DRN-5509225

The complaint

Mr R has complained, via a Claims Management Company ('CMC'), about a transfer of his FIL Life Insurance Limited ('Fidelity') stakeholder pension to a small self-administered scheme ('SSAS') in February 2016. Mr R's SSAS was subsequently used to invest in Llana Beach Resort, an overseas commercial property development in Cape Verde administered by The Resort Group (TRG). The investment now appears to have little value. Mr R says he has lost out financially as a result.

Mr R says Fidelity 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 R says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Fidelity had acted as it should have done.

What happened

In or around June 2015, Mr R signed a letter of authority allowing First Review Pension Services Limited ('FRPS') to obtain details, and transfer documents, in relation to his pension. Mr R says this followed an unsolicited approach. FRPS subsequently wrote to Fidelity, enclosing Mr R's letter of authority. It requested information on Mr R's pension and discharge forms to allow a transfer. Fidelity sent the requested information to Mr R on 18 June 2015, and then to FRPS on 29 June 2015. FRPS wasn't authorised by the Financial Conduct Authority ('FCA').

Mr R says he was attracted by the prospect of a significant increase in the returns on his pension. He trusted what FRPS told him about the transfer and the investment, and it sounded to him like a realistic opportunity to achieve that.

In July 2015, a company was incorporated with Mr R as director. I'll refer to this company as 'Business C'. On 19 October 2015, Mr R signed documents to open a SSAS with Rowanmoor Group plc ('Rowanmoor'). Business C was recorded as the SSAS's principal employer. The SSAS documents also recorded that the SSAS was to be used to invest in "The Resort Group ['TRG'], Cape Verde."

At some point after that, Rowanmoor sent a transfer request to Fidelity via the Origo Options platform. Origo is an electronic transfer system that allows paperless execution of transfers amongst firms that have signed up to the service. A copy of the transfer request hasn't been provided to us.

Mr R's pension was transferred on 23 February 2016. His transfer value was around £89,000. He was 38 years old at the time of the transfer.

In March 2016, Mr R invested £72,900 from his SSAS in a fractional share of a unit at the Llana Beach Resort in Cape Verde. The investment did not perform as expected. The SSAS received income payments in connection with the investment over the years until late 2018 when those payments stopped, and it now has little to no value. There are legal difficulties with the title to the property and there's no market for the investment, so it has no realisable value.

In December 2019, Mr R's CMC set out his complaint to Fidelity. Briefly, his argument is that Fidelity ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call, he had been advised by an unregulated business, and the proposed investment was in an unregulated, overseas, high risk asset.

Fidelity did not provide Mr R with a response to the complaint because it didn't have an up-to-date letter of authority for his CMC. After the complaint was referred to us, Fidelity told us it would otherwise not have upheld the complaint. It said none of the information it had about the transfer at the time gave it cause for concern, and it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

The initial provisional decision upheld the complaint. The Ombudsman reasoned that Fidelity couldn't confirm that it had provided Mr R with the Scorpion insert and as no letters Fidelity sent to Mr R referred to the Scorpion materials, the Ombudsman made the finding that Fidelity failed to send the insert.

The Ombudsman also stated that while the transfer request had been made via Origo, this didn't negate the need for Fidelity to carry out its own due diligence into the transfer request and the circumstances surrounding it. And had Fidelity done as it should have it would have discovered that:

- Business C was a dormant company and had only been established to facilitate the setup of, and the transfer to, the SSAS;
- Mr R wasn't meaningfully employed by Business C;
- Mr R had been approached out of the blue by FRPS;
- FRPS (an unregulated firm) most likely recommended Mr R transfer his pension into the SSAS and invest in TRG.

So in light of these discoveries Fidelity should have made Mr R aware of these warning signs and explained to Mr R that his adviser was unregulated so was therefore likely acting in breach of FSMA and could be putting his pension at risk. The Ombudsman also felt that having been told about these concerns by Fidelity Mr R would have changed his mind about the transfer and not carried on with it.

Responses to the initial provisional decision

Mr R's CMC confirmed he accepted the initial provisional findings. They also confirmed that he had sold the Llana Beach Resort investment for £200, and the SSAS bank account had subsequently been closed with the proceeds paid directly to him.

