Ombudsman's Determination

Applicant	Mr M
Scheme	Fidelity Self-Invested Personal Pension (**Fidelity SIPP**)
Respondent	Fidelity International (**Fidelity**)

Complaint Summary

Mr M has complained about Fidelity's online trading process for his Fidelity SIPP:

- Fidelity did not tell him that it would not execute his orders in an opening market auction; and
- the sell order that he placed online while the market was closed was subsequently executed at a lower price than he had expected.

Summary of the Ombudsman's Determination and reasons

Mr M's complaint against Fidelity is upheld. To put matters right, Fidelity shall pay £500 to Mr M for the significant distress and inconvenience the matter has caused him.

Detailed Determination

Material facts

1. Mr M held a self-invested personal pension with Fidelity, the assets of which included equity funds. Mr M had experience of trading equities in his role as a global equity trader for an investment bank.

2. On 8 September 2020, before 7:50 AM when the UK market was closed, Mr M placed an online order to sell 23,000 ordinary shares of International Personal Finance PLC (**the Shares**) in the Fidelity SIPP, with the expectation of selling them in the opening market auction.

3. The opening market auction is a period from 7:50 AM and 08:00 AM when transaction orders for UK shares are submitted but not automatically executed, with the objective of concentrating available liquidity. At the end of the auction period, trades are uncrossed, and the auction uncrossing price sets a share's price for when the stock exchange opens at 8:00 AM.

4. Mr M selected the Market Order type for his transaction. An information tab for Market Orders on the trading platform stated:

> "The market is closed, so you won't be able to see a quote before placing your order. You can still place an order should you choose, and we'll place it at the best price available to us. Prices can be volatile when the market first opens however, so you may wish to place a Limit Order using the tab above and set the price you would like to buy or sell at."

5. Mr M has said that the opening price for the Shares at 8:00 AM on 8 September 2020 was £0.71 per share. Mr M's transaction took place at 08:07 AM, by which time the Shares' price had fallen to £0.65 per share.

6. On 9 September 2020, Mr M telephoned Fidelity and complained that he had not received the Shares' higher opening price.

7. On 20 October and 14 December 2020, Fidelity responded to Mr M's complaint with the following points:-

   - As the market was closed when Mr M submitted his transaction, the Market Order method resulted in his transaction terms being "deal at best". On page 12 of Fidelity's customer document Doing Business with Fidelity, a "deal at best" order is described as follows:

     > "……………you are not provided a quote for these transactions, and they will only be processed on an at best price available at the time of execution. This type of order is also available online when the market is closed, or a quote cannot be provided for either a market-related or technical reason. This means we send your request to the market for a set quantity of shares or for a set amount of money. We will then attempt to fill that order at the best price available from numerous different market makers."

   - This method automatically displayed a banner on the website during the transaction process, stating that the price would be confirmed after execution.

   - Fidelity did not participate in market auctions, and it submitted that this was common for retail investment platforms. Fidelity had not received customer requests to do so, and it regarded this as more of a requirement for frequent or sophisticated trader platforms, which Fidelity was not. Its customers were typically buy-and-hold investors, who did not require participation in market auctions.

- The Fidelity Client Terms – November 2019 (**the Client Terms**) neither stated that it would or would not deal at market auctions. The Client Terms stated in Appendix 3 – How your UK orders in Exchange Traded Securities are routed:

  "Every trading day, the London Stock Exchange (**LSE**) operates a pre, post and intraday auction. During the auction it might not be possible to obtain real-time quotes for LSE listed securities, in which case we will not offer Market Order execution for those securities [when a price is quoted immediately]. At best and Limit Order execution [when the customer sets a specific transaction price] should be unaffected by these auction periods."

- Fidelity acknowledged that its documentation could have been clearer about it not trading in market auctions, and it would address this issue.

- Mr M had confirmed that he had read and agreed to the Doing Business with Fidelity document and the Client Terms before he opened his Fidelity SIPP. Also, when each trade was placed online, customers were required to confirm that they had read and agreed the Doing Business with Fidelity document.

- Mr M could have waited for the market to open and then set a minimum price [Limit Order] for his transaction. Orders placed outside of market hours were traded as quickly as possible after an opening auction had finished and at the best price available, and "deal at best" and Limit Orders placed outside of market hours were treated in the same way as those placed whilst the market was open.

- The only reason a trade could be delayed would be if there was insufficient liquidity, usually due to market volatility or large orders. Fidelity had controls in place to ensure that orders not executed immediately were picked up immediately. When a customer placed an order, if there was sufficient liquidity with the market makers to deal the entire order, Fidelity would action it by an automated Straight Through Process (**STP**).

- Mr M's order for the sale of 23,000 of the Shares was too large for the market makers to offer a price at the time. His order was moved to a manual dealing queue, where the Shares were manually dealt by a dealer to sell as quickly as possible at the best price available. Mr M's order was completed at 08:07 AM. The publicly available trade data showed that 4,104 of the Shares went through the opening auction on 8 September 2020.

- Fidelity conducted analysis called best execution monitoring on all orders, to ensure its clients had received the best possible price available. If this was not the case, Fidelity placed corrective deals to rectify the position. Fidelity did not believe that an error had been made with Mr M's trades, as they had been completed in line with its best execution policy.

