

Ombudsman's Determination

Applicant	Dr S
Scheme	Fidelity Self Invested Personal Pension
Respondents	Fidelity International (Fidelity) Standard Life (SL)

Outcome

1. I uphold part, but not all of Dr S' complaint. To put matters right for the part of the complaint I uphold, Fidelity shall adjust the units held in Dr S' SIPP to put the plan in the position it would now be in if the transfer had not been delayed by ten working days.

Complaint summary

2. Dr S has complained about the timing of the sale of all the underlying investment assets (**the assets**) in her late husband's, Mr S' Self-Invested Personal Pension (**SIPP**), and the time taken to transfer the proceeds of the sale to her own beneficiary's drawdown plan.

Background information, including submissions from the parties

3. I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. On 21 April 2020, Mr S died.
5. At the time of his death, Mr S held a FundsNetwork SIPP administered by SL on behalf of Fidelity. SL also acted as the Trustee. As relevant, an extract from the SIPP's Terms and Conditions (**T&Cs**) is provided in the Appendix.
6. On 4 May 2020, Dr S' representatives (Brian J. Hyman (Life & Pensions) Ltd, referred to here as **Hymans**) telephoned Fidelity to notify it of Mr S' death. On the same day, Fidelity notified SL.
7. On 5 May 2020, SL instructed the sale of the assets in Mr S' SIPP. On the same day, SL wrote to Hymans. As relevant, SL said:

“The death benefit from the above pension plan amounts to £244,592.26.

Please note, this value is for illustrative purposes only and is not guaranteed. We are currently awaiting the sale of all investments as per our [T&Cs].

Who we pay this to

[SL], as the Scheme Administrator, will decide who to pay the death benefit to. The Scheme Rules allow us to pay to any person or persons who fall within the classes of beneficiary set out in the Scheme Rules, in such proportions as we decide. This is called exercising our discretion.

When exercising our discretion, we will consider the deceased’s personal circumstances and family situation. We will also take into account any ‘expression of wishes’ submitted to us by the deceased, however please note that any such wishes are not legally binding on us. We will then distribute the death benefit by paying an amount to, or for the benefit of, any beneficiary or beneficiaries chosen by us.

Next steps

To enable us to exercise our discretion, we need to start gathering relevant information. I’d be grateful if you would get in touch with us to provide the following (please answer all points and do not answer with not applicable or N/A):

1. Copy of the Death Certificate
2. Copy of the deceased’s Will (if there was one)

...

We will make every effort to progress matters and exercise our discretion promptly, however please be aware that it can take time to gather all the information we need to fulfil our obligations. We won’t be able to settle the death benefit until we’re satisfied we have everything we need to exercise our discretion appropriately. We are extremely grateful for your patience and cooperation.”

8. On 6 May 2020, the assets in Mr S’ SIPP were sold by SL.
9. On 13 May 2020, Hymans wrote to SL. As relevant, Hymans said:

“Our client has asked whether you would be prepared to accept the attached Certificate for Burial as there are delays in the production of actual Death Certificates at present due to Covid-19.

We wish to minimize the period of time our client – [Dr S] – is out of the market as we note that you are insisting that her husband’s pension investments are sold as at date of death and the proceeds passed on as cash.

It is not clear when the death certificate will be available.”

10. On 19 May 2020, SL wrote to Hymans. As relevant, SL said:

“Unfortunately, we will require the death certificate before we can settle a death claim.”

11. On 22 May 2020, Hymans wrote to SL and enclosed a certified copy of the original death certificate and Mr S’ Will.

12. On 26 May 2020, SL wrote to Hymans. As relevant, SL said:

“Thank you for sending us the death cert and a copy of [Mr S]’ Will.

I think there may be a page of the Will missing...

Can you please send us all pages of the Will and we will be able to exercise discretion.”

13. On the same day, Hymans responded to SL, acknowledging that there was a problem with the scanning of the Will, and re-sent it. On the same day, SL notified Hymans that the death benefit was £247,070.68 and that it had exercised discretion to pay the benefit in favour of Dr S. It gave options of how the benefits could be paid to Dr S. As relevant, SL said:

“[Dr S] is a Dependent, therefore, has the following 4 options below.

