Ombudsman's Determination

Applicant	Mr N
Scheme	Bechtel Limited Career Pension Plan (**the Plan**)
Respondent	Fidelity International (**Fidelity**)

Outcome

1. Mr N's complaint is partially upheld and to put matters right, Fidelity shall pay Mr N £500 for the significant distress and inconvenience its errors have caused him.

Complaint Summary

2. Mr N has complained that Fidelity's web-based investment tool, PlanViewer (PV), displayed incorrect valuations for his Plan between 9 March 2020 and 29 June 2020. Mr N said that no warnings were posted on PV to say that the values shown were incorrect, and his investment decisions were based on this incorrect information. While Fidelity made a correction to his account on 29 June 2020, Mr N says this did not cover his investment losses resulting from the inaccuracies of the valuations shown in PV.

Background information, including submissions from the parties

3. The Plan is a Stakeholder Workplace Pension, which offered Mr N the ability to switch funds.

4. Fidelity has advised that Mr N viewed the balance of his investment in the Plan on an almost daily basis between 9 March 2020 and 4 April 2020.

5. On 16 March 2020, Mr N placed a switch instruction and following completion of the switch on 17 March 2020, his holding in the Plan was invested as follows:

- Fidelity BlackRock Over 5 Years Index Linked Gilt Fund Class 5 - 38.70%
- Fidelity Cash Pensions Fund Class 5 - 25.17%
- Fidelity BlackRock Over 15 Year UK GILT Index Fund Class 5 - 19.51%
- Fidelity Index Linked Bond Pensions Fund Class 5 - 13.67%

- Fidelity Pre-Retirement Bond Pensions Fund Class 5 - 02.95%

Following the switch PV showed the Plan's value as £1,190,311.68. The correct value was £1,177,625.87.

6. On 19 March 2020, Mr N placed a further switch instruction and following completion of the switch on 20 March 2020, his holding in the Plan was invested as follows:

- Fidelity Blackrock Cash Fund Class 5 - 73.07%
- Fidelity Cash Pensions Fund Class 5 - 26.93%

Following the switch PV showed the Plan's value as £1,103,925.44. The correct value was £1,058,662.77.

7. On 4 June 2020, Mr N placed a third switch instruction and following completion of the switch on 5 June 2020, his holding in the Plan was invested as follows:

- Fidelity Blackrock Cash Fund Class 5 - 68.07%
- Fidelity Cash Pensions Fund Class 5 - 26.93%
- Fidelity BlackRock Over 5 Years Index Linked Gilt Fund Class 5 - 01.25%
- Fidelity BlackRock Over 15 Year UK GILT Index Fund Class 5 - 01.25%
- Fidelity Index Linked Bond Pensions Fund Class 5 - 01.25%
- Fidelity Pre-Retirement Bond Pensions Fund Class 5 - 01.25%

Following the switch PV showed the Plan's value as £1,068,855.97, which was the correct value.

8. On 29 June 2020, Fidelity made a number of account corrections and added extra units to Mr N's account totalling £44,641.28 in value. On 9 July 2020, Fidelity wrote to Mr N to advise him of these corrections and explained that a number of transactions had to be completed at the previous day's prices due to a stale pricing issue, to ensure he had not been disadvantaged.

9. Stale pricing is where transactions take place at prices that are not reflective of the latest available in the market. Following the market volatility due to the pandemic, some external fund managers were unable to send prices for their funds within the timeframe agreed. As a result, a number of transactions had to be completed at the previous day's prices resulting in stale pricing.

10. On 19 July 2020, Mr N wrote to Fidelity to set out a number of concerns. He requested a full explanation of the mistakes and the corrections made and why the corrections were made around three months after the event. He also stated that the sudden drop in his funds around this period resulting from Fidelity's error seriously impacted his future investment strategy. He said if he had known the extent of Fidelity's error, he would have maintained his existing investment strategy and

avoided further losses as the market recovered. Had he done this, his portfolio would now be worth around £200,000 more and therefore, he requested further redress.

