CAS-74121-W6S9

Ombudsman's Determination

Applicant	Mr R
Scheme	Fidelity FundsNetwork Pension (**the Plan**)
Respondents	Fidelity International (**Fidelity**)

Outcome

1. Mr R's complaint against Fidelity is partly upheld. To put matters right, Fidelity shall follow the actions set out in the section, "Directions" (paragraphs 59-60 below).

Complaint summary

2. Mr R complained that, as part of the transfer of his drawdown account, Fidelity delayed the sale of units he held in three funds managed by Invesco Perpetual (**the Invesco Funds**). In the intervening period, the unit price of the Invesco Funds decreased, so Mr R said that he suffered a financial loss as a result of the delay.

3. Mr R also complained about the overall time taken by Fidelity to complete the transfer of his drawdown account.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.

5. Prior to the transfer, Mr R held two Flexi-Access Drawdown SIPP accounts with Fidelity. The first account (**Account 1**) was opened in March 2016, following a pension transfer from Standard Life. The second account (**Account 2**) was opened in July 2018, following a pension transfer from The Countrywide PLC Stakeholder Pension Scheme.

6. On 15 January 2020, Fidelity received a request to transfer Account 1.

7. On 20 January 2020, the receiving provider for the transfer (**Seven IM**) emailed Mr R’s independent financial advisor (**Smith & Pinching**) to confirm that it had received a transfer valuation from Fidelity. Seven IM explained that it was unable to administer the Invesco Funds on its platform, because they were restricted share classes. It asked Smith & Pinching to confirm how Mr R wished to proceed.

8. On 21 January 2020, Smith & Pinching emailed Seven IM to say that the Invesco Funds should be sold in order for the proceeds to be transferred as cash.

9. On the same day, Seven IM emailed Smith & Pinching to confirm that the Invesco Funds would be sold, and Mr R’s remaining funds in Account 1 would be transferred in-specie. It said that the transfer was in progress.

10. On 28 January 2020, Seven IM registered the instruction to transfer Account 1 from Fidelity. This instruction was recorded on Equisoft, an electronic re-registration service.

11. On 6 and 14 February 2020, Seven IM contacted Fidelity to request an update on the progress of the transfer.

12. On 20 February 2020, Fidelity notified Seven IM that there were some outstanding income distribution payments for funds held in Account 1. Fidelity said that once these payments had been made, it could instruct the transfer.

13. On 2 and 9 March 2020, Seven IM contacted Fidelity to request an update on the progress of the transfer.

14. Between 9 and 16 March 2020, Fidelity completed the in-specie transfer of 15 of the funds that had been held in Account 1.

15. On 17 March 2020, Seven IM contacted Fidelity to request an update on the progress of the transfer.

16. On 18 March 2020, Fidelity emailed Seven IM. It confirmed that the majority of Mr R’s funds, that were to be transferred in-specie, had been re-registered as requested. However, it said that the manager for his BNY Mellon funds had rejected the transfer to the nominee account provided. Fidelity asked Seven IM to confirm its nominee account for the BNY Mellon Emerging Income and BNY Mellon Global Income funds.

17. On 24 March 2020, Fidelity emailed Seven IM to chase a response to its previous email.

18. On 31 March 2020, Seven IM emailed Fidelity to confirm that it had re-submitted the correct account information for the transfer of Mr R’s BNY Mellon funds.

19. On 2 April 2020, Fidelity received confirmation that Mr R’s BNY Mellon funds were successfully transferred. This meant that all the in-specie transfers had been completed.

20. On 22 April 2020, Fidelity initiated the sale of the Invesco Funds; the sale was settled on 29 April 2020.

21. On 4 May 2020, the cash balance held in Account 1, of £731,077.95, was transferred to Seven IM.

22. On 12 May 2020, Fidelity paid rebates of £2.52 and £6.84 to Account 1.

23. Between 20 and 28 May 2020, three income distribution payments, totalling £942.62, were made to Account 1.

24. On 1 July 2020, Smith & Pinching emailed Fidelity to raise a complaint on behalf of Mr R. In summary, the concerns raised were:-

- The delayed sale of the Invesco Funds and transfer of Mr R's cash funds from Account 1 meant that he lost the opportunity to invest at a market low point.

- Mr R's monthly income drawdown payments from Seven IM could not start until May 2020. This was because Fidelity did not provide the required information to Seven IM until 7 May 2020. Mr R had to draw income from other sources.

- In April 2020, Mr R received a partial income drawdown payment from Account 2, which he was not expecting to be paid. The uncertainty around his payments caused Mr R a lot of stress.