Once a decision has been made, the enclosed Beneficiary Options leaflet (**the options form**) explains what our requirements are.

1. Take the death benefits as a Lump Sum payment (see attached leaflet for payment instructions).

2. Use the death benefit to purchase a Beneficiary Drawdown Plan (see attached leaflet for payment instructions).

3. Use the death benefit to purchase an annuity (see attached leaflet for payment instructions).

4. transfer the death benefit to another provider to provide a beneficiary annuity or drawdown plan (see attached leaflet for payment instructions).

...

I look forward to hearing from you.”

14. On 28 May 2020, Fidelity wrote to SL and requested a copy of the death certificate.

15. On 1 June 2020, Hymans made a telephone call to Fidelity. Fidelity confirmed it was awaiting a copy of the death certificate.

16. On 2 June 2020, Hymans uploaded a copy of the death certificate to Fidelity’s secure server.

17. On 5 June 2020, Hymans telephoned Fidelity and made a complaint about the date the assets in Mr S' SIPP were sold. Hymans said Dr S was unhappy because the assets were sold upon notification of Mr S' death when the markets were at a low point. It said the value of the assets had "soared" in the intervening four weeks and Dr S "had seen the value of the stock markets climb each day, knowing the funds had already been encashed".
18. During the call, Fidelity confirmed that it had received the death certificate and the transfer process was continuing but it could not provide a timescale for completion. On the same day, Fidelity acknowledged receipt of the death certificate in writing to Hymans and confirmed a copy of the correspondence had been sent to SL.
19. On 8 June 2020, Hymans telephoned SL and complained that the benefits had not been transferred to Dr S' SIPP. SL said it had received no instruction from Dr S or Hymans to transfer the funds to a Fidelity SIPP. Hymans said it was obvious that Dr S would want the benefits transferred to a Fidelity SIPP. SL said it could not make this assumption as the benefits could be transferred to the open market.
20. On 9 June 2020, in a telephone conversation Fidelity informed Hymans that it had all the required documentation to progress the transfer of the assets in Mr S' SIPP to a new Fidelity Drawdown Plan for Dr S, apart from the completed options form.
21. On 10 June 2020, the completed options form was received by Fidelity. Upon receipt, a pension drawdown to drawdown transfer application form (**the transfer application form**) was sent to Hymans.
22. On 11 June 2020, the transfer application form was completed and signed by Dr S and Hymans in respect of the transfer of the assets in Mr S' SIPP to a new Fidelity Drawdown Plan for Dr S.
23. On 15 June 2020, the completed transfer application form was received by Fidelity.
24. On 25 June 2020, upon request, SL sent a copy of the FundsNetwork SIPP's T&Cs to Hymans. As relevant, SL said:

"The relevant details are in section 13 on page 33.

Just for clarity, the term normally means if we can sell, we will sell. The exceptions are suspended funds and commercial property investments."

25. On the same day, Hymans responded to SL. As relevant, Hymans said:

"You have referred me to section 13 and I can see no rule which states the assets are sold on notification of death. The rule states that "After we're notified of your death we'll normally.... before distributing them to your beneficiaries...." I have missed out a section of text because it is of no consequence. The main issue here is that the assets will be sold at some point after notification of death and before payment to beneficiaries. Nowhere, and I believe for a very good reason (investment risk) does it say you will automatically sell on the day of notification."

26. On 3 July 2020, Fidelity responded to Hymans' complaint. As relevant, Fidelity said:

"I understand you are concerned at the time taken to move the holdings into a pension in [Dr S]' name. [SL] has confirmed that they did not receive the options from yourselves or the client, and they are unable to carry out any instructions without this.

You have expressed dissatisfaction with the fact that [SL] had sold all assets upon notification of the client's death. This is SL's procedure and they acted accordingly. My colleague [name redacted] will be getting back to you with information regarding the sale of the assets as you requested from him in his telephone call of 1 July."