Fidelity did not accept the provisional findings and provided comments which I have summarised below:

- The PSIG Code is a voluntary code and is not enforceable by legislation. Whilst Fidelity pays regard and follows the main principles outlined in the Code, it doesn't follow it to the letter.
- Fidelity did not deem it necessary to conduct additional due diligence on Rowanmoor because it was a known professional trustee company that was also a member of the Association of Member Directed Pension Schemes.

- The absence of an authorised financial advisor in the transfer wasn't a point of concern because no safeguarded benefits were transferred. There was no indication
- Mr R had received unregulated advice to transfer or that he was requesting a transfer as a result of anything other than his own decision.
- Fidelity enclosed a copy of the Scorpion leaflet with the transfer pack it sent to FRPS, and a transfer pack it sent to Mr R on 18 June 2015. It was part of its process at the time to ensure the leaflet was enclosed with all transfer packs that were issued.
- Fidelity's additional due diligence would not have required it to investigate where the funds were to be invested in the receiving scheme. This was outside of its remit which was limited to ensuring the transfer itself was authorised.

I issued a second provisional decision after reviewing the information provided by both parties in response to the initial provisional decision. An extract of this is set out below and forms part of this decision:

What I've provisionally decided – and why

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 Fidelity 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. 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 to 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, HM Revenue & Customs ('HMRC'), the Pensions Advisory Service ('TPAS'), TPR, the Serious Fraud Office, 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 2000 ('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 as 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[1]. 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.[2]

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.[3]

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[1]*https://webarchive.nationalarchives.gov.uk/ukgwa/20140901182707/http://www.fca.org.uk/consumers/ financial-services-products/pensions/protect*
[2]*https://www.fca.org.uk/publication/publications/rru-sept-2014.pdf*
[3]*https://webarchive.nationalarchives.gov.uk/ukgwa/20150703105203mp_/http://www.pensionsadvisoryservice.org.uk/content/publications-files/uploads/pension-scam-leaflet_2_page.pdf*

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 interests 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 interests 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?
As set out in the initial provisional decision Mr R said in his complaint that he received a cold call offering him a free review of his pension. He went on to meet a "reviewer" from FRPS or Choices Wealth at his home on three occasions in total. He said the reviewer recommended he transfer his pension to a SSAS and invest in an overseas commercial property. The reviewer told him the returns would be a significant improvement on what he was getting at the time. He recalled specifically being told he "would get 6% capital growth each year as rental income." Mr R said it sounded to him like a realistic opportunity to achieve a significant increase on his pension savings. He thought the reviewer was acting in his best interests and he relied on and trusted the advice and information they gave him.

The documentary evidence shows that Fidelity wrote to FRPS on 29 June 2015, acknowledging its receipt of FRPS's letter of authority and providing them with the information they had requested about it. And on 19 October 2015, Mr R signed an FRPS authorisation form allowing them to submit his SSAS application to Rowanmoor. So it's clear that FRPS was involved in Mr R's transfer.

It would seem that Mr R's motivation for transferring was the prospect of getting a better return on his pension – he has said that FRPS recommended the transfer and investment to him on the basis that it would generate significantly higher returns than what he was currently receiving and I have no reason to doubt this. Furthermore, given the complex nature of the arrangement of the SSAS and the onward investment I think it's unlikely he would have decided to enter into that arrangement without some form of advice or recommendation to do so. And from everything I have seen it seems likely that this came from FRPS.

I note the SSAS application form recorded another party, Broadwood Assets Limited, as the trustee adviser for his SSAS. But my experience is that Broadwood Assets Limited commonly provided advice to trustees on the suitability of TRG investments for a SSAS. Their advice wasn't regulated, and it did not extend to the suitability of the TRG investment for the individual member of the SSAS, or the transfer into it. Whereas FRPS is known to have worked to bring about investment in overseas property in Cape Verde via their clients' pensions. Therefore, I've am satisfied that Mr R was likely advised to transfer his pension and (in addition to Broadwood's advice) to invest in Llana Beach Resort by FRPS.