- On 21 January 2020, Seven IM was instructed to sell the Invesco Funds and transfer the proceeds as cash. The transfer took place in May 2020, but there was no apparent reason for this delay. It caused Mr R a financial loss, because the unit price of the Invesco Funds fell between January 2020 and the date of sale.

25. Smith & Pinching said that the process of re-registering the majority of Mr R's funds, held in Account 1, to Seven IM was carried out between February and March 2020. Smith & Pinching confirmed that Mr R did not have concerns about this aspect of his transfer. It asserted that subsequent delays to the transfer of Mr R's other benefits, primarily held in cash, and Fidelity's delayed provision of information to Seven IM, was unacceptable. Smith & Pinching considered that Mr R had been financially disadvantaged as a result. It also considered that further redress should be awarded for the additional work it had undertaken, in light of the delays, and for the distress and inconvenience Mr R had suffered.

26. On 10 July 2020, the remaining balance in Account 1 of £951.98, for the combined rebates and income distribution payments received between 12 and 28 May 2020, was transferred to Seven IM.

27. On 17 July 2020, the transfer of Account 1 was recorded as complete.

28. On 27 August 2020, Fidelity issued a response to Mr R’s complaint. It said that the process of transferring Account 1 began on 15 January 2020, following receipt of a transfer notification from Seven IM. It explained that Mr R’s in-specie fund transfers were completed between 9 March and 1 April 2020. It added that its standard procedure for funds which cannot be transferred in-specie, is that they are sold after the completion of any in-specie transfers. In Mr R’s case, the Invesco Funds were sold on 22 April 2020. Fidelity explained that due to an error, the sale of these units was not processed in a timely manner. It offered redress of £947.94 to Mr R, for the loss that it considered had been caused by its actions.

29. Fidelity apologised for the inconvenience it had caused. It said it had arranged to pay £100 to Mr R in recognition of this. However, it considered that its only error in processing the transfer was the delay in the sale of the Invesco Funds, which it had acknowledged. It also noted that Smith & Pinching had telephoned it three times about this matter, so confirmed that it had arranged to pay £150 to Smith & Pinching in recognition of this.

30. Fidelity said that it did not receive a transfer request for Account 2, so it continued to make the scheduled drawdown payments to Mr R. By 2 April 2020, there were limited funds remaining in Account 2, so this was why the payment for that month was a lower amount than normal. Fidelity explained that it will usually send information about an income drawdown account to a receiving provider once a transfer has been completed. In Mr R’s case, Fidelity said the majority of the transfer administration was completed by 4 May 2020, and it sent the relevant account information to Seven IM that day. It added that it would have provided the information to Seven IM by telephone if such a request had been made.

31. On 26 November 2020, Smith & Pinching wrote to Fidelity. It said that it had carried out a further investigation of Mr R’s case. It noted that Fidelity had set out that its procedure was to sell units which could not be transferred once any in-specie transfers had been completed. This meant that the Invesco Funds had to be sold. Smith & Pinching asserted that, following confirmation being given that Mr R wished to proceed on this basis, on 28 January 2020, Seven IM then instructed Fidelity to sell the units. Smith & Pinching considered, based on a telephone conversation it held with Fidelity, that Fidelity’s standard timescale to action the sale of units was 48 hours following the request. Its position was that the sale of the Invesco Funds should have been actioned on 28 January 2020. It calculated that Mr R's financial loss from the sale not being carried out at that time was £30,916.86.

32. On 14 January 2021, Fidelity wrote to Smith & Pinching. It said that the information it had provided, regarding the 48-hour timescale for the sale of units, did not relate to Mr R’s transfer. It reiterated that its procedure was to sell units once any in-specie transfers had been completed. Fidelity explained that it had paid Mr R redress of £947.94, because his cash trades had not been processed in a timely manner. It considered that it had fully redressed Mr R for any loss for which it was responsible.

Mr R's position

33. As far as he is aware, Fidelity did not provide a prior explanation that its policy was to wait to sell any funds, which could not be transferred in-specie, until all in-specie transfers had been completed. This point was only clarified in Fidelity's complaint response letter, dated 27 August 2020.

34. The basis of the estimate for his financial loss is that the Invesco Funds should have been sold on 28 January 2020, at the unit prices for that date. When compared with the actual value achieved by the sale of these funds, the difference was £30,916.87.

35. The complaint to Fidelity highlighted his concern that he was unable to receive income payments from Seven IM until May 2020. Fidelity provided its response, in a letter dated 27 August 2020, and made an offer of £100 for the distress and inconvenience he had suffered. This sum was paid to him without seeking his acceptance. He remains dissatisfied with Fidelity's response.