27. On 8 July 2020, the funds from Mr S' SIPP were received into Dr S' Fidelity SIPP account.

28. On 9 July 2020, Hymans wrote to Fidelity confirming receipt of the funds into Dr S' account. Hymans were unhappy with Fidelity's complaint response of 3 July 2020. As relevant, Hymans said:

"...our principal concern was with the sale by [SL]. Everything that followed (our anxiety in relation to the delays at every step of the way) was consequential to the ludicrous decision to encash [Mr S]' funds. Had they not done so, all of the consequential problems with timing disappear.

I think it would be helpful for your Complaints team to get this notion clear in their minds. Notwithstanding that, [SL] repeatedly allege that they were not aware of [Dr S] intention to transfer the money into her own pension. They have referred me on several occasions to the options "form" that was provided once they agreed her claim on her husband's pension was valid (c27th May). That delay on the deliberation by [SL] was largely the result of [Dr S] being unable to provide a Death Certificate due to the backlog at the Registrar's Office. Hardly her fault. Not really anyone's fault but as I have said many times, if [SL] had not instructed the sale of funds then the delay to transfer would not have had the devastating impact it had on the fund values of her late husband's pension.

Besides which, the options form is not an application form. It outlines the choices. [Dr S] was aware of the choices even prior to her husband's passing. We advised Fidelity of her desire to transfer and, for sure, in a conversation I had with [SL] at the end of May, they would have been perfectly well aware of [Dr S] intentions. At that time, it was our belief that we had advised Fidelity and we had requested forms from FIDELITY to expedite that transfer. Despite continued requests you did not supply the requisite form, you did not contact [SL] and the transfer was again held up.

..."

29. On 17 July 2020, Dr S emailed SL chasing a response to Hymans' email of 25 June 2020. As relevant, Dr S said:

"[I am] extremely dissatisfied that my husband's shares were sold arbitrarily on 5 May as soon as you were notified by Hymans of his passing.

[SL], as the trustees of his pension, should look out for what is best for the investment before knee jerk selling everything...

...

The cash was not transferred to my account until 5 July [sic] – so why were the assets sold on 5 May?"

30. On 31 July 2020, Fidelity sent its final response letter (**FRL**) to Dr S and Hymans regarding the complaint. As relevant, Fidelity said:

"On 26 May [2020], [SL] emailed your financial adviser with four options for you to take in terms of beneficiary payment. It was not until 15 June that we received further instruction in the form of a transfer application form. The transfer of this pension completed on 8 July. This transfer completed within our agreed processing times and no delay has been caused here.

On 4 May 2020, following a call from the financial adviser, Fidelity called [SL] and explained that Mr S had died on 21 April 2020. On 5 May, [SL] instructed the sale of Mr S' investments in accordance with the Scheme Rules, and [SL] emailed our requirements to [name redacted] at the IFA firm.

...

The transfer funds were received on 8 July [2020] and they were allocated to the account on the same day."

31. On 11 August 2020, Hymans wrote to Dr S. As relevant, Hymans said:

"In the Covid-19 workplace difficulties I am not sure 2 months will be deemed excessive. It depends on whether the delay was caused solely by their negligence and clearly it was initially not their doing since we couldn't provide a death certificate until the 4th week of May. Further, the delay didn't really dramatically impact the loss as markets had already moved by the end of June beginning of July. We are on shaky ground.

...

Being perfectly honest, I am not sure how we felt about the decision to sell at that point. The market could just as easily have fallen back further. It still could! All I knew at that time (and we told them as much on 13th May) was that the sale meant you were out of the market and warned them of the prejudice that this could cause in the event of a delay."

32. On 2 September 2021, Hymans responded to Fidelity's FRL and suggested it should reconsider its position. As relevant, Hymans said:

“...the automatic sale of assets on 5 May, even if it were in accordance with a very narrow interpretation of the scheme rules, is not normal market practise and, if it were so and understood to be so, [Dr S] would not have notified Fidelity of her husband’s passing until, at the very least, a death certificate were available...to ensure that the period she remained out of the market could be minimised.

