DRN-5827879

The complaint

Mr D, with the help of a professional representative, has complained about the transfer of his FIL Life Insurance Limited ("Fidelity") Section 32 Buyout Pension Plan. The transfer was to a Qualifying Recognised Overseas Pension Scheme ("QROPS") based in Gibraltar in October 2014. The QROPS was subsequently used to invest in The High Street Commercial Financial Ltd Secured Loan Note and the investment now appears to have little value. Mr D says he has lost out financially as a result.

Mr D 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 D 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 2014 Mr D held two pension plans with Fidelity – a Section 32 Buyout Plan and a Group Personal Pension plan. Only the Section 32 Buyout Pension Plan was transferred and so is the only focus of this decision. I will refer to this plan as "the pension" throughout this decision.

Mr D's representative has said that in or around July 2014 Mr D was cold called and persuaded to transfer his pension to the STM G.I.B Pension Transfer Plan – a QROPS based in Gibraltar - and invest into high-risk non-mainstream investments. At the time Mr D was 49 years of age, was employed and was not planning to move abroad.

It is unclear which firm contacted Mr D. But evidence shows that AWM Financial Services ("AWM") – a Financial Conduct Authority ("FCA") authorised firm - first contacted Fidelity on 16 July 2014 to request information about Mr D's pension it's likely the cold call also came from that firm.

The letter from AWM to Fidelity provided a signed letter of authority ("LOA") by Mr D and requested Fidelity provide the CETV, Transfer Discharge forms and other information about Mr D's pension plans.

On 22 July 2014 Fidelity sent AWM an independent financial adviser ("IFA") pack and on 24 July 2014 Fidelity wrote to AWM again this time including a transfer pack containing the Transferring Plan Declaration, Transfer Out Quotation, Transfer Out Questionnaire and a transfer Discharge Form. Fidelity has said The Pension Regulator's ("TPR") Scorpion insert (explained in more detail below) was also included in the correspondence to AWM.

On 30 September STM Fidecs Pension Trustees Limited ("the trustees") wrote to Fidelity providing the completed discharge forms, the completed questionnaire, the HMRC QROPS forms, HMRC Recognition Letter and receiving scheme bank details.

On 17 October 2014 Fidelity wrote to Mr D and the trustees confirming that around £22,000 in respect of the Buyout plan had been transferred.

On 24 October 2014 around £17,000 was transferred to the underlying investment with the rest of the monies being held in cash.

Information provided by the representatives also show that a suitability Letter was sent to Mr D dated 18 August 2014. This was produced by a firm called Caledonia Investments ("Caledonia"), which was a firm based in Spain and not one which was authorised by the FCA.

This suitability letter refers to recent discussions with Mr D's "agents" regarding his pension plans. His objectives were detailed as:

- He wanted to review his pension plans and in particular to look at the benefits associated with transferring to a QROPS.
- He wanted to gain more control over his pensions, focusing on capital growth over the next few years.
- He wanted flexibility of investment choice.

The letter set out Mr D's current financial position in relation to his pension plans and assessed his attitude to risk. It also detailed how the investments would be set up within the QROPS, any applicable charges, potential returns and potential risks.

Mr D's representative has stated when making the complaint that Mr D doesn't recall dealing with Caledonia or receiving any correspondence from that firm.

The representative has also confirmed that no written advice was given to Mr D by AWM as this was delegated to Caledonia.

Fidelity didn't uphold Mr D's complaint. It said it had received an LOA from AWM in July 2014 whom it described as Mr D's adviser at the time. As the LOA was correctly completed and signed by Mr D it felt there was no reason to not apply the LOA to Mr D's account. It was satisfied it had sent the Scorpion insert to AWM and that when it received the transfer request from the trustees on 8 October 2014 the paperwork didn't indicate any independent financial adviser involvement. Fidelity was satisfied with all the transfer documentation the trustees had provided and overall was satisfied that this was a genuine request and there was no indication that further due diligence was required.