Turning now to the response received by Fidelity:

The PSIG Code and its application

Fidelity is correct in saying that the PSIG Code was voluntary and pension providers did not necessarily have to follow the Code in its entirety in every transfer. But in order to act in the consumer's best interests, I think it's fair and reasonable to expect ceding schemes to have paid due regard to the Code when processing transfer requests. So, I maintain the Code is a relevant consideration against which to consider Fidelity's actions in Mr R's transfer.

Rowanmoor and its standing

It was acknowledged in the provisional decision that Rowanmoor was a professional trustee, and there is an argument that Fidelity could have taken some comfort from Rowanmoor's standing at the time. However, I agree with what the provisional decision said on this point – that despite this, the Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding.

An important aspect in this is the fact that there is little regulatory oversight of SSASs like this; they don't have to be registered with TPR. And TPR had specifically highlighted that scams were now focusing on single-member schemes in its 2015 update to the Scorpion action pack. In the absence of that oversight, Fidelity was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) weren't FCA-regulated, so I see no reason why Fidelity could have assumed that they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded Fidelity could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr R's transfer. For completeness, its also worth me setting out my view of the transfer being made through the Origo System.

Origo may well have already completed due diligence checks on the receiving scheme's administrators however Fidelity hasn't provided any details of these checks so I don't know exactly what they would have covered if they were carried out. Furthermore, in Fidelity relying on due diligence conducted by a third party it couldn't reasonably have assumed this would have achieved the aims of the PSIG Code and the Scorpion guidance. Its important to keep in mind what the due diligence in question was aimed at preventing – pension scams, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening. And, in light of the duties of personal pension providers under PRIN and COBS 2.1.1R, deferring this duty is just not good enough here.

The presence of an unregulated adviser

The information Fidelity received in relation to the transfer was limited to the information request from FRPS and the transfer request Rowanmoor sent it via Origo. I think it's unlikely *either of those requests would have indicated that an adviser was involved in the transfer. From my experience, the request from FRPS would likely have been strictly limited to a request for information about Mr R's pension and discharge forms to affect a transfer. And neither FRPS, Choices Wealth nor Broadwood would likely have been recorded on the Origo request as Mr R's adviser. So, I don't think there was any indication in the information Fidelity received that Mr R had received unregulated advice to transfer. However, if Fidelity had conducted further due diligence on Mr R's transfer, as I think the relatively limited information it had should reasonably have led it to do, I think it's likely it would have discovered from Mr R that he had been advised by FRPS to transfer his pension.*

The Scorpion Leaflet
Fidelity has provided me with a copy of a transfer pack dated 18 June 2015 and addressed to Mr R directly alongside a copy of a print cover letter that stated:

"The following inserts are required with this document:
1.TPR Predators stalk your pension leaflet."

The print cover letter also included a "member code" that matches the reference number it gave on the transfer pack. I've attached a copy of these documents for both parties' reference.

I note the version of the Scorpion leaflet titled "Predators stalk your pension" was the February 2013 version of the leaflet. That version focussed on the threat of pension liberation rather than pension scams more generally. Fidelity has said it did not update its print cover letter each time the Scorpion leaflet was updated. It has also confirmed that, based on evidence it's found in other transfers from around the same time as Mr R's transfer, the leaflet it issued at the time was the longer version of the March 2015 Scorpion leaflet titled "Scamproof your savings."

The print cover letter was an internal document that appears to form part of Fidelity's correspondence printing process. In that context, I think it's understandable that it wouldn't necessarily be updated each time the Scorpion leaflet was updated. Also given the simple nature of the task at hand, it seems unlikely that Fidelity would have continued to issue a version of the leaflet that by then had been out of date for almost a year. Therefore, on balance, I think the longer version of the March 2015 version of the Scorpion leaflet was enclosed with the transfer pack Fidelity sent to Mr R.

I appreciate that Mr R said when making his complaint that he doesn't recall receiving the Scorpion leaflet. However, several years have passed since the events concerned and recollections do fade over time. And given the recent information received from Fidelity as set out above would have been sent to Mr R at the time of the transfer I am satisfied that the Scorpion warnings were provided to Mr R in the form of the longer booklet, thereby giving Mr R more information and warnings that was required via the insert.
It therefore follows that having received the Scorpion booklet Mr R had a responsibility to read it and understand it.