11. On 2 September 2020, Fidelity responded to Mr N and explained that the corrections had been done to ensure that its members were not disadvantaged by the error. The error was not the fault of Fidelity but rather the fund managers as they failed to provide it with the fund prices before the agreed and extended cut off time.

12. On 5 September 2020, Mr N wrote again to Fidelity and pointed out that his contract was solely with Fidelity so blaming this error on a third party was contractually incorrect. He also stated that PV should always contain accurate data and if this was not possible, a suitable warning should be displayed. He also requested additional information relating to the account corrections made.

13. On 6 October 2020, Fidelity responded to Mr N and reiterated that it would not consider additional redress as the error occurred as a result of factors outside of its control. It also stated that he retained almost 90% of his current fund value in cash and due to market volatility in the weeks leading up to the switches it would be speculative to comment on what he would otherwise have done.

14. On 13 October 2020, Mr N replied to Fidelity stating that it was responsible for incorrect reporting on PV and he was willing to accept a compensation payment of £45,000 to settle the matter.

15. On 26 October 2020, Fidelity wrote to Mr N enclosing a summary of the corrections made on 29 June 2020 by account and contribution type. It also enclosed summaries of the switches that took place, together with a comparison of the switches that should have happened if the correct prices had been used. Its position with regard to further redress remained the same as detailed in its earlier responses.

Mr N’s position

16. Fidelity should have corrected the information within days, not months. Stale pricing does not explain why PV was inaccurate for approximately three months.

17. The incorrect website data adversely impacted his investment decisions, which led to losses not covered by the £44,641.28 correction. Fidelity has no idea what he may have done differently and consequently this has no legal significance.

18. Fidelity has a responsibility to reflect the correct pricing even during a pandemic or periods of volatility. If this is not possible, it only has to add a simple warning to the website but failed to do so. Other financial institutions were still able to provide accurate data to their clients during the pandemic and it should not be used as an excuse for Fidelity’s failings.

19. Fidelity allowed him to continue trading, in good faith, while knowing PV was inaccurate.

20. As Fidelity has not provided an exact timeline regarding what happened and when, he is still unable to fully check if the corrections totalling £44,641.28 are accurate.

21. He has been invested with Fidelity for many years. During this time, he has always pursued a strategy based on shares, gilts and bonds. He rarely changed the type of funds and never invested in cash. He pursued this strategy during volatile market conditions, including the financial crash of 2008 and it was always his intention to continue this strategy to ride out the volatile market condition during the pandemic. In addition, during the pandemic, Fidelity introduced a restriction to one trade per month. The error in PV indicated the plan had dropped significantly, effectively overnight and this drop was overstated by PV. Based on the errors in PV and the limits on trades, he had no choice but to change to a cash strategy to protect his investment.

22. Had the correct figures been presented in PV, he would have continued the strategy he had pursued over many years and not changed his portfolio to cash. As additional proof, once the markets settled, he immediately began moving his funds back into his original investments. His actions over many years prior to the pandemic and after the initial volatility demonstrate that the errors in PV significantly influenced his investment decisions, which ultimately led to a large loss. The root cause error is Fidelity's and consequently, he should be compensated for his losses.

Fidelity's position

23. The investment switch on 17 March 2020 was directly impacted by the stale pricing issue. The switches placed on 20 March and 5 June 2020 were indirectly impacted by this issue. The correction which has been conducted corrected the switches placed on 20 March 2020 and 5 June 2020 as the unitary position for both switches was incorrect as a result of the stale pricing affecting the switch on 17 March 2020.

24. PV pulls data directly through from its internal system. As the stale pricing error has since been corrected, the information now shown on PV for the historic dates will reflect the correct price. It has checked with its IT department and is unable to provide the fund value which was shown on PV on the dates requested.

25. It operates on a forward pricing model so when Mr N placed a switch, he would not have known the price of the funds as the switch is only placed the next working day. Therefore, all switches are essentially made blind. When stale pricing occurs, the same price is reported over multiple days. Unfortunately, at this time, the markets were being impacted by Covid-19 and the market was extremely volatile with large daily reductions. Mr N placed switches to cash due to this volatility and placed further switches later on. When he switched to cash, there was stale pricing on his existing funds, which meant his switch occurred for a lower amount than it should have. Fidelity has since corrected this by adding additional units totalling £44,641.28.