When the complaint was referred to this Service, Fidelity objected to this Service considering the merits of the complaint under the Dispute Resolution (DISP) Rules set out in the FCA handbook (set out below). This was because it thought it had been brought to us too late. As the transfer took place in 2014 it felt the complaint had been brought outside of the six-year element of the rule. It also stated that Mr D would have been aware of a cause to complain more than three years before he raised the complaint in March 2025. This was because the investment form that was completed in October 2014 indicates that the investment had a term of five years. Therefore, given this suggests the investment matured around October 2019 Mr D would have known at that point, and for three years thereafter, that the investments had failed or had not given him back what he may have been promised. Fidelity has also said that the transaction statement dated April 2024 shows that the last transaction on the account was September 2020 and no investment had matured. So, if Mr D was expecting the investment to have matured in October 2019 it would seem prudent for him to have reviewed his investments at this time to ensure they remained invested in a suitable strategy for his needs.

The investigator was unable to resolve the dispute informally, so the matter has now been 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.

Time Limits

Because Fidelity has raised a time bar objection and didn't accept the investigator's view I must first consider whether Mr D has brought his complaint to this Service within the timescales set by the FCA DISP Rules (as already mentioned) under which I am required to operate.

Without the consent of the business involved, we can't consider a complaint that is brought to us outside set time limits.

The rules setting out which complaints this Service can and can't consider are found in the DISP rules, mentioned above.

Specifically, DISP 2.8.2 R sets out the following:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:
……..
(2) More than:

(a) Six years after the event complained of; or (if later)
(b) Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and had written acknowledgement or some other record of the complaint being received;

Unless:

(3) in the view of the ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; …….

I have carefully considered all of the information provided including the comments from both parties on this specific point.

When applying DISP Rules the following principles apply:

The ombudsman's task is to interpret the ordinary words set out in the scheme of DISP 2.8. A reasonable and common-sense interpretation of the rules must be adopted and those rules must be applied fairly within the context of the statutory obligations.

The transfer of Mr D's pension took place in 2014, so given he brought his complaint to this Service in 2025 it's clear his complaint is out of time under the first part of the rule, as it was referred more than six years after the event complained of. I therefore need to consider whether Mr D became aware, or ought reasonably to have become aware, that he had cause for complaint against Fidelity more than three years before he referred his complaint to our service.

To determine this, I will need to consider:

a) When I think Mr D became aware, broadly that he had, or could, suffer some sort of loss.
b) When I think he became aware that this was a result of some act or omission, and
c) Whether on the basis of facts known to Mr D, or reasonably ascertainable by him at that time (including facts he might reasonably have been expected to acquire with the help of appropriate expert advice) Mr D should have been aware there was a real possibility that his loss was attributable to the acts or omissions of Fidelity.

It's important to note that in order to have awareness Mr D need not know the exact nature of the complaint that he is bringing to this Service now. It is enough that he knew or ought to have known that something had gone wrong and that this could result in him suffering some loss. Furthermore, Mr D need not be aware that he *could* make a complaint against Fidelity; for this consideration the point I must consider is whether he *ought reasonably* to have known he had cause to complain about Fidelity. And in order to have the requisite awareness, it is not necessary that Mr D understood that Fidelity may have been responsible for omissions that amounted to 'due diligence failures' as such – the complaint points being currently brought. All that is required is that Mr D ought reasonably to have been aware that there was a real possibility his loss was attributable to failings by Fidelity. He need not know with any precision what it was that Fidelity had failed to do – it would be enough that he understood the 'essence' of the failings that may have occurred (such as a broad understanding that Fidelity had failed to take reasonable steps to ensure the transfer was not made to a fraudulent or otherwise inappropriate scheme). In addition, in order for the three-year clock to start to tick, the loss reasonably attributable to Fidelity need only be part of the loss suffered – he does not need to have had requisite awareness of Fidelity's possible role in causing the *whole* of the loss suffered.

I agree that the investment form from the time indicates that the investment would mature in five years so providing Mr D hadn't been told prior to this date that the maturity of his investment within the QROPS was to be delayed, it isn't unreasonable that Mr D should have been in a position to become aware of a potential problem when the investments didn't mature. However as above, this alone isn't enough for the three-year awareness point to be triggered – I still need to consider whether Mr D knew or reasonably should have known that the problem with his pension could be attributable to any actions on the part of Fidelity. And in that regards I don't think he would have. I haven't seen anything from the time of the transfer that could have made Mr D aware that Fidelity had any obligations in relation to his transfer at the time as it is agreed by all parties that Fidelity didn't communicate directly with Mr D during the transfer process. So, I see no reason why Mr D knew or should have known that Fidelity and its actions could have any impact or connection with his investment over and above Fidelity being his ceding scheme provider. Essentially there is nothing that Mr D received from Fidelity that would have put him on notice that Fidelity had obligations in relation to the transfer.

