pensions-ombudsman.org.uk.

10. The view that the previous Ombudsman and I have taken in those Determinations is that, as the Pensions Regulator did not issue guidance to providers on pension liberation and the danger of pension scams until February 2013, it was at this point that industry practice changed with regard to the level due diligence expected. This led to the issue of 'Scorpion' leaflets, warning members about the risks to their pensions. I also agreed with the previous Ombudsman, that it was reasonable to allow a short period of time in order for providers to consider and implement the Regulator's guidance. There will clearly be some people who made their transfer applications during that period, and later wished that they had not and that the revised procedures had been in place earlier.

11. That is not to say that pension liberation was not known about before then, it was in the Pensions Act 2004. But, members have a statutory right to a transfer so the extent to which providers could delay or refuse a transfer is limited, where, as in this case, the Beausale Scheme had met HMRC's requirements. The level of due diligence expected since 2013 has been commented upon in detail in various Determinations, see Stobie PO-3105 and Kenyon PO-1807.

12. The High Court judgment in Hughes v Royal London[1], also indicates that there is very little providers can do to stop a transfer where a statutory, or other right exists, even if they have serious concerns about the destination of the money or the nature of the receiving scheme.

13. There is no evidence that Prudential was aware of any particular concern about the Beausale Scheme. In hindsight, it was not an appropriate location for Mr R to transfer his pension but it was his choice to do so. The Adjudicator did not consider that there was any maladministration on Prudential ‘s part in allowing the transfer to proceed at the time that it did in accordance with Mr R’s statutory rights and his clear instructions.

14. Mr R has admitted that from his previous discussion with Prudential he was aware that it was not possible to access pension fund money before age 55. But despite this he still went ahead with the transfer hoping to access some money due to his financial circumstances. Therefore, the Adjudicator was of the view that even if Mr R had been provided with a Scorpion leaflet advising him of the danger of pension liberation and pension scams, he would have proceeded with his transfer request.

15. It may be that Mr R will be able to recover some of his pension monies due to the appointment of the independent trustee but the Adjudicator did not consider there were sufficient grounds to make Prudential liable for the return of his funds.

16. Mr R did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr R for completeness.

17. Mr R says that he disagrees with the Adjudicator’s opinion as Prudential knew of the danger he was entering into because he had informed it he was only moving his pension to access cash due to his present financial difficulties and it was not a common practice. So, the question he asks is: why did Prudential release the money? Prudential had made it clear to him that it was not possible to obtain money from a pension scheme before the age of 55 when he explained that he needed to transfer his pension funds in order to raise some cash.

Ombudsman’s decision

18. Although I sympathise with the position that Mr R now finds himself in I do not find that Prudential can be held responsible for the loss of Mr R’s pension. The sequence of events is that Mr R initially telephoned Prudential, in 2012, to try and release some cash from his pension before the age of 55 due to his financial circumstances, He was told during that telephone call that it was not possible to release any money from the pension scheme before the age of 55.

[1] Hughes v The Royal London Mutual Insurance Society [2016]

19. Mr R says that he told Prudential, in 2012, that he had been approached by another company about the possibility of releasing some money from his pension scheme and I presume that the Prudential representative at the time would have simply repeated the message that it was not possible to release money from a pension scheme before the age of 55. There are no records of the telephone call that Mr R made in 2012 due to the length of time that has expired.

20. Some months later Mr R completed an application to transfer to the Beausale Scheme. Prudential carried out its due diligence measures at the time and confirmed that the Beausale Scheme was registered with HMRC and no concerns had been flagged against that scheme. The transfer then proceeded and Mr R obtained a release of money from the transfer made.

21. Mr R has, in effect, asked why did Prudential not realise that the transfer was potentially a pension liberation exercise given the detail he had disclosed in his telephone call in 2012. I presume the answer to this question lies in the manner of how Prudential deals with customer calls. When Mr R called Prudential in 2012 his call would have been answered by a representative in a call centre. The representative explained that it was not possible to release money from a pension scheme before age 55 and would not have been authorised to give any advice or warnings about the other arrangement that Mr R mentioned.

22. When Mr R made his application to transfer to the Beausale Scheme a few months later, a separate pension transfer team would have examined the documents received and carried out the appropriate due diligence checks applicable at the time. As there were no explicit dangers highlighted with the transfer it was processed and the transfer made. I also presume that the transfer team procedures at the time would not have required them to review any previous calls that Mr R had made to the call centre.

23. Therefore, I do not uphold Mr R’s complaint.

Anthony Arter

Pensions Ombudsman
7 May 2019