26. Since Mr N switched to 100% cash in March 2020, he has kept over 85% in cash. It therefore has no reason to believe that he would have kept his initial investment strategy had the stale pricing error not occurred.

27. It appreciates that no warnings were placed on PV. However, it was unaware that stale pricing had occurred until it received the actual price, at which point it then needed to analyse the accounts and prices before it could be confirmed that stale pricing had occurred. As it was not aware in advance of when stale pricing would occur, it did not add a warning to PV.

28. In correcting the units, it has put Mr N in the position that he would have been in had the error by the third party not occurred. In view of this, it does not consider that a further award is warranted for distress and inconvenience.

29. Members can contact its Pension Service Centre to discuss their account, obtain information and place investment switches.

Adjudicator's Opinion

30. Mr N's complaint was considered by one of our Adjudicator's who concluded that Fidelity should pay £500 directly to Mr N to recognise the significant distress and inconvenience its errors have caused him. The Adjudicator's findings are summarised in paragraphs 31 to 39 below.

31. It was Fidelity's responsibility to ensure that the PV tool it provided was accurate and its failure to do so amounts to maladministration. Fidelity accepted responsibility for the error by voluntarily implementing the account corrections.

32. Fidelity provided sufficient evidence in the letter sent on 26 October 2020 to demonstrate that amendments to add additional units to the funds in the Plan ensured the value of the Plan is now correct.

33. Mr N says he would have made different investment decisions had he been aware of the correct values. The Adjudicator thought it was more likely than not that Mr N would have carried out exactly the same switches on 16 March, 19 March and 4 June 2020 if the information displayed in PV had been accurate.

34. Although Fidelity is now unable to provide evidence of the incorrect fund values that were shown on PV, it has provided information based on the correct fund values to give an indication of the trend of the value of the Plan around the time of the switches (see Appendix).

35. It is apparent that the value of the Plan was in a sharp decline between 8 March and 19 March 2020. On 16 March 2020, the fund value had fallen by £12,685.81 more than the incorrect value Mr N would have seen on PV. On 19 March 2020, the fund value had fallen by £45,262.67 more than the incorrect value Mr N would have seen on PV. So, the trend was clear even if the figures Mr N saw on PV were one day out of date. The value then remained constant between 21 March and 6 June 2020 due to the funds held being invested 100% in cash.

36. Fidelity explained that it operates on a forward pricing model so when Mr N placed a switch, he would not have known the price of the funds as the switch is only placed the next working day.

37. The fund value remained static up to the time of the switch on 4 June 2020 so I am unable to conclude that Mr N's decision to switch on this occasion would have been any different if PV had displayed the correct value. After Mr N switched to 100% cash on 19 March 2020, he retained 95% in cash and Fidelity confirmed on 19 October 2021 that since then Mr N had kept at least 85% in cash. This indicated that he would not have kept his initial investment strategy had the stale pricing error not occurred. Mr N's perceived losses were attributable to market volatility rather than Fidelity and this aspect of his complaint should not be upheld.

38. A warning should have been placed on PV as the issue occurred for an extended period. However, this particular aspect did not amount to maladministration as there is no requirement for Fidelity to have provided such a warning. It would have been helpful for Fidelity to have done so to enable members to make informed choices about their investments, but the Adjudicator did not believe this would have changed the action taken by Mr N.

39. The evidence was not sufficient to show that Fidelity directly caused Mr N a financial loss beyond that for which it has already compensated him. However, the errors made by Fidelity would have caused Mr N significant distress and inconvenience. Mr N had to invest a lot of time trying to rectify the position and in pursuing the complaint. Mr N was also clearly worried that the inaccuracies in PV may have resulted in him suffering investment losses. Therefore, Fidelity should pay Mr N £500 for the significant distress and inconvenience he experienced.

40. Fidelity accepted the Adjudicator's Opinion.

41. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, and I will respond to Mr N's additional comments which are summarised below:

    - The finding that he would have acted in the same way regardless of the errors in PV cannot be substantiated by Fidelity or the Pensions Ombudsman. He doubts such an analysis would stand up in a court of law.