So, it is possible Mr D could have been concerned with his investment when it was due to mature. If he had been informed that prior to the maturity date that maturity would take place at a later date then Mr D wouldn't have had cause to complaint until the point he had met his representative in this complaint.

However, even if Mr D should have become aware of problems around the maturity date, his awareness would only have been about a problem with the investments. I don't think its reasonable that MR D would have known or should have known that any potential loss he could suffer could be attributable to the actions or inactions of Fidelity.

It therefore follows that I am satisfied that Mr D's complaint was referred in time.

<u>The merits of the complaint</u>

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. 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 some of 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.

Fidelity has made numerous comments in response to the investigator's view citing much case law and other Final Decisions issued by this Service which it feels present the same circumstances as Mr D's complaint. However, Fidelity must understand that while this Service must bear the law in mind when making decisions, we have our own rules that we must follow, and we operate on a fair and reasonable basis looking at each complaint on its own individual circumstances.

Furthermore, while I've carefully considered everything it's said, our rules don't require me to address or respond to each and every point raised. We're an alternative to the court not a substitute for it. As such my role is to decide how a complaint should be resolved with minimal formality. And I aim to present my conclusions in as clear and as concise a manner as I can. In doing so I focus on the key issues and the reasons that are crucial to my decision making. So, if there's something I haven't mentioned, it isn't because I've ignored it, it's because I'm satisfied I don't need to comment on it to be able to reach what I think is the fair and reasonable outcome in the circumstances of this complaint.

<u>The relevant rules and guidance</u>

Before I explain my reasoning, it will be useful to set out the environment Fidelity was operating in at the time with regard to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- The Pensions Schemes Act 1993 and Personal Pension Schemes (Transfer Values) Regulations 1987 generally give a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme, which is either registered with HMRC for tax purposes or is a QROPS.

- A QROPS must already be an overseas pension scheme, defined in short as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. Then it must be recognised, meaning that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.

- To be a QROPS a scheme must notify HMRC that it is a recognised overseas pension scheme, provide appropriate evidence of this to HMRC, undertake to adhere to HMRC's requirements and not be excluded by HMRC from being a QROPS. Schemes that have notified HMRC of this are included in a published list on HMRC's website.

- On 10 June 2011 and 6 July 2011, the Financial Services Authority (FSA) issued two announcements in quick succession to consumers about the dangers of "pension unlocking" and "early pension release schemes". At around the same time TPR put up a notice on its website termed 'pension liberation', referring to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan. However, it was designed to raise public awareness about pension liberation, and remind trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow.

- TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the FCA which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

- Fidelity was subject to the 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 pension transfer requests, but the following have particular relevance:

– 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.

<u>The Scorpion campaign</u>

Overview

As I have said above, the Scorpion campaign was launched in February 2013 and the guidance was updated regularly over the next few years. The guidance published in 2013 and the 24 July 2014 update are relevant in this case because, from enquiry to completion, the process by which Fidelity transferred the pension to the QROPS ran from July 2014 until October 2014 (almost three months after the July 2014 update).

The 2013 Scorpion campaign comprised the following:

- A Pensions Advisory Service insert (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or 'introducers' who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These included background searches online, pointing out that any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.
- A longer insert issued by The Pensions Advisory Service (TPAS) which gives more

information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer insert was intended to be sent to members who had queries about pension liberation fraud.
- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “look out for” various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

The 2014 update to the Scorpion campaign

This update reiterated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from *pension liberation* specifically, to *pension scams*. The action pack for trustees and administrators was entitled “Pensions Scams” whereas the action pack from 2013 was entitled “Pension Liberation Fraud”. And, on the front page of the 2014 insert that was to be sent to members, it said “Pension scams. Don’t get stung”. The 2014 update also made references throughout to “scammers” and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

Other features of the 2014 guidance:

- It stated pensions scams in the UK were on the increase. With one-off pension investments, “pension loans” or upfront cash being used to entice savers.
- Trustees, administrators and pension providers had to ensure that members received regular and clear information about the risk of pension scams and how to spot a pension scam.
- It asked for the Scorpion insert to be included in the member’s annual pension statement or in any other member communications.
- It highlighted some common features of pension scams such as phrases like “one off investment opportunities”, “free pension review”, “legal loopholes”, “cash bonus” and “government endorsement”.
- It stated that consumers being approached out of the blue over the phone, via text messages or in person door-to door was a common feature of a scam.
- Transfers of money or investments overseas, were also highlighted as something to watch out for and it explained this was because the money would be harder to recover.
- It said that if any of the warning signs applied, the action pack provided a checklist transferring schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.
- If transferring schemes still had concerns, they were encouraged to contact the member to establish whether they understood the type of scheme they were planning on transferring to and to send them the pension scams booklet.
- It also encouraged transferring schemes to speak to the member at risk – over the

phone, via email or letter – this could help the transferring provider to establish answers to more of the questions on the checklist; or to direct the member to Action Fraud or TPAS if the provider thought it was a scam; or if the member insisted on proceeding the provider could contact Action Fraud itself.

The 2014 action pack also included two examples of real-life scams where the individuals concerned lost most or all of their pension savings. One of the examples involved an individual under the minimum pension age who wanted to access some of her pension early. And the other concerned an individual (again under the minimum pension age) who had been approached out of the blue with an offer for a free pension review who had been offered a "unique investment opportunity" for his pension savings specifically in a property development overseas.

<u>The status of the Scorpion guidance</u>

When it was launched in February 2013, the Scorpion guidance was described as a cross-government initiative by Action Fraud, the City of London Police, HMRC, TPAS, TPR, the SFO, and the FSA/FCA, all of which endorsed the action pack, allowing their names and logos to appear in the action pack and Scorpion insert.

So far as TPR itself was concerned, it issued the guidance under the powers at s.12 of the Pension Act 2004, which provides:

"12 Provision of information, education and assistance

(1) The [TPR] may provide such information, education and assistance as it considers appropriate to those involved in –

(a) the administration of work-based pension schemes, or
(b) advising the trustees or managers in relation to such schemes as to their operation."

So, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty.

Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. Likewise, by and large, the contents of the action pack are framed in a way that is consistent with its stated purpose, namely as points to note or suggested actions a firm might take. For example, rather than telling firms they are expected to spot the warning signs of pension liberation fraud, the action pack lists "some of the things to look out for"; and, rather than say that the presence of a warning sign requires the firm to run though the checklist, it states: "If any of these statements apply, then you can use the checklist …"

The language arguably strays into the imperative under the heading "Next steps if you have concerns", stating "Contact the member to establish whether they understand the type of scheme they'll be transferring to. Then "speak to the member at risk". But, overall, the tenor of the document is essentially a set of prompts and suggestions, not requirements. And this remained the same for the updated version of the Scorpion guidance that followed in July 2014.

Also, it would seem inconsistent to view the Scorpion guidance as representing a binding rule or legal duty on personal pension providers regulated by the FSA/FCA when such a duty didn't extend to those bodies that came under the regulator that drafted the guidance, the TPR. Furthermore, 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 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.

I take from all the above that the contents of the action pack were essentially informational and advisory in nature and that deviating from the action pack doesn't necessarily mean a firm has 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 statutory rights.

That said, the launch of the February 2013 Scorpion guidance 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 transfer requests. And this remained the case with all its subsequent updates. The campaign and guidance were 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 guidance.

So, taking all of this into account, I do think it's fair and reasonable to conclude providers should have recognised that the environment had changed, and more was now expected of transferring schemes. 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.

Therefore, whilst I don't think personal pension providers had to follow *all* aspects of the Scorpion guidance in every transfer request, I do think they should have paid heed to the information it contained; and, where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable to expect pension providers at least to follow the substance of those recommendations. I look at what this means in practice in the next section.

<u>What did personal pension providers like Fidelity need to do?</u>

TPR said it wanted to see the use of the Scorpion insert in transfer packs become best practice. Sending the insert to customers asking to transfer their pensions was a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. I therefore think it reasonable for the Scorpion insert to have been sent by pension providers to transferring customers as a matter of course with transfer packs.

