CAS-61797-Y0L9

Ombudsman's Determination

Applicant	Mr Y
Scheme	Direct Line Group Personal Pension Plan (**the Scheme**)
Respondent	Fidelity International (**Fidelity**)

Outcome

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

2. My reasons for reaching this decision are explained in more detail in paragraphs 24 to 28 below

Complaint summary

3. Mr Y complained that Fidelity had not allowed him to withdraw his benefits without listening to the relevant regulatory risk warnings.

Background information, including submissions from the parties

4. On 13 July 2020, Mr Y telephoned Fidelity to withdraw his Scheme benefits. In summary, the following was discussed during the telephone conversation:-

   - Mr Y explained that he had tried to withdraw his pension once before but was told he would need to receive and then read a "wake-up" pack (**the pack**) before payment could be made. He had read this pack and now requested to withdraw his benefits.

   - Fidelity explained his various options available to him regarding withdrawal.

   - Mr Y selected the "small pots" option, available to him because his total benefits were valued at less than £10,000. Mr Y also stated, "this is all going straight over my head," and, "I don't really know the difference between the two options but there you go."

   - Fidelity told Mr Y he would need to go through a 15 to 20 minute "cash out call", during which it would explain the withdrawal process and the relevant regulatory risks in greater detail.

- Mr Y did not want to participate in a call of that length and wished only to receive the documents he was required to sign.
- Fidelity explained that it was its policy that members complete the cash out call before the forms could be sent to him.
- Mr Y refused to conduct the cash out call and asked to complain to a manager.

5. On the same day, a manager at Fidelity telephoned Mr Y. This manager explained that they could not exercise discretion in regard to Mr Y's request and that he was required to complete the cash out call before he could withdraw his benefits. Mr Y asked to raise his complaint with a senior manager.

6. On the same day, a senior manager at Fidelity telephoned Mr Y. In summary, the following was discussed during the telephone conversation:-

   - Fidelity told Mr Y he would need to be present for and engage in the cash out call before he could withdraw his benefits.
   - Mr Y asserted he would not listen to the risk warnings again and insisted the matter be taken higher.

7. On 14 July 2020, Fidelity emailed Mr Y regarding the telephone conversations from the day before. It said:-

   - It understood that Mr Y had received and thoroughly read the pack.
   - A business decision had been made that the relevant risk warnings regarding making a withdrawal from his pension had to be discussed via the telephone. This applied to all members.
   - It could not proceed with his request until the cash out call had been completed.

8. On 16 July 2020, Mr Y responded to Fidelity. He said:-

   - He was aware of his options and had made an informed decision.
   - He had "closed down" several pensions already, each of which provided him with a detailed letter and accepted his decision upon reply.
   - He did not wish to endure the process or "be treated like a five-year-old" so, did not accept the response and requested that his complaint be escalated.
   - He also asked what legal requirement stipulated that he had to participate in the cash out call.

9. On 23 July 2020, Fidelity acknowledged Mr Y's request to escalate his complaint.

10. On 31 August 2020, Fidelity responded to Mr Y's email dated 16 July 2020. It said:-

- The Pensions Regulator (**TPR**) required that it let members know the risks and potential implications of a withdrawal decision. It was a standard practice across the pension industry and Fidelity had made the business decision to require that the cash out call process be completed before issuing withdrawal forms.

- The process had to be followed, regardless of the value of benefits held by a member.

- It recognised Mr Y's financial advisers had authority to deal with his plan. It offered to allow the relevant regulatory risk warnings to be explained through the advisers.

11. On 10 August 2020, Mr Y responded to Fidelity's email. He said:-

    - Fidelity's legal obligations had already been discharged as the pack contained the regulatory risk warnings so there was no need for Fidelity to explain everything again.

    - It was now a matter of principle, and he did not wish to have the regulatory risk warnings explained by his financial advisers.

12. On 19 August 2020, Fidelity informed Mr Y that until the cash out call had been completed it would not proceed with his withdrawal request. It also told him that it would not respond any further on the matter.

13. In his submission to The Pensions Ombudsman (**TPO**), Mr Y said in summary :-

    - He had not initially been sent the pack, Fidelity only sent it to him once he contacted them.

    - He read the pack, and understood it, but Fidelity wanted to go through the information again.

    - He already fully understood the risks.

    - He had already been provided with clear and satisfactory advice, so did not need anyone to read the relevant regulatory risk warnings to him.