Would further warnings from Fidelity have made a difference?

Mr R said in his complaint that if Fidelity had warned him about the risk factors involved in the transfer, he would have heeded those warnings and decided not to proceed with the transfer. I agree Fidelity didn't carry out further due diligence into Mr R's transfer and there were a number of the warning signs that Fidelity should have informed him of. However as above I am satisfied that Fidelity sent Mr R the longer Scorpion booklet from March 2015 and a number of those warning signs that Fidelity should have informed him of were clearly set out in this booklet.

The booklet set out the following as how to spot the warnings signs of a scam:

- *A cold call, text message, website pop-up or someone coming to your door offering you a “free pension review”, “one off investment opportunity” or a “legal loophole”;*
- *Convincing marketing material that promised returns of over 8% on the investment;*
- *Overseas transfers of funds;*
- *Paperwork delivered to your door by a courier that requires immediate signature;*
- *Pension access before the age of 55*
- *A proposal to put your money in a single investment.*

So upon reading the booklet, which I think Mr R should have done, I think its reasonable that Mr R would have related to a number of the warning signs detailed in the booklet – specifically he had received a cold call offering him a free pension review; the investment of his pension was to be overseas and that the proposed transfer involved a single investment in an overseas property.

The leaflet also included an example of a real-life scam which involved an individual investing their pension savings in property developments overseas that promised much higher returns than the individual’s existing pension. So, to me it is reasonable that Mr R would have known, or gone on to realise, that much of these features were present in his transfer.

As well as this, the booklet gave a clear warning about dealing with unregulated advisers and it explained how scheme members could check the adviser they’re dealing with is registered by the FCA. The essence of that warning is the same as the warning Fidelity should have given Mr R about dealing with FRPS.

In my view therefore, the contents of the Scorpion booklet should have resonated strongly with Mr R and put him on notice that there were warning signs of a scam in his transfer. I acknowledge the booklet wasn’t personalised to his transfer, but it made clear that it had been produced by TPR which should have had some impact on Mr R.

Overall, the warnings it contained overlapped significantly with the specific things Fidelity should have told him it had noticed in his transfer request. And while Fidelity didn’t give Mr R any warnings I think the booklet was clear and understandable and should have carried enough weight with Mr R to put him in the position of not proceeding with the transfer had he felt concerned by the information. However, this evidently did not happen.

Conclusion

In summary, I don’t think Fidelity met its responsibilities to Mr R in dealing with his transfer. Those responsibilities should have led it to identify and communicate to him a number of warnings of the threat of a scam in his pension transfer. However, for the reasons set out directly above, even if Fidelity had done all it should have, I don’t think Mr R would have changed his mind about transferring because he was not dissuaded from transferring by material that communicated a number of those warnings to him.

Fidelity agreed with the findings of the second provisional decision and provided no further comments.

Mr R through his CMC didn’t agree with these findings and provided further comments which I have summarised below:

- The evidence relied upon relating to Fidelity sending the Scorpion booklet has not been provided to the CMC. However, the CMC has doubts about its authenticity and has called upon this Service to question Fidelity more closely about why this document hasn't been produced previously. It feels that further comment and investigation is justified on the part of this Service as to why Fidelity hasn't referred to this previously. Furthermore, even if this letter was sent and even if the Scorpion Warning enclosed was the March 2015 long form document, as Fidelity assert, this shouldn't affect the outcome of the complaint. The due diligence and communication expectations under the PSIG Code of Conduct and March 2015 version of the Scorpion Action Pack went far beyond provision of this document.

- The Origo transfer request (which the CMC provided) shows that the transfer request was received on 18 February 2016 and named the adviser recorded as FRPS. Furthermore, Fidelity's documents confirm that they treated FRPS as Mr R's adviser from June 2015 onwards – in a letter to him dated 29 June 2015 Fidelity said: "*Following your request to set up First Review Pension Services Limited with authority on your account, we can confirm that our records have been updated and your chosen adviser can now request information from us*". So Fidelity knew an unregulated firm was involved in providing advice on this transfer request.