The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to scam them. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to an intermediary in the hope that that intermediary would then share the insert with their client. I therefore consider it fair and reasonable to say the insert had to be sent direct to the member rather than, say, to an unregulated introducer.

Under the 2014 Scorpion action pack, firms were asked to look out for the tell-tale signs of pension scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the scam warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, as above, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

Furthermore, the considerations of regulated firms didn't start and end with the Scorpion guidance. 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 the Scorpion guidance – 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 shows that AWM made the first contact with Fidelity asking it to provide information about Mr D's pensions (authorised by Mr D) in July 2014. So, I am satisfied that AWM was involved in this transfer, but it seems its role was limited to gathering information and perhaps introducing Mr D to the concept of the STM Fidecs investment. It doesn't seem likely to me that AWM was involved in providing Mr D with any advice to transfer his pension as there is no evidence to suggest AWM did anything other than what I have described above.

However, I do think it's more likely than not that Mr D was advised to make this transfer – he was an unsophisticated investor who wouldn't have naturally come across the idea of transferring to an overseas scheme on his own or without being introduced to it in one way or another. And from the evidence presented to me it seems likely, on the balance of probabilities, that the adviser involved in this transfer was Caledonia.

I say this because the application form for the QROPS, signed by Mr D on 13 August 2014 contains section detailing the financial adviser involved in Mr D's transfer. Caledonia has been recorded in this section. In addition to this, as detailed earlier in this decision, a suitability letter addressed to Mr D was produced by Caledonia.

I know that Mr D's representative has said that Mr D doesn't recall dealing with, speaking to Caledonia or even receiving this document but I can't ignore the fact that the suitability letter exists and was correctly addressed to Mr D. So, I think it more likely that Mr D simply doesn't remember dealing with Caledonia due to the length of time that has passed since the transfer took place. Given the documented evidence compared to Mr D's recollections I think it is reasonable that the documented evidence is more persuasive on this occasion – Caledonia's involvement in the advice simply cannot be denied.

So I'm satisfied that Caledonia was involved in giving advice about the transfer and the investments that were to be held in the QROPS, as the letter suggests. And I think that Mr D simply doesn't remember Caledonia's involvement due to the time since the transfer was made and these events took place. Therefore, had Mr D been asked at the time given the existence of the suitability letter he would have said that Caledonia had provided him with advice to transfer.

Fidelity contends that the suitability letter from Caledonia merely records and acknowledges objectives and discussions already established by AWM and that Caledonia was simply "rubber stamping" recommendations already given by AWM. But I am unclear as to how Fidelity has arrived at this conclusion as nothing in the information I have been provided indicates this. Furthermore, it may well be that AWM initiated the plan to invest in the

QROPS but then passed Mr D onto Caledonia for a suitability assessment, which the evidence indicates is exactly what happened

Ultimately, I am basing my findings on the fact that there is a document from the time of the transfer that confirms Caledonia provided the advice to transfer the pension. And while Fidelity seems to feel that in concluding that Caledonia more likely than not gave advice is a disregard of the evidence that Mr D has no recollection of dealing with Caledonia, I have to disagree. In fact, weighing up all of the evidence in front of me and being more persuaded by documentary evidence over Mr D's recollections of events from over ten years ago is not irrational or unreasonable – ultimately, it's a case of documented evidence compared to Mr D's memory of something that took place over ten years ago.

Therefore, in light of this information, my findings, based on the evidence provided, are that:

- Mr D was contacted by AWM initially and was introduced to the idea of transferring his pension into a QROPS.
- AWM gathered information about Mr D's pensions from Fidelity.
- Mr D was given advice to transfer his pension to the QROPS by Caledonia along with where to invest the fund within the QROPS.

<u>What did Fidelity do and was this enough?</u>

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. And in this particular complaint, given the request for information came in early July 2014 (before the 24 July 2014 update to the Scorpion guidance) the 2013 version of the Scorpion insert should have been sent to Mr D.

Fidelity has said that it sent the Scorpion insert to Mr D's agent (AWM) however the Scorpion guidance is clear that the insert was to be sent directly to the transferring member. In sending the insert, which was intended for members and in written in such a way for members to easily understand, to a third-party Fidelity couldn't have been certain that this important information would have been passed on to Mr D, which it should have been.

