

Ombudsman's Determination

Applicant	Mr L
Scheme	Fidelity Buy Out Plan (ex-Syntegra Flexible Plan) (the Plan)
Respondent	Fidelity International (Fidelity)

Outcome

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

Complaint summary

2. Mr L's complaint is that Fidelity has failed to fully recognise the financial detriment he has incurred resulting from an initial failure to pay his full protected tax-free cash (**PTFC**) entitlement under the Plan.

Background information, including submissions from the parties

3. The Pensions Regulator (**TPR**) is responsible for regulating the UK pensions industry. Its stated aim is to drive up standards and tackle the risk of financial loss to members by engaging with the pension scheme administrators under its authority.
4. As the regulator of the financial services industry in the UK, the Financial Conduct Authority (**FCA**) aims to ensure that the financial markets are honest, fair, and effective so that consumers get fair treatment.
5. On 10 July 2019, Fidelity, the Plan's administrator, wrote to Mr L and said:-
 - Following a review, it had been established that the PTFC lump sum he received when he took his retirement benefits on 18 August 2015 had been underpaid.
 - This meant that more of Mr L's pension would be subject to income tax and so an additional payment of £10,024.65 (**the redress offer**) would be made to him to mitigate the resulting potential financial loss. The aim was to put Mr L as close to the position he would have been in, had he been made aware of the correct calculation of his PTFC entitlement in 2015.

- Mr L would need to provide some related salary details for a revised tax calculation to be completed in accordance with HMRC regulations in relation to the redress offer.
6. On 7 August 2019 and 8 August 2019, Mr L telephoned Fidelity to discuss this information and asked for a more detailed explanation of how the redress offer had been calculated.
 7. On 8 August 2019, Fidelity wrote to Mr L and said:-
 - Following a change in pensions legislation from 6 April 2006, (**A-Day**), some members, including Mr L, became entitled to an enhanced PTFC.
 - Accordingly, Mr L could have claimed a tax-free lump sum greater than the normal 25% limit, but this had not been considered when his retirement benefits were paid.
 - The proposed payment of £10,024.65 represented the additional tax liability that Mr L incurred because his tax-free cash payment had been incorrectly limited to 25%.
 8. Fidelity also said that in reaching the figure of £10,024.65, the considerations included calculation of Mr L's PTFC entitlement immediately before A-Day, based on HMRC regulations, which was determined by reference to:
 - Mr L's period of employment with Syntegra (**the Employer**) covering the period 1 April 1996 to 5 April 2006.
 - Mr L's final remuneration based on his earnings before A-Day, which was £192,843, the average pay for the three-year period ending 31 March 2005.
 - HMRC's published limits to be used in such calculations, which in the 2005/2006 tax year was £105,600 plus an accrual rate of 3/80ths for each year and part year of service, providing a figure of £39,654.
 9. The letter stated that the next part of the process was to revalue Mr L's PTFC entitlement to determine its value on the date of the calculation in accordance with HMRC regulations which refer to 'changes to the level of the Lifetime allowance.' This resulted in a revalued PTFC allowance of £80,172.11.
 10. Fidelity said that the final stage of the process was to establish the additional tax liability that Mr L would incur when he claimed the benefits that remained unpaid, and the considerations related to this were:-
 - At the time the initial retirement benefits were paid, Mr L's tax-free cash lump sum was limited to £60,329.38, which was 25% of his pension fund, and less than the correct PTFC entitlement which should have been £80,172.11.

- Assuming an income tax rate of 40%, this produced a basic redress figure of £7,939.09 calculated as £80,172.11 - £60,329.38 (25% of the pension fund value of £241,317.52) x 40% = £7,937.09.
- Added to this was interest of 8% per year to the calculation date, plus an extra 90 days of interest, which amounted to £2,609.45 gross, from which basic rate income tax of 20% was deducted, leaving total redress calculated as:-

$$£7,937.09 + £2,087.56 = £10,024.65.$$

11. On 19 August 2019, Mr L wrote to Fidelity and complained that the method of calculating the redress offer was unfair because there was no allowance for the distress and inconvenience, he had suffered nor full recognition of the financial detriment he had incurred because of the initial error, including:-
 - Inability to pay off existing high interest borrowing from 18 August 2015 to the date of the award.
 - His income tax on the redress offered would be 45% because he was still employed and a higher rate taxpayer.
 - Claiming the additional benefits would lead to his total pensions exceeding the lifetime allowance, further increasing his tax liability.
 - His holiday budget from 2015 had been adversely affected by existing borrowing that remained unpaid.
12. Mr L also proposed his own method of calculating the redress, which he said resulted in a gross figure of £57,183 based on an interest rate of 13% being payable on the initial underpayment figure and income tax of 45%.
13. On 6 September 2019, Fidelity wrote to Mr L and said that its previously quoted methodology for calculating the redress offer had been agreed in consultation with TPR and the FCA, so it was fair.
14. On 11 September 2019, Mr L wrote to Fidelity, reiterating his complaint of 19 August 2019 and asked Fidelity to review its decision of 6 September 2019.
15. On 20 November 2019, Fidelity wrote to Mr L in response and said that the redress offer of 8 August 2019 had been increased by £1,326.68 to £11,351.33 in recognition of the fact that he paid income tax at 45%.
16. On 2 June 2020, Fidelity paid an updated award of £11,514.16 to Mr L based on his income tax rate of 45%.