14. In its submissions to TPO, Fidelity said in summary:-

    - When a member requested to withdraw their benefits, they were provided with information on their retirement options, otherwise known as the pack.

    - Part of the withdrawal process was to ensure members were aware of the risks involved in withdrawal.

    - It chose to do this through a recorded telephone conversation because it could also perform anti-money laundering checks.

    - The process was in place for all members regardless of their account value.

Adjudicator's Opinion

15. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Fidelity. The Adjudicator's findings are summarised below.

16. Fidelity administered various different pension arrangements and was regulated by the Financial Conduct Authority (**FCA**). Section 19.7.3 of the FCA conduct of business sourcebook (**COBS**) Regulations (**the COBS Regulations**) governed the criteria which had to be satisfied before a member could withdraw their benefits. The COBS Regulations state that "a firm must give the client appropriate risk warnings prepared under COBS 19.7.9AR(2)."

17. The COBS Regulations did not specifically stipulate exactly how the appropriate regulatory risk warnings should be presented to members. So, individual pension providers had considerable latitude on how to discharge this regulatory responsibility. Fidelity had acted in accordance with the COBS Regulations by putting in place a process that it felt adequately explained the relevant regulatory risk warnings through both written and verbal communication.

18. Fidelity had said that while the pack did highlight the relevant risk warnings, it had made a business decision that the appropriate risk warnings also had to be presented verbally so it could discuss and confirm that the member had understood the risk warnings.

19. Fidelity's decision to put in place both a verbal and written notification of the appropriate risk warnings was reasonable. This was because:-

    - Written and verbal communication would provide optimal opportunity to access and understand the relevant information.

    - The business decision was in line with the COBS Regulations.

    - The approach that Fidelity took was a blanket process for all members. Ensuring that all members had an equal opportunity to understand the risks which eliminated discrimination.

    - Given the rise in sophisticated pension scams, the addition of an extra layer of authentication, and confirmation of a members understanding was a reasonable approach to protecting members.

20. Fidelity's decision not to allow Mr Y to withdraw his benefits before completing the relevant regulatory risk warnings was reasonable.

21. As Fidelity had not breached any regulatory guidance or acted contrary to the COBS Regulations or the rules governing the Scheme, no maladministration had occurred.

22. Mr Y did not accept the Adjudicator's Opinion, and, in response, he provided further comments. In summary he said:-

- He did not say in any of the telephone calls with Fidelity that he did not understand the risks.
- The Opinion had not explained if the pack met the regulatory requirements and if so, why he needed the risks further explained to him.
- He was fully aware of the money laundering process. He had never said he would not undertake the money laundering questions and had endorsed that procedure completely.

23. I note the additional points raised by Mr Y, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

24. Mr Y complained that Fidelity refused to allow him to withdraw his benefits without listening to the relevant regulatory risk warnings.

25. Mr Y said that it has not been explained to him why, if the pack met the regulatory requirements, he needed to participate in a cash out call. As the Adjudicator correctly pointed out the COBS Regulations state that "a firm must give the client appropriate risk warnings prepared under COBS 19.7.9AR(2) ". However, the COBS Regulations do not provide guidance on the manner in which the risk warnings should be communicated so each pension provider is able to interpret how best it can comply with this regulatory requirement. Further, the COBS Regulations also do not define the level of understanding that pension providers should ascertain from members regarding risk warnings before processing payment of a member's benefits.

26. TPR also expects pension providers to ensure members understand the risks when withdrawing their pension savings. It is up to the pension provider how this is done provided they have addressed TPR's minimum requirements.

27. I am satisfied that the business decision taken by Fidelity requiring a member to receive the regulatory warnings about withdrawals in both a written and verbal format is in keeping with both the COBS regulations and TPR's guidance. It is clear that Fidelity's blanket approach reasonably operates to protect Scheme members from discrimination and sophisticated pensions scams. Although inconvenient for Mr Y, Fidelity's business decision to enforce the requirement of both written and verbal communication, is an acceptable method through which to discharge its responsibility.

28. I note that Mr Y does not object to undertaking the money laundering questions which Fidelity are required to ask and he endorses that part of the procedure. Given that the money laundering questions are conducted in conjunction with the explanation of the relevant regulatory risk warnings it is unlikely that one part of the process can be carried out without the other. I have no doubt that Mr Y does understand the risks, but

it remains that if he wishes to withdraw his benefits from the Scheme he will need to adhere to Fidelity's requirements and participate fully in the cash out call.

29. I do not uphold Mr Y's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
7 March 2023