So in this respect there is a failing on the part of Fidelity as the insert should have been sent directly to Mr D when Fidelity sent out the information about Mr D's pension and transfer pack to AWM.

Due Diligence

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Fidelity has said it was satisfied with the documentation that it was presented with at the time, all forms were duly completed, and the QROPS was correctly registered with HMRC, so it feels there was no reason for it to conduct any further due diligence. However, in my view the fact that the QROPS was registered and recognised by HMRC wasn't enough to negate the need for Fidelity to make further enquiries, especially in these specific circumstances when the transfer was to an overseas scheme - something which Fidelity clearly knew about well before it had completed the transfer and something that was highlighted in the 2014 Scorpion Action Pack as a possible warning sign of a scam. And while the information request from AWM was received by Fidelity before the update to the

Scorpion guidance, the transfer request was received by Fidelity a couple of months *after* the update. Therefore, given Fidelity was still in the process of transferring Mr D's pension I think it was reasonable for Fidelity to have been familiar with the changes to the guidance after the update and to have applied it to Mr D's transfer before it completed in October.

As already explained above, the 24 July 2014 update to the Scorpion guidance shifted the focus away from just pension liberation to pension scams in general. This gave more prominence to overseas investments. And the potential for a QROPS to facilitate investments which were at risk of a scam in that wider sense, rather than liberating funds back to the member, was greater.

Overall, I'm of the view that in exercising reasonable due diligence in line with its obligations under PRIN and COBS, Fidelity should have followed up on the warning sign apparent to it at this time – namely that Mr D was planning to transfer his pension overseas, which was a common theme of pension scams, to understand more about the transfer.

The most reasonable way of going about this would have been to turn to the checklist, from the 2014 action pack, to structure its due diligence in regard to Mr D's transfer. This provided a series of questions to help transferring schemes assess the potential threat of a scam by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the checklist could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer.

The checklist is divided into three parts (which I've numbered for ease of reading and not because I think the checklist was designed to be followed in a particular order):

1. The nature/status of the receiving scheme
   Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered employer or a dormant employer, is that employer geographically distant from the transferring member and is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme
   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' 'one-off investments', 'free pension reviews' or allude to overseas investments?

3. The scheme member
   Sample questions: Has the transferring member been contacted by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension?

Opposite each question, or group of questions, the checklist listed actions that should help the transferring firm establish the facts.

I don't think it would always have been necessary to follow the checklist in its entirety. And I don't think an answer to any one single question on the checklist would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether liberation or a scam were realistic threats. However, given the warning sign that should have been apparent to Fidelity when dealing with Mr D's transfer request, and the relatively limited information it had about the transfer, I think in this case Fidelity should reasonably have addressed all three parts of the checklist and contacted Mr D as part of its due diligence.

What would Fidelity reasonably have discovered?

From a few simple questions directed to Mr D, Fidelity would have discovered a number of facts about the transfer. Under the first section of the checklist Fidelity would have likely found that the prompt for Mr D to transfer his pension to the QROPS was a cold call. In my view his assertion is plausible because Mr D wasn't a sophisticated investor – information gathered at the time suggests he had no knowledge or experience in investing in unregulated investments nor of how to invest in an overseas investment. This was an unusual arrangement for someone in his circumstances, and I think it unlikely he would have become aware of such an option without a different party highlighting it to him. It was also not unusual that consumers were contacted in this way for a review of their pensions in order to get them to invest in such schemes.

I also think it's likely Fidelity would have learned from Mr D that he wasn't planning to move abroad and that he had been told by one of the parties he was in contact with about the high returns on the investment being offered to him.

In addition to this, under the third section of the checklist (as above) had Fidelity used this to find out more about Mr D's transfer I think it would have discovered that Mr D had spoken to a couple of related firms about this transfer and that he would have explained that he had been *advised* to make the transfer, as I have already explained earlier in this decision.