Mr L's position

17. The 'standard' methodology that Fidelity applied in calculating its redress offer failed to recognise the impact of the continued borrowing that was forced on him following the error that was made in 2015, and simply focused on the additional tax liability.
18. He would like a revised calculation to be completed to get him into the position that would have applied, had the error not been made, and allowing for the payment that has already been made in June 2020. Based on his own assumptions, he has calculated that a further payment of £40,043 is required from Fidelity.

Fidelity's Position

19. £19,843 is the additional sum that Mr L could have been paid as his PTFC entitlement. This sum has remained invested in the Plan since 18 August 2015 and has benefited from growth. That investment growth has not been considered for the purpose of completing the loss assessment relating to the initial underpayment of PTFC to Mr L.
20. The loss assessment was conducted to review the value of income tax that Mr L would be liable for on the £19,843 that ought to have been paid in 2015. While this was initially calculated based on a tax rate of 40%, that figure was subsequently amended to 45% tax, once Mr L said that his income fell into this tax bracket. Consequently, the methodology for calculating the redress offered to Mr L was $£19,843 \times 45\% \text{ tax} = £8,929.35$. Simple interest at a rate of 8% per year was then added to that sum in recognition of the delayed payment of the outstanding due benefits from 18 August 2015 to June 2020. With the addition of appropriate interest, the total payment to Mr L was £11,514.16.
21. That redress payment was not classed as an 'unauthorised payment' and did not incur a 55% tax charge because it did not originate from Mr L's investments in the Plan. Instead, the redress was categorised as a compensation payment to Mr L made outside of HMRC regulations for 'unauthorised payments'.
22. A further award of £500 to Mr L in recognition of the distress and inconvenience caused by incorrectly calculating his PTFC entitlement in 2015, and the delay in informing him of this would be appropriate.

Adjudicator's Opinion

23. Mr L'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:-
 - Fidelity has acknowledged its failure to correctly calculate Mr L's PTFC entitlement when his retirement benefits were initially paid in August 2015, causing an underpayment. In the Adjudicator's opinion this error amounted to maladministration by Fidelity.

- Based on his own assumptions, Mr L has claimed redress of £57,183 from Fidelity but he has provided no evidence in support which shows this to be reasonable or appropriate. By contrast Fidelity has said that it consulted with TPR and the FCA in establishing the methodology that was used in calculating the award of £11,514.16 to Mr L.
- Fidelity was permitted to establish its own methodology to redress the error. The involvement of TPR and the FCA in that regard is significant due to their roles in ensuring the integrity of pension scheme administrators and fairness in the treatment of scheme members. It is unlikely that TPR and the FCA would have approved the methodology used by Fidelity to calculate the redress offered to Mr L if it was unreasonable.
- Fidelity took a business decision on how best to remedy its error. So long as that business decision is not unjust the Pensions Ombudsman's would not seek to interfere in a business decision. So, in the Adjudicator's opinion Fidelity's approach to rectifying the error based on its proposed methodology is reasonable.
- In the Adjudicator's view the maladministration identified would have caused Mr L significant distress and inconvenience. An award of £500 is in keeping with the Ombudsman's guidance for this type of non-financial injustice. So, Fidelity's award of £500 to Mr L was sufficient recognition of the distress and inconvenience he has suffered.

24. Fidelity accepted the Adjudicator's Opinion, Mr L did not, and the complaint was passed to me to consider. Mr L provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr L and Fidelity.

Mr L's additional comments

25. The methodology used by Fidelity in calculating the redress offered does not recognise the financial loss he has incurred due to the initial underpayment of the PTFC, and the time taken to rectify the issue. The pre-existing credit card debts that he accrued were not related to the PTFC which he claimed in August 2015. He simply took the sum that Fidelity said he was entitled to receive in that way to reduce the debts. The resulting financial loss was caused by Fidelity not offering the full PTFC sum that was payable in 2015, causing him to continue paying interest on the remaining unpaid pre-existing debts.
26. He decided to withdraw PTFC from another pension scheme in March 2016 as a result of Fidelity's error. At the time he was unaware of the underpayment of PTFC received from Fidelity, so the benefits remained invested in the Plan. If he had instead decided to claim a further lump sum from the Plan, without the benefit of it being tax-free, due to Fidelity's error, this would have incurred 45% income tax liability, because he was a higher rate taxpayer.