...we would draw your attention to...the delays that occurred between the period 26 May to 15 June. If you refer to all the communications that took place between our offices and your office and [SL], you will find that the delay was caused entirely by a breakdown of the relationship between Fidelity and [SL].

...

To be clear, [Dr S] and my office responded to all requests immediately and usually within a timescale measurable in minutes and hours rather than days and weeks. We were not responsible for any delays whatsoever.”

33. On 14 December 2021, Fidelity responded to Hymans and said their position on the matter had not changed. As relevant, Fidelity said:

“We have followed our procedure and I refer to our T&C attached, see section 13.1. The sell down of assets were completed upon notification of death and following instruction, we entered [Dr S] into a beneficiary drawdown account. This was completed within external timeframes and in good time, when referring to an expected transfer timeframe of up to 8 weeks for a cash transfer from the date the application was received. In this instance, [SL] sent us the requirement on 10 June 2020 and the transfer completed on 8 July 2020...”

Dr S’ position

34. Dr S submits:-

- The decision to sell Mr S’ shareholdings on 6 May 2020 was arbitrary and not in line with the T&Cs.
- There were various delays in the transfer between 6 May and 8 July 2020 which were caused by SL and Fidelity.
- As a result, the assets were encashed at a market low. If the assets had been sold on 7 July 2020 rather than 6 May 2020, the value of the assets would have been £21,743.05 higher.
- The options form was not an application form, but a choices form, it was only required to notify Fidelity of her desire to transfer the funds. Regardless, Hymans says it informed SL in a conversation at the end of May of her chosen option.

SL’s position

35. SL submits:-

- The assets in Mr S' SIPP were sold in accordance with the T&Cs.
- The discretionary decision regarding the award of the death benefits was made within a reasonable timescale.
- It could not assume Dr S wanted to transfer the funds to a Fidelity SIPP as there was an open market option, so SL had to await instruction.

Fidelity's position

36. Fidelity submits:-

- The assets in Mr S' SIPP were sold in accordance with the T&Cs.
- The transfer of the assets was completed in good time following receipt of all requirements and Dr S' signed Fidelity transfer application form.
- The funds could not be transferred to Dr S' SIPP sooner as SL did not receive the completed transfer application form until 15 June 2020.
- When the funds were received, they were allocated on the same day. The transfer was completed within its own timescales.

Adjudicator's Opinion

37. Dr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Fidelity or SL. The Adjudicator's findings are set out below:-

- The T&Cs set out that the sale of the assets will "normally" take place "after notification of the death". The T&Cs did not give a timescale for the sale, other than providing that it would be before the funds were distributed to the beneficiary. The sale of the assets in Mr S' SIPP took place on 6 May 2020, one day after the notification of Mr S' death. Dr S' SIPP received the funds on 8 July 2020.
- The sale therefore took place in accordance with the T&Cs. So, in the Adjudicator's view, this part of Dr S' complaint could not be upheld.
- Dr S was unhappy with the time taken from when the assets were sold to when the funds arrived in her SIPP account.
- The Will and death certificate SL requested from Hymans on 5 May 2020 were not provided to SL until 26 May 2020 due to the impact of COVID-19 around this time. Therefore, any delays up to 26 May 2020 were not the fault of SL or Fidelity.
- SL exercised its discretion to make its decision to pay benefits to Dr S on the same day it received the Will and death certificate, so there was no delay with the decision making up to this point. The complaint regarding the delays is therefore

that from 26 May 2020 to 8 July 2020, 32 working days, was too long to process the transfer of assets from Mr S' SIPP.