- The provisional decision acknowledges that Fidelity should have carried out due diligence (but didn't) and there were a number of warning signs Fidelity should have informed Mr R of. But the decision is based on accepting that Fidelity sent out a Scorpion Warning to Mr R in June 2015 and even if it had carried out the extensive due diligence as it should have done in February 2016 (when the transfer request was received), and provided the specific warnings to Mr R he would have ignored such warnings and pressed ahead anyway. But this decision on this point is unfair and unreasonable and is contradictory to the underlying guidance and the previous Ombudsman's opinion:

- Both the PSIG Code and the Scorpion Action packs confirmed that the communication expectation went well beyond simply sending out the Scorpion insert – it must follow therefore that the regulatory bodies which produced the guidance expected consumers to act differently if they received a more specific level of communication than if they were just sent the Scorpion Leaflet. Otherwise, there would have been no point in the guidance setting out due diligence and further communication expectations.

- There were substantial factual differences between the strength of a warning message provided by Fidelity in sending out a leaflet as an enclosure to a letter in June 2015 (if that did happen) and the type of communication which should have been given after a due diligence exercise when Fidelity received the transfer request. First, following a due diligence exercise, the timing would have been important. The communication would have been at exactly the point Mr R was in the process of transferring – February 2016. The June 2015 letter, in contrast had been sent eight months earlier. Second, a due diligence communication would have been specific to Mr R's transfer. In contrast the June 2015 communication was entirely non-specific; even if the leaflet was enclosed, it wasn't even referred to in the covering letter and Mr R wasn't directed to read it by Fidelity.

- Overall, the provisional decision has reached a fundamentally different decision to the previous Ombudsman based only on acceptance of a letter which Fidelity has produced well over four years after this complaint has been in progress. Fidelity knew that FRPS were the adviser for the transfer but did nothing with that information. The previous Ombudsman's decision made a well-reasoned and careful decision on what Fidelity ought to have done in terms of due diligence and communication (in February 2016) and how Mr R would have reacted. It is wholly unreasonable to overturn that analysis simply on the basis of acceptance of the generic June 2015 letter and possible enclosure.

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.

In making my decision, I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive, (as it is here), I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

Firstly the CMC has compared my provisional findings to the first provisional decision which was written by a different Ombudsman. The CMC should know that as the new Ombudsman assigned to work this complaint it is for me to review all the information afresh and make new objective findings based on the evidence I have been provided with. This is what I have done and it is clearly set out in my provisional findings why the outcome I reached is different to that reached by the first Ombudsman.

In terms of the evidence around the Scorpion information Fidelity provided in response to the first provisional decision, I agree that it is disappointing that this information was not provided by Fidelity much earlier in the complaint process. And given how important this piece of information is clearly not providing it when asked has caused further delays and resulted in an initial positive outcome for Mr R thereby unnecessarily raising his hopes. However, I have no reason to be suspicious of the information as the CMC is suggesting and I have no reason to doubt that this was sent in 2015 to Mr R when Fidelity received notification of Mr R's request for transfer information about his pension. And as the CMC knows I must accept that the evidence has been provided by Fidelity in good faith. I therefore don't intend to question Fidelity any further about this evidence as I am satisfied with its explanation. And having scrutinised the information I am satisfied that it was the Scorpion booklet that Fidelity sent to Mr R in 2015.

The fact I am satisfied this information was sent in 2015 and the transfer completed in early 2016 doesn't affect my view of the importance of this information. As set out previously it is at the point of requesting pension information when the Scorpion materials should have been sent out by ceding scheme providers. This was to ensure that the transferring member was fully aware of the risks and potential consequences of proceeding with the transfer as early on in the process as possible. And even though the transfer completed much later I cannot ignore the fact that it seems very likely from the evidence provided that Mr R received the Scorpion booklet and therefore had been made aware in clear terms about any scam warnings signs that he should have applied to his own circumstances.