27. So, he claimed PTFC from the other pension scheme to reduce his borrowing. However, he could have reduced or even avoided this second claim if Fidelity had initially paid the full PTFC entitlement. Further, the PTFC claim under the other scheme caused risk with regards to potential loss of future growth on the benefits. Consequently, this payment should be excluded from the considerations for any award offered to him.
28. Guidance provided by the Financial Ombudsman Service (**FOS**) suggests that an award should be made in recognition of the interest due on the underpaid PTFC from the date he could have claimed it to present. A previous case, AS-38354-V5L8, supports this argument. On that basis, simple interest of 8% on the PTFC underpayment of £19,842.73 over seven years equals a total redress payment of £14,164.22. However, allowing for the fact that Fidelity has previously offered redress in 2019, this would reduce the redress figure to £9,010.83, assuming that this figure is paid in August 2022.

Fidelity's additional comments

29. Mr L has acknowledged that he was in debt before receiving confirmation of the underpaid PTFC entitlement. It was his personal choice to claim PTFC from another pension arrangement to pay off those debts.
30. While the PTFC paid to Mr L in 2015 was lower than he was entitled to receive, the residual element that was unclaimed remained invested in the Plan, and he could have taken the funds at any time. So, the redress already paid to Mr L was appropriate and in accordance with Fidelity's previous consultations with TPR and the FCA.

Ombudsman's decision

31. Mr L complained that the methodology used by Fidelity in calculating the redress offered does not recognise the financial loss he has incurred due to the initial underpayment of PTFC, and the time taken to rectify the issue.
32. Mr L submits that Fidelity's error forced him to continue paying interest on pre-existing credit card debts and to claim PTFC from another pension scheme. He said that the conclusions reached in a previous case (CAS-38354-V5L8) supports this argument.
33. Fidelity has acknowledged that it understated Mr L's PTFC entitlement in 2015, which meant that he was unable to claim the full tax-free lump sum that was payable at the time. I find that this error amounts to maladministration by Fidelity. However, Mr L has acknowledged that it would not, in any case, have been beneficial for him to draw a further lump sum from the Plan because this would have incurred a tax liability of 45%. Mr L said that he instead claimed PTFC from the other pension scheme to reduce his borrowing, but he could have reduced or even avoided this, if Fidelity had paid his full PTFC entitlement. So, Mr L has suggested that Fidelity should pay

interest of 8% on the underpaid PTFC from the date he could have received it to the present time. I do not agree because the unclaimed element of Mr L's PTFC entitlement remained invested in the Plan and has achieved investment growth in line with the underlying investments. If I were to award interest in line with Mr L's suggestion, then he would obtain further unwarranted benefit from the Plan.

34. Mr L contends that making a second PTFC claim under the other scheme carried risk in terms of potential lost growth. However, I note that those benefits were not guaranteed in a similar way to Mr L's investments in the Plan. So, in August 2015, without the benefit of hindsight Mr L could not have known whether claiming a larger PTFC lump sum from the Plan would be more beneficial than claiming under the other scheme he has referred to in March 2016. Further, Mr L has provided no evidence that he could not have done this earlier if he had wished to do so. Consequently, there is no evidence that Fidelity's error caused Mr L financial detriment.
35. Mr L contends that the circumstances of a previous case (CAS-38354-V5L8) are evidence that the methodology used by Fidelity in calculating the redress offered to him failed to address the full extent of the financial detriment he has suffered. I note that in the previous case Mr L has referred to, the respondent was directed to award interest of 8% on the applicant's benefits for unreasonable delays in completing a transfer. The delays in that case caused the applicant to miss potential growth on an investment opportunity. In Mr L's case he has complained of missing an opportunity to repay pre-existing credit card debts and reduce his borrowing.
36. Since Mr L successfully mitigated the effects of his PTFC entitlement being understated in 2015, by claiming PTFC from another scheme, there is no evidence that Fidelity's error caused him to miss the opportunity to repay the pre-existing credit card debts. Consequently, I find that the circumstances of the previous case, CAS-38354-V5L8, are different and have no bearing on Mr L's complaint.
37. Fidelity has said the methodology used in calculating the redress awarded to Mr L was approved by TPR and the FCA. I consider that the involvement of TPR and the FCA was appropriate, and the conclusions reached were relevant, given the status of those regulators and their stated aims of seeking the fair treatment of members by pension scheme administrators. Consequently, I find that the methodology used by Fidelity to calculate the redress awarded to Mr L was reasonable.
38. I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
1 September 2022