- There is some dispute over whether completion and return of the options form, sent to Hymans on 26 May 2020, was required to confirm how Dr S wished to receive the funds. SL's correspondence enclosing the options form closed by stating "I look forward to hearing from you", indicating a response was expected.
- Hymans' view was that completion of the options form was not necessary. It said SL was informed that Dr S wanted the funds paid to her SIPP in a telephone call at "the end of May 2020" and that this should have been sufficient. While SL's email did not specifically state that it was necessary to complete and return the options form, in the Adjudicator's view, Hymans, as the financial adviser, would or should have been aware that a transfer could not take place on the strength of information provided in a telephone call alone and that completed documentation would be required. That Hymans returned the options form in the subsequent 10 to 14 days after the telephone call, in the Adjudicator's view, suggested it was either told by SL, or decided itself, that it did need to return the forms to progress the transfer. The completed options form was returned 15 days after it was sent to Hymans and the transfer application form four days after this, on 15 June 2020.
- Since Mr S was under 75 when he died, Dr S would not be subject to tax on the pension fund so long as the funds were moved within two years of 4 May 2020, when SL as administrators became aware of Mr S' death. Aside from this legislation, there were no specific regulations governing deadlines on how long a transfer of assets from the sale of investments within a SIPP to the beneficiaries should take.
- In the Adjudicator's opinion, the 45 working days taken from the date of notification of Mr S' death to completion of the transfer was not an excessive time for the sale of assets, exercise of discretion over which beneficiaries should be paid the benefits and the transfer of funds to take.
- In the Adjudicator's view, there was no evidence of maladministration by either Fidelity or SL. Dr S' complaint should not be upheld and no further action was required by Fidelity or SL.

38. After the issuance of the Adjudicator's Opinion, Fidelity conceded that an administrative error caused a 10 working days delay (from 17 June to 1 July 2020) in the processing of the transfer. If this delay had not occurred, the transfer of the assets to Dr S' SIPP would have purchased more units in the SIPP's fund. To put matters right, Fidelity has offered either to pay the amount that this delay financially disadvantaged Dr S directly to her (£1,951.35 based on 30 April 2024 unit prices), or to make an adjustment to the units in her SIPP.

39. Hymans, on behalf of Dr S, did not accept the Adjudicator's Opinion, or Fidelity's settlement offer, and the complaint was passed to me to consider. Hymans has provided its further submissions.

Hymans' further comments

40. Hymans submits:-

- Although the offer from Fidelity is appreciated, this delay is incidental and not the core of Dr S' complaint.
- SL has incorrectly interpreted section 13.1 of the T&Cs regarding when the assets could be sold. Within the section, because the word "before" does not have a capital 'B', means this is a continuation of the sentence which begins "After". This gives a different meaning to section 13.1; that SL will not distribute the assets "in specie" where it is possible for them to be sold. The section does not say the assets will be sold "immediately [when] we are notified of the death of the policyholder". That is what the section would and should say if that is what was going to happen.
- During its telephone conversation with Fidelity on 5 June 2020, Fidelity agreed that its usual practise is not to sell assets straight after the notification of death. This telephone conversation should be listened to in full.
- Other SIPP providers would not sell assets at their own discretion so soon after notification of death¹.
- SL did not have the authority to sell the assets shortly after notification of death and without the agreement of the trustee and/or Executor.
- SL has no contractual obligation to "protect values" of assets after death.

41. I have considered Dr S' comments but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

42. Hymans has provided a copy of the T&Cs for the 'Fundsnetwork SIPP provided by Standard Life'. These T&Cs are the May 2024 version of the T&Cs. The applicable T&Cs at the time of Mr S' death, and those used and quoted in the Adjudicator's Opinion, are the May 2018 T&Cs for 'Fundsnetwork SIPP provided by Standard Life'.

¹ Hymans has provided a Death Benefits Options form from A J Bell which it says is more in line with accepted market practise. This form indicates A J Bell sell assets once "all the claim documentation has been completed and received". Dr S believes the death benefits should be paid in line with this.