To reiterate what I said in my provisional findings, the booklet set out the following ways to spot a warning sign of a scam:

- Being approached out of the blue or by a cold called and being offered a "free pension review", a "one-off" investment opportunity or a "legal loophole".

- The presence of convincing marketing materials that promised returns of over 8 % on the investment.
- Paperwork being delivered to by a courier that required an immediate signature.
- Being told one could access their pension before the age of 55.
- The fund beings transferred overseas for the investments.
- A proposal to put money into a single investment.

The booklet also warned that:

Scammers don't care whether you're an inexperienced investor or have never put your money anywhere other than a bank. They will try to flatter, tempt and pressure you into transferring your pension fund into an investment with attractive sounding returns. Once you have signed the forms and the transfer has gone through it's too late. You'll probably lose all your savings and end up with nothing but a hefty tax bill.

The booklet also contained a case study setting out the details of an individual's circumstances and their transfer and highlighted all the things within this situation that should have stood out as potentially being a scam:

- A cold call
- Claims of adviser being authorised by government but not registered with FCA.
- Promise of cash back under the age of 55.
- Unrealistic returns of at least 8%.
- Promises of higher returns if he agreed to being locked into a single investment for a number of years.
- Being rushed into signing couriered documents with promises of a time limited offer.
- Documents naming the individual as company director and trustee of the pension scheme.

And the booklet also set out tips on how transferring members could scam proof themselves such as noting that a genuine adviser will never rush someone into making a decision and it also provided the link to the FCA website where the member could check the adviser was registered by the FCA. It also gave contact details for the FCA's Scamsmart warning list which provided names and details of known scams at that time, Pension wise where an individual could get advice on what to do with their retirement monies, TPAS for advice and information about scams as well as Action Fraud if an individual felt they may have been scammed.

From this I think it can be seen that this information was detailed, clear and easy to understand. So, it follows that its reasonable that Mr R would have been able to apply anything he read in the Scorpion booklet to his own situation and so if he felt worried about his pension transfer, in light of the information in front of him, he had the opportunity to stop the process and rethink. However, Mr R didn't do this.

I appreciate that had Fidelity carried out the due diligence it should have it would have contacted Mr R some months later, however, the concerns Fidelity would have raised would have been very much in line with the warnings in the Scorpion booklet that (as already mentioned) I am satisfied Mr R would have had. Therefore, there is no reason why receiving a letter with the same information that he had received some months earlier would have changed his mind – if he didn't change his mind upon receiving the Scorpion booklet there is no reason why would have done so had he been contacted by Fidelity some months later. Ultimately, the fact Mr R continued with the transfer despite being provided with the warnings via the Scorpion booklet is a good indicator of how he would have acted if the same information would have been provided to him some months later.

As the CMC knows I need to base my findings on what I think would be most likely to have happened. I can't know for sure exactly what Mr R would have done had Fidelity highlighted scam warnings signs to him but given his actions in relation to the Scorpion leaflet its very likely in my view he would have acted in the same manner if Fidelity had contacted him giving him the same information.

The CMC is correct that the Origo transfer request form sent to Fidelity in 2016 does record FRPS as the adviser. I am grateful for the CMC pointing this out and the point I made in the provisional findings around the Origo form are conceded. However, this doesn't change my outcome. The CMC will note that my provisional findings do state that had Fidelity conducted further due diligence, as it should have done, then it would have discovered that FRPS was advising Mr R. There is no dispute about this, and this is something Fidelity should have warned Mr R about and should have had concerns about. However, the fact remains that the Scorpion booklet, which I am satisfied was sent to Mr R, did sufficiently highlight the presence of unregulated advisers as being warnings sign of a scam. So, Mr R was aware of the irregularity of the presence of FRPS and its advice from this information. Yet he chose to not be concerned or change his actions. So again, we circle back around to my view that having seen the warning about unregulated advisers in the Scorpion material and pressing on with the transfer regardless of this I see no reason why Mr R would have done anything different even if Fidelity had reiterated the warnings some months later, as it should have done.

Therefore, for the reasons I have set out above I remain of the view that this complaint cannot be upheld.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 May 2025.

Ayshea Khan
Ombudsman