8. Fidelity did not uphold Mr M's complaint.

- Evidence from Bloomberg has indicated that 4,104 of the Shares went through the opening auction on 8 September 2020.

Summary of Mr M's position

9. Mr M submitted the following points:-

- An average stock had 20% to 30% by volume of trades executed through an auction, and this should have been sufficiently material for Fidelity to include this trading method in their "deal at best" terms. He also said that it was fairly common market practice for financial applications to be able to access UK market auctions for customers.
- He did not believe that there were 4,104 of the Shares traded during the opening market auction. He believed the volume was 31,569.
- He submitted that there was a total of 7,903,411 of the Shares traded during the whole day on 8 September 2020.

Summary of Fidelity's position

10. Fidelity submitted the following points:-

- It had followed its Client Terms for Mr M's transaction. As an experienced investor, he should have understood that although the Client Terms did not state that it would not trade in an opening auction, they did not state that it would. Mr M had made an assumption based on his experience of working for investment banks, but Fidelity was not an investment bank. Mr M could have contacted Fidelity to clarify the position.
- Market auctions were only used by institutions and members of the exchange such as banks who bid large volumes before the market opened. Fidelity did not have access to market auctions.
- Fidelity's Share Dealing Frequently Asked Questions stated:

  > "Unlike with fund deals, you will be able to deal at any time of day, while the markets are open… You can place a deal when markets are closed, and it will go through as soon as they re-open. London markets are open from 8:00 AM to 4:30 PM."

  Therefore, it would be clear to an experienced investor that Fidelity did not participate in the opening market auction, as it occurred earlier than 8:00 AM.

- The Client Terms stated:

  > "In the event that a Market Order cannot be executed immediately we will at the next available opportunity give you the option to deal instead on an At Best basis, either online or over the phone via our call centre. The next available opportunity may however be on the next business day on which the relevant market is open."

  This suggested that Fidelity did not trade in market auctions, and it only traded when the market was open.

- Fidelity's execution broker said that the 4,104 was the volume that the London Stock Exchange had officially provided Bloomberg as the volume traded during the opening market auction.

- The execution broker also submitted that the 31,569 of the Shares stated by Mr M as being traded during the opening market auction represented the number of the Shares traded during a minute, and therefore not only included the opening market auction, but also subsequent transactions carried out during the first minute of the day's trading.

Conclusions

11. I appreciate that Mr M is an experienced investor and has worked as an equity trader for an investment bank. Therefore, he has a detailed knowledge of equity trading and had an expectation of how Fidelity could have traded the Shares efficiently. On this basis, Mr M expected Fidelity to sell the Shares during the opening market auction as he had placed his order before 7:50 AM and he knew Fidelity was required to "trade at best". However, Fidelity did not participate in market auctions, and so the Shares were sold shortly after the market had opened, and after they had fallen from the opening price of £0.71, to £0.65 per share.

12. Mr M has submitted that a material proportion of a share's daily trading volume is carried out at market auctions, and therefore to "deal at best" would require Fidelity to include market auctions as a trading method.

13. Fidelity defines "deal at best" in its customer documentation, but it does not say either way whether it uses market auctions. Fidelity has submitted that it would be clear to an experienced investor that it did not participate in the opening market auction because of its explanation about placing a deal when markets are closed in its Share Dealing Frequently Asked Questions.

14. However, participating in the opening market auction results in trades being matched and executed at the end of the auction period. Therefore, Fidelity saying that "You can place a deal when markets are closed, and it will go through as soon as they re-open" could still be interpreted as using the opening market auction.

15. I accept that Fidelity does not use market auctions, but its documentation did not state this. Fidelity has acknowledged this and said that it would address the issue.

16. Therefore, it was a matter of interpretation as to whether Mr M could have expected Fidelity to use a market auction for his order. But Fidelity's definition of "deal at best" does commit it to attempt to fill an order at the best price available from numerous different market makers. On balance, I find that it would be reasonable for Mr M to have expected Fidelity to use a market auction, if this could obtain the best terms for his order.

17. If Fidelity had used the opening market auction, it is possible that the Shares would have been sold at a different price than the £0.65 per share they achieved. Mr M has stated that the opening market auction on 8 September 2020 had priced the Shares at £0.71 per share. So, I can understand why Mr M has argued that Fidelity could have sold the Shares at this price. However, I accept that evidence from Bloomberg has indicated that only 4,104 of the Shares went through the opening auction on 8 September 2020. So, submitting a trade to sell 23,000 shares during the opening market auction, would have been expected to reduce the Share's price to below £0.71.

18. I find, given Mr M's relatively large holding, it is more likely than not that if Fidelity had used the opening market auction, the impact of his order would have reduced the Share's auction price to below £0.71. It is not possible to know the extent of the impact, but I am of the view, on the balance of probability, that if the Shares had been added to the 4,104 traded during the opening market auction, the price achieved would not have been greater than the £0.65 per share that Fidelity secured at 8:07 AM. Therefore, Mr M did not incur financial loss from Fidelity not using the opening market auction.

19. However, this matter will have caused Mr M a significant level of distress and inconvenience which should be recognised.

Directions

20. To put matters right, Fidelity shall, within 28 days of this Determination, pay £500 to Mr M in recognition of the significant level of distress and inconvenience he has suffered.

Anthony Arter CBE

Deputy Pensions Ombudsman
15 May 2023