    - The trend in fund performance has been heavily relied upon in the Opinion. However, the actual data was wrong, so trending cannot be relied upon. Fidelity's position is only supported by luck and the trend could have easily swung in the opposite direction. The Opinion is incorrect as there is no substitute for inaccurate data.

    - The Adjudicator failed to recognise the external factors impacting financial markets after Fidelity's errors when finding that he would have maintained his high cash strategy if there was no incorrect information displayed on PV. He says he has slowly moved back into a share strategy, which he would have competed had it not been for these factors.

- Fidelity is trusted by its investors to be professional, reliable and safe as a major financial institution. He does not accept that maladministration explains Fidelity's world-wide platform, being incorrect for over three months. This significantly downplays what happened and its impacts.

- The opinion is biased as it mirrors Fidelity's position. It is not possible to prove what might have happened had there been no errors on PV. He considers the level of compensation offered to be paltry given that Fidelity made serious long-term errors. It would not cover the charges from Fidelity for what has proved to be extremely poor service.

Ombudsman's Decision

42. There is no dispute that PV displayed incorrect valuations for his Plan between 9 March 2020 and 29 June 2020, which I find amounts to maladministration.

43. I find that Fidelity has provided sufficient evidence to demonstrate that it has correctly carried out amendments to add additional units to the funds in the Plan. This ensures the switches Mr N placed were correctly priced.

44. Mr N does not accept that he would have carried out exactly the same switches on 16 March, 19 March and 4 June 2020, if the information displayed in PV had been accurate.

45. The starting point for my approach for cases involving a misstatement, and provision of incorrect information, is that the member is only entitled to receive the benefits provided under the Scheme rules or in this case the Plan's terms and conditions. Broadly, I will provide redress if it can be shown that financial loss or non-financial injustice has flowed directly from reliance on incorrect information given. Also, that it was reasonable to do so and that it resulted in an irreversible loss.

46. It is not always possible for a party to evidence what they would have done had they received the correct information. In those cases, I must make a decision, on the balance of probabilities, using the information available and the events that did take place. Claims of loss cannot be made with the benefit of hindsight, so I must consider what actions were taken with the information available and what actions would have been taken, on the balance of probabilities, had that information been correct. In this case, I have carefully considered whether Mr N would have taken the same course of action in relation to the switches he made if the information displayed in PV had been correct.

47. On 16 March 2020, Mr N has said he decided to make a switch on the basis that his fund value had fallen significantly. The fund value he saw on PV was actually £12,685.81 more than the correct value on that date. So, given Mr N has claimed he

made the switch due to the significant drop in his fund value, I find, on the balance of probabilities, that Mr N would still have made this switch if the correct value had been displayed.

48. On 19 March 2020, Mr N made a further switch, which again he attributes to a sharp fall in his fund value displayed on PV. However, the fund value displayed on PV when he made this decision to switch was £45,262.67 more than the correct value on this date. Applying the same rationale, he claims made him decide to carry out this switch to the lower correct value, I find that he would have had an even greater cause for alarm and would, on the balance of probabilities, have carried out the same switch.

49. In relation to the switch on 4 June 2020, the value had remained constant between 21 March and 6 June 2020, due to the funds held being invested 100% in cash on 19 March 2020. Therefore, there is nothing to suggest, from this transaction, that Mr N would have taken a different action had the value displayed on PV at this date been correct.

50. For these reasons, I am unable to conclude that Mr N would have chosen a different course of action. I acknowledge Mr N's arguments but the evidence available suggests that, had he seen the correct information on PV, he would have taken the same action to switch to safer, cash investments, as he has said his decision to carry out the switches was driven by his concern at the falling value of his fund.

51. I note Mr N's comments about the trend in the data supporting Fidelity's position by luck and that the data could have easily swung in the opposite direction. This is somewhat irrelevant to the facts of this case and the questions I must consider. Fidelity has provided evidence to demonstrate that the value of the funds were falling over the period in question, and had fallen more than the values reflected on PV for the key dates in this case. Had the trend in fund values swung the other way my consideration of this case would be different, but it did not so I agree with the Adjudicators findings in this regard.