It therefore follows that it would have been reasonable for Fidelity to have asked Mr D *who* was giving the advice. In these circumstances, I think Mr D would have named Caledonia as being his adviser, again for the reasons already covered above - namely that Caledonia was marked as Mr D's adviser on the application form and also the suitability letter produced by Caledonia providing Mr D with the advice to transfer his pension to the QROPS. I appreciate Fidelity wouldn't have seen these documents at the time, but my reasoning is based on what I think is likely Mr D would have *told* Fidelity had it asked him (as it should have) and because of the evidence I think it more likely than not that Mr D would have told Fidelity that he was advised by Caledonia. Despite what Mr D has said about not recalling dealing with Caledonia the evidence indicates that me that he did have dealings with Caledonia at the time of the transfer in relation to Caledonia providing advice about the transfer. Therefore, it's more likely than not that this was how the situation and Caledonia's involvement was presented to him.

To be clear, I haven't assumed Fidelity actually had evidence Mr D was being advised by by Caledonia. Rather, I've concluded this is what Fidelity likely would have discovered if it had followed the Scorpion checklist to find out more about how Mr D came to request the transfer.

TPR's checklist recommends that in order to establish whether its client has been advised by a non-regulated adviser, the ceding scheme should "check whether advisers are approved by the FCA at www.fca.gov.uk/register". This is not a difficult step, and Fidelity would have been able to quickly confirm that Caledonia was not regulated by the FCA.

Being advised by an unregulated firm (or individual) to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion campaign itself makes this point. This is to ensure they are suitably qualified, subject to Handbook rules that govern their advice, supervised and approved by the Regulator, and their client has significant protections by virtue of them being regulated. My view is that Fidelity should have been concerned by the involvement of an unregulated adviser because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here. But in any event, Fidelity should also have had wider concerns about the nature of this transfer as a result of its due diligence in line with the Scorpion action pack.

What should Fidelity have told Mr D – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings Fidelity could have given to Mr D in relation to a possible liberation threat (that doesn't appear to have materialised, but that wouldn't have been known at the time) or other types of threat identified in the checklist such as non-standard, overseas, investments. But the most egregious oversight was Fidelity's failure to uncover the threat posed by a non-regulated adviser. Fidelity's failure to do so, and failure to warn Mr D accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With its obligations under the regulator's Principles and COBS 2.1.1R in mind, it would have been appropriate for Fidelity to inform Mr D that the individual adviser he'd been speaking to was unregulated whereas only regulated financial advisers were allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity. And that several of the features of his transfer echoed with the warning signs of a scam set out in the Scorpion guidance, as I've detailed above. Fidelity should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

This process of engaging with Mr D could have happened in real time, whilst Fidelity was asking him questions about the investment and how he had come to make the transfer. That alone was in my view capable of causing him to change his mind. Or, if necessary, Fidelity could have followed up its enquiries by making further contact with Mr D to set out its concerns. It could also have sent him directly the Scorpion insert (as it should have done so earlier in the process) or the longer Scorpion booklet or encouraged him to call TPAS's helpline.

I accept Fidelity wasn't in a position to tell if this was actually a scam or not at the time. And I've set aside any questions of whether the investment involved the right level of risk for Mr D, because I accept it wasn't Fidelity's role to assess this. But given the extent of the concerns it should in my view have had in this particular case, I don't think Fidelity would have been able to discount the threat of a scam.

Yet Fidelity did nothing at all here in terms of direct engagement with Mr D. Its failure to establish these risks and warn Mr D accordingly, meant it didn't meet its obligations under Principles 2, 6 & 7 and COBS 2.1.1R. I don't think giving such warnings would have been a disproportionate response to the information that Fidelity should have gathered, had it acted correctly.

I'm satisfied any messages along these lines would have changed Mr D's mind about the transfer. The messages would have followed conversations with Mr D so would have seemed to him (and indeed would have been) specific to his individual circumstances and would have been given in the context of Fidelity raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr D aware that there were serious risks in using an unregulated adviser. And I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mr D would have been any different.

What losses are Fidelity responsible for

I consider that if Fidelity had acted as it should, Mr D wouldn't have proceeded with the transfer out of his pension to make the investments into the QROPS and the subsequent investments.

Therefore, I think it's fair and reasonable to hold Fidelity responsible for any losses caused by all the investments made by Mr D in his QROPS

I also have to decide whether it is fair Mr D be compensated by Fidelity for those losses (see section 229(2)(a) of FSMA). In doing so I have given thought to whether Mr D should bear some responsibility for the losses he has incurred. I take into account that the courts are able to reduce a defendant's liability for negligence where the claimant shares responsibility for the damage they've suffered.