36. Smith & Pinching has provided a screenshot (**the Screenshot**) of the instruction that was made to Fidelity on 28 January 2020, via Equisoft, to transfer the various funds Mr R held in Account 1. The Screenshot highlighted that all funds marked 'In-Specie' were to be re-registered and the Invesco Funds were marked as 'Encash'.

37. Smith & Pinching has provided a spreadsheet showing the transactions for Account 1 and Account 2 in the year 2020. It has also explained that following the transfer of the cash funds to Seven IM, Mr R began to invest these funds from 24 June 2020. He then continued to invest at regular intervals up to November 2021, in order to take advantage of market opportunities.

Fidelity's position

38. It provided Mr R's accounts on an execution-only basis. The relevant information about the transfer process was available on its website. It was Mr R's responsibility to understand this and the likely timescale. At the time of the transfer, it quoted a period of between eight and twelve weeks to complete the process. This allowed for processing times and settlement of the transactions.

39. It is industry standard to sell funds, which cannot be transferred in-specie, after any in-specie transfers have been completed. This is so that the funds remain in the market for as long as possible because it cannot guarantee exactly how long the process will take. Cash will be transferred last, so that it can deduct any outstanding service fees.

40. It had to wait for Mr R's income distribution payments, in February and March 2020, before proceeding with the transfer administration. When transferring an account, it will place a block on the account to ringfence the funds. This ensures that the values are accurate and there are no discrepancies between it and the receiving provider. Any pending deals, such as income distributions, prevent the block from being applied. In Mr R's case, this meant the in-specie transfers could not be initiated until March 2020, with the first transfer being completed on 9 March 2020. However, it was able to carry out some other administrative actions for the transfer during the intervening period.

41. Its service level agreement (**SLA**) to complete the sale of a non-transferable fund, as part of an overall account transfer, is nine working days. For an instruction to sell that is not part of a request to transfer, it would normally take 48 hours from the receipt of a valid request, but this was not applicable to Mr R.

42. Its SLA to complete the transfer of cash funds to another drawdown provider is also nine working days.

43. The redress to which it has already agreed was stated to be an amount of £947.94 in its correspondence, but the actual amount paid was £947.96. The difference was most likely due to rounding from more decimal places by its dealing department.

44. The reason that it offered the redress was because the sale of the units for the Invesco Funds should have been instructed within nine working days of the final fund being transferred in-specie, as per the SLA. In Mr R's case, the completion of the in-specie transfers was confirmed on 2 April 2020. It then determined that the unit sale should have been instructed on 15 April 2020, rather than 22 April 2020, which was the actual date of instruction. It now acknowledges that 15 April 2020 was seven working days, rather than the SLA of nine working days, after 2 April 2020. It had not accounted for the two Easter bank holidays on 11 and 14 April 2020.

45. Mr R normally received monthly income payments of £2,614.06 from Account 2. This continued until April 2020, when the remaining balance of the account was only £1,015.41, so that was the amount paid out. As there was no balance remaining in Account 2, there was nothing to transfer in addition to Account 1.

Adjudicator's Opinion

46. Mr R's complaint was considered by one of our Adjudicators, who concluded that further action was required by Fidelity. The Adjudicator's findings are summarised below:-

- The Screenshot records how the request was made to Fidelity to either transfer in-specie, or sell, Mr R's funds in Account 1. It shows that on 28 January 2020, an instruction was made for Fidelity to sell the Invesco Funds as part of the transfer to Seven IM.

- Fidelity's actions in relation to the sale of the Invesco Funds did not amount to maladministration. Its standard approach, to wait until in-specie fund transfers have been completed before selling funds, is reasonable. Fidelity did not explain this to Mr R prior to commencing the transfer, but this was not required, and Mr R did not ask Fidelity about the timescales for this part of the process.

- There was no evidence that a request was made to sequence the transactions such that the Invesco Funds were immediately sold upon instruction, the proceeds held as cash, then the cash funds transferred once the in-specie transfers had been completed. The Adjudicator's view was that it was unreasonable to expect Fidelity to have taken this action without it being requested.

- The delay to the transfer of approximately one week, acknowledged by Fidelity, amounted to maladministration. Fidelity paid Mr R redress for this delay, calculated on the basis that the Invesco Funds should have been sold within the SLA of nine working days of it receiving notification that the in-specie fund transfers had been completed.

- Fidelity's redress process took the approach that the unit sale should have been instructed on 15 April 2020, rather than 22 April 2020. Fidelity has since accepted that 15 April 2020 was only seven working days after 2 April 2020.

- The Adjudicator's view was that Fidelity's intention was to establish the date of sale for the Invesco Funds as being nine working days after 2 April 2020, which was 17 April 2020. The Adjudicator recommended that Fidelity should calculate what the value of the Invesco Funds would have been, had the units been sold on 17 April 2020, and compare this to the value calculated for 15 April 2020. If Mr R would have received a higher value for the sale on 17 April 2020, Fidelity should pay redress for the difference, plus interest.