52. Mr N switched to 100% cash on 19 March 2020, and the fund was still held in 100% cash as of 4 June 2020. Fidelity also confirmed on 19 October 2021, that since 19 March 2020, Mr N had kept at least 85% of the fund in cash. He has argued that the Adjudicator has failed to recognise that, following Fidelity's errors, the financial markets have been impacted by a much longer than anticipated pandemic, followed by recession, inflation, and a banking crisis when he came to the conclusion that he would have maintained a high cash strategy even if PV had been correct. He claims that despite these factors he has slowly moved back to a share strategy which would have been completed sooner had these factors not played a part.

53. I agree with the Adjudicator's findings on this point. These factors would have been applicable whether Mr N had been provided with incorrect or correct information between 9 March 2020 and 29 June 2020. I have already found, on the balance of probabilities, that Mr N would have completed the switches to cash had the correct values been available on PV. So, the fact that he chose to retain a higher cash

investment because of these factors after Fidelity had informed him of the errors and applied corrections to the Plan, supports the Adjudicators position that he would have maintained this cash strategy regardless of the incorrect information.

54. I find that Mr N's perceived losses, over what Fidelity has already corrected, were attributable to market volatility rather than Fidelity's maladministration.

55. Mr N has said that he cannot accept that the PV being inaccurate for three months is simply maladministration when Fidelity is such a large and trusted financial institution. I acknowledge the point Mr N is making, but size is irrelevant to a finding of maladministration. I can only consider the complaint brought to me on its own merits, and only in respect of the applicant bringing the complaint. I have considered what happened and its impact on Mr N, but I am unable to consider any wider impact such as impact on other customers of Fidelity.

56. Mr N has suggested that the Adjudicator's opinion is biased and the level of award recommended is not sufficient to redress the non-financial injustice he has suffered. I do not agree. The Adjudicator considered all of the evidence available and reached a decision impartially. I agree with that decision for the reasons I have set out above. Mr N is entitled to a distress and inconvenience award in respect of the non-financial injustice Fidelity has caused him to suffer as a direct result of its maladministration.

57. My awards for non-financial injustice are intended as an acknowledgement to the applicant of the inconvenience and/or distress that they have suffered. In other words, to remedy the injustice genuinely suffered, not to penalise or punish the respondent for bad behaviour. I have published guidance on the level of awards I will make[1]. I note that Mr N had to invest a lot of time trying to rectify the position and in pursuing the complaint. Mr N was also clearly worried that the inaccuracies in PV resulted in him suffering investment losses. However, I consider the effect to have been short term, and that Fidelity took reasonable steps to put the matter right by carrying out a reconciliation and applying a correction to the Plan. As such I consider Mr N has suffered significant non-financial injustice and an award of £500 is reasonable.

58. I partially uphold Mr N's complaint.

Directions

59. To put matters right, Fidelity shall, within 28 days of the date of this Determination:

- Pay Mr N £500 for the significant distress and inconvenience he experienced.

Anthony Arter CBE

Deputy Pensions Ombudsman
21 August 2023

[1] https://www.pensions-ombudsman.org.uk/publication/redress-non-financial-injustice

Appendix

Information provided by Fidelity showing the actual current value of the Plan

08 March 2020: £1,256,433.40 (As this was a Sunday the value is from 6 March 2020)
09 March 2020: £1,248,126.25
10 March 2020: £1,239,555.16
15 March 2020: £1,190,311.68 (As this was a Sunday the value is from 13 March 2020)
16 March 2020: £1,177,625.87
17 March 2020: £1,143,468.13
18 March 2020: £1,103,925.44
19 March 2020: £1,058,662.77
20 March 2020: £1,068,855.97
21 March 2020: £1,068,855.97 (As this was a Saturday the value is from 20 March 2020)
03 June 2020 : £1,068,855.97
04 June 2020 : £1,068,855.97
05 June 2020 : £1,068,855.97
06 June 2020 : £1,068,855.97