More specifically, the Law Reform (Contributory Negligence) Act 1945 allows for the apportionment of liability in the case of contributory negligence. It says that where any person suffers damage as the result partly of his own fault and partly of the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

My view is that Mr D doesn't bear responsibility for the losses he suffered. He transferred his pension because he listened to unregulated parties promising significantly higher returns than he was achieving. And crucially, Fidelity didn't provide Mr D with any of the warnings it should have done at the time of the transfer. Nor did it give him any indication of what further steps he could take to protect himself when I think Fidelity ought to have had concerns about what Mr D was doing and who was advising him. Furthermore, I don't think Mr D, acting reasonably, would have got a sense from any other sources that there was a need to act with further caution when transferring his pension.

In the circumstances, my view is that Mr D wouldn't reasonably have known about these risks. I therefore don't intend to reduce Mr D's compensation.

Putting things right

Fair compensation

My aim is that Mr D should be put as closely as possible into the position he would probably now be in if Fidelity had treated him fairly.

The QROPS only seems to have been used in order for Mr D to make an investment that I don't think he would have made from the proceeds of this pension transfer, but for Fidelity's actions. So I think that Mr D would have remained in his pension plan with Fidelity and wouldn't have transferred to the QROPS.

To compensate Mr D fairly, Fidelity must subtract the actual value of the QROPS from the notional value if the funds had remained with Fidelity. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the QROPS value at the date of my Final Decision. To arrive at this value, any amount in the QROPS bank account is to be included, but any overdue administration charges yet to be applied to the QROPS should be deducted. Mr D may be asked to give Fidelity his authority to enable it to obtain this information to assist in assessing his loss, in which case I expect him to provide it promptly.

My aim is to return Mr D to the position he would have been in but for the actions of Fidelity. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the investments within the QROPS. This is because we know the investments have failed to the extent that it's reasonable to say at this point that investors – Mr D included – are unable to realise a value for them. Therefore, as part of calculating compensation:

- Fidelity should seek to agree an amount with the QROPS as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the QROPS plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything Fidelity has paid to the QROPS for illiquid investment(s).

- Alternatively, if it is unable to buy them from the QROPS, Fidelity must give the illiquid investment(s) a nil value as part of determining the actual value. In return Fidelity may ask Mr D to provide an undertaking, to account to it for the net proceeds he may receive from those investments in future on withdrawing them from the QROPS. Fidelity will need to meet any costs in drawing up the undertaking. If Fidelity asks Mr D to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mr D should not be disadvantaged while he is unable to close down the QROPS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Fidelity must pay an upfront sum to Mr D equivalent to five years' worth of future administration fees at the current tariff for the QROPS, to allow a reasonable period of time for the QROPS to be closed.

Notional value

This is the value of Mr D's funds had he remained invested with Fidelity up to the date of my Final Decision.

Fidelity should ensure that any pension commencement lump sum or gross income payments Mr D received from the QROPS are treated as notional withdrawals from Fidelity on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the QROPS given Mr D's dissatisfaction with the outcome of the investment it facilitated.

Fidelity should reinstate Mr D's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr D was invested in).

Fidelity shouldn't reinstate Mr D's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Fidelity to determine whether this is possible.

If Fidelity is unable to reinstate Mr D's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr D's original pension.

If Fidelity considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mr D is entitled based on his annual allowance and income tax position. However, Fidelity's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mr D doesn't incur an annual allowance charge. If Fidelity cannot do this, then it shouldn't set up a new plan for Mr D.

If it's not possible to set up a new pension plan, Fidelity must pay the amount of any loss direct to Mr D. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mr D is retired. (This is an adjustment to ensure that Mr D isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr D is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr D was yet to take his 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to him in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mr D had already taken his 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to him in cash.

If payment of compensation is not made within 28 days of Fidelity receiving Mr D's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If Fidelity deducts income tax from the interest, it should tell Mr D how much has been taken off. Fidelity should give Mr D a tax deduction certificate in respect of interest if Mr D asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Fidelity is reinstating Mr D's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mr D was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mr D in a clear, simple format.

My final decision

My final decision is that I uphold this complaint.

I direct FIL Life Insurance Limited to pay Mr D the redress using the calculation method set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 October 2025.

Ayshea Khan
Ombudsman