- The overall time taken by Fidelity, to carry out its administrative work for the transfer, was approximately one week more than the 12-week timeframe it had indicated. The Adjudicator's view was that this did not amount to maladministration.

- Fidelity's actions, in relation to Mr R's income drawdown payments, did not amount to maladministration.

- Mr R would have experienced some distress and inconvenience, but the £100 already paid to him by Fidelity was sufficient recognition of this.

47. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. He provided further comments in response to the Opinion, which are summarised as follows:-

- Fidelity's lack of action was unacceptable, and he asserts that it is hiding behind its standard practices. He was not informed that the sale of the Invesco Funds would be delayed. He has suffered a financial loss because of this delay.

- Fidelity's stated standard practice is to sell units in funds that cannot be transferred in-specie. He considers this relates to funds which have not been instructed for sale prior to the point the transfer has been requested.

- In his case, Fidelity was instructed to sell the funds in January 2020, so there was a delay of approximately three months. His understanding was that the sale would take place immediately.

- Fidelity has since explained that its standard timescale, following an instruction to sell units, is 48 hours.

48. Fidelity accepted the Adjudicator's Opinion. It calculated that had the Invesco Funds been sold on 17 April 2020, Mr R would have received an additional £1,142.49 for the sale of these funds.

49. Mr R's further comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

50. Following the initial notification to Fidelity of the request to transfer Account 1, Smith & Pinching contacted Seven IM to confirm that the Invesco Funds should be sold for the proceeds to be transferred as cash. This was because Seven IM had explained that it could not hold the Invesco Funds on its platform. On 21 January 2020, Seven IM acknowledged the sale request and confirmed that the transfer was in progress.

51. Fidelity has explained that its standard procedure, where a transfer includes in-specie fund transfers and unit sales for cash transfer, is to sell the units after the in-specie transfers have been completed. This is to ensure that the 'out of market' time is kept to a minimum. I find that this approach is reasonable, and I would not expect Fidelity to have deviated from it, unless asked to do so. Although it may have been helpful to Mr R, Fidelity was not required to explain to him that it would sequence the transactions in this way.

52. The instruction to transfer Account 1 was communicated via Equisoft, as shown in the Screenshot. There was no supplementary correspondence with Fidelity in relation to the sequencing of the transactions. I find no evidence that either Mr R, or Smith & Pinching, specifically informed Fidelity that it should sell the Invesco Funds as soon as possible, rather than wait until the in-specie transfers had been completed.

53. Mr R considers that the request to sell the Invesco Funds was a separate instruction and it should have been subject to Fidelity's 48-hour SLA. He said he was not aware that there would be a delay.

54. Having reviewed the Screenshot, I do not agree that the sale of the Invesco Funds was instructed separately to the in-specie transfer of Mr R's other funds. All of Mr R's funds were listed as part of a single transfer request and marked as 'In-Specie' or 'Encash', depending on the requirement. It is unfortunate that the process coincided with a decrease in the unit price of the Invesco Funds, but I find that this was not the responsibility of Fidelity.

55. Further, I find that the overall time take by Fidelity to complete Mr R's transfer was not unreasonable. I also find no evidence of maladministration in relation to Mr R's income drawdown payments from his Fidelity accounts.

56. However, I agree with the Adjudicator that, in fairness to Mr R, Fidelity should recognise the discrepancy in the working days used in its calculation of Mr R's redress. I note that Fidelity has accepted this point, and its calculation has shown that Mr R would have been financially better off if the Invesco Funds had been sold on 17 April 2020, rather than 15 April 2020. The difference in value was calculated to be £1,142.49. I find that Fidelity shall pay this amount to Mr R, plus additional interest.

57. I consider that Mr R will have suffered some distress and inconvenience as a result of the one-week transfer delay, for which Fidelity has provided redress. I find that the level of this distress and inconvenience does not warrant an additional award to the £100 already paid by Fidelity to Mr R.

58. I partly uphold Mr R's complaint.

Directions

59. Within 28 days of the date of this Determination, Fidelity shall pay the additional redress amount of £1,142.49, calculated in response to the Adjudicator's Opinion, to Mr R's Seven IM account. Fidelity shall also pay interest on this amount, covering the period from the hypothetical sale date of 17 April 2020 to the date of payment. The interest shall be calculated at the base rate for the time being quoted by the Bank of England.

60. If Seven IM cannot accept a payment from Fidelity, then the redress amount set out in paragraph 59 shall be paid directly to Mr R.

Anthony Arter CBE

Deputy Pensions Ombudsman
19 February 2024