43. Section 13.1 of the T&Cs states that the assets will normally be sold after notification of death and the cash proceeds will be paid to the trustee bank account before distribution to the beneficiaries or being used to provide a pension for a beneficiary. An extract of the section is set out in the Appendix. Section 13.2 of the T&Cs provides that SL, as scheme administrator, may pay a lump sum death benefit and that SL decides who should receive it. Once a decision is made in favour of a beneficiary, section 13.2 provides that a beneficiary may ask to receive a pension as an alternative to a lump sum. A transfer option also applies. I note that until a decision is made by SL, no beneficiary has any entitlement to a benefit and cannot therefore give any instructions on the application of the SIPP funds or the death benefit.
44. The assets were sold after notification of death and before distribution. The section gives no specific timescale or deadline for exactly when assets must be sold aside from “after notification of death” and “before distribution”. Regardless of the punctuation and grammar within this section, there is no part of it which has been breached or misinterpreted by the timing of the sale. I cannot see how there could be any maladministration in promptly selling assets on notification of death in preparation for paying a lump sum death benefit from the trustee’s cash account, this being the default option under the T&Cs.
45. I do not agree with Hymans’ contention that other providers’ policies should be taken into account when investigating this complaint. Whether there is a more common market practice, or what is stated in other providers’ T&Cs is not relevant to the consideration of Dr S’ complaint. Her complaint must be considered on its own merits, and it is the T&Cs applying to Mr S’ SIPP at the time of his death which are relevant.
46. During the telephone conversation between Hymans and Fidelity on 5 June 2020, the call handler from the Bereavement team confirmed that Fidelity’s procedure was not to automatically sell assets upon notification of death. However, during the same call, it was explained that although the account was held by Fidelity, SL “run the account” and, as administrators, it was the T&Cs which were applicable. It was confirmed to Hymans that the assets were sold for cash in accordance with the T&Cs.
47. Section 5.6 of the T&Cs (see Appendix) also confirms that the trustee will own all the investments held under the SIPP and will buy or sell investments as directed by the scheme administrator. As Hymans is aware, SL is both the trustee and scheme administrator (or manager) of the SIPP. In its role as scheme administrator, SL instructed Standard Life Trustee Company Limited to sell the assets on 5 May 2020, which was within its remit and in accordance with Section 13.1 of the T&Cs. The assets were sold on 6 May 2020.
48. I appreciate Dr S is disappointed that this date turned out, with hindsight, to be a bad time to sell with financial markets at a low point, particularly due to the impact of the COVID-19 worldwide pandemic at this time. However, I cannot see that SL’s actions in selling the assets promptly on being notified of the death of the member could be criticised. The T&Cs provide that this is what SL would normally do. It is clearly

appropriate to sell investments in preparation for paying a lump sum death benefit to one or more of the member's beneficiaries who at that point could not yet be determined.

49. After the Adjudicator's Opinion was issued, Fidelity conceded that an administrative error did cause a delay in the transfer of ten working days, from 17 June to 1 July 2020. If this delay had not occurred, the transfer of the assets to Dr S' SIPP would have purchased more units in her SIPP's fund. To put matters right Fidelity should adjust the units held in Dr S' SIPP so that the plan is in the position it would now be in if the administrative error had not occurred.

50. I uphold, in part, Dr S' complaint.

Directions

Within 28 days of the date of this Determination, Fidelity shall adjust the units held in Dr S' SIPP to put the plan in the position it would now be in if the transfer had not been delayed by ten working days. If this proposed unit adjustment results in a reduction in the number of units held then no adjustment should be made.

Camilla Barry

Deputy Pensions Ombudsman
08 April 2025

Appendix

Extracts from the FundsNetwork SIPP Terms and Conditions:

“5.6 Ownership of the investments

The trustee will own all of the investments held for you under the scheme, but it will only buy or sell investments where the scheme administrator directs the trustee to do so. As a member of the scheme, you don't own the investments held for you under your plan but your benefits do depend on how these investments perform. You may request copies of the annual reports and accounts in relation to your investment in mutual funds on the Fidelity platform and you can instruct the trustee how to vote in relation to these investments, subject to additional administration charges.

...”

“13 Death benefits from the drawdown pot

13.1 This section describes the death benefits that are payable from your **drawdown pot**.

After we're notified of your death, we'll normally:

- a) sell all of the assets held for **you** under the **scheme**; and
- b) pay the cash proceeds into the **trustee cash account**;

before distributing them to your beneficiaries or using them to provide a pension for your **beneficiaries**.”