

Ombudsman's Determination

Applicant	Mr S
Scheme	Fidelity Retail Pension Scheme (the Scheme)
Respondents	Fidelity International (Fidelity)

Outcome

1. Mr S' complaint is upheld and to put matters right Fidelity shall pay £1,520.80 to Mr S.
2. In addition, the Employer shall pay Mr S £1,000 for the serious distress and inconvenience it has caused him, taking into account any amount already paid.

Complaint summary

3. Mr S has complained that Fidelity delayed the payment of his pension benefits in the 2020/2021 tax year, which has resulted in an unnecessary tax charge.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.
5. In 2021, Mr S was facing severe financial difficulties and had sought advice from Quadrant Financial Associated Limited – the Independent Financial Advisors (**the IFA**) regarding a potential transfer of his pension with the Renold Pension Scheme (**the ceding scheme**). This would allow Mr S to receive a tax-free payment in addition to a further taxed payment of £7,604 (if the transfer was completed in the 2020/2021 tax year).
6. On 18 February 2021, the IFA sent a transfer application form to Fidelity. It also sent documentation in relation to the ceding scheme. This included Mr S' declaration that the IFA was appointed to act on his behalf, the Receiving Scheme Payment Instruction form (**RSPI**) and the Receiving Scheme's warrant to the Trustee of the ceding scheme.
7. On 2 March 2021, the IFA confirmed Mr S' bank account details to Fidelity.
8. On 3 March 2021, the IFA sent the following documents to Fidelity; a Letter of Authority (**LOA**), Expression of Wish (**EOW**), and nomination forms.

9. On 10 March 2021, the IFA chased Fidelity for the RSPI and was told that it had been sent to the ceding scheme. These forms had been sent via post.
10. On 15 March 2021, the IFA was informed by the ceding scheme that the LOA, EOW and nomination forms had been received. It stated:-

“The completed transfer-out paperwork was received on 15 March 2021 and after a review of the forms we have had to return some of the documents to Fidelity Retail Pension Scheme for amendments to be made.”
11. On 22 March 2021, the ceding scheme asked for the RSPI to be completed again.
12. On 30 March 2021, the IFA chased the ceding scheme. In response, it said that it still required the RSPI which needed to be signed by a member of Fidelity staff with their name, position and the date.
13. On 6 April 2021, the deadline for Mr S receiving payment in the 2020/2021 tax year passed. This meant that Mr S could not recover tax charged on his pension payment as it would take place in the 2021/22 tax year.
14. On 8 April 2021, the ceding scheme received the completed RSPI from Fidelity.
15. On 12 April 2021, the funds were transferred from the ceding scheme to Fidelity.
16. On 13 April 2021, the IFA complained to Fidelity. In summary the IFA said:-
 - It had highlighted from the start that Mr S was in an urgent financial situation and this case was completed under the Financial Conduct Authority (**FCA**) ‘Carve Out Rules’ in relation to the FCAs Code of Business Sourcebook 19.1 Pension transfers, conversions, and opt-outs (Appendix 1).
 - Due to delays caused by Fidelity Mr S did not receive payment prior to 5 April 2021 and this payment had then been subject to 20% tax of £1,520.80.
 - The ceding scheme updated the IFA that the RSPI had not been completed correctly. Fidelity was chased on a number of occasions and took much longer than necessary to complete this paperwork given the circumstances.
 - Without the delays caused by Fidelity Mr S would have received his taxed payment before 5 April 2021 and would have been able to reclaim the tax paid.
17. On 16 April 2021, Mr S received a tax-free cash payment of £22,137 and an income payment of £5,610.34 from Fidelity. This payment was made 12 working days later than expected due to an error by Fidelity in not completing the RSPI correctly. This payment was still within Fidelity’s Service Level Agreement (**SLA**) of between 10 to 20 working days for electronic transfers and two to three months for manual transfers.
18. On 12 May 2021, Fidelity responded to the IFAs complaint and said that it could not provide a full response at the time but that it would include a payment of £25 as part of the final response.

19. On 8 June 2021, Fidelity contacted the IFA to say that the final response was not ready and that investigations were still being carried out. As Fidelity were unable to resolve the complaint within eight weeks the complaint could be referred to the Pensions Ombudsman (**TPO**).
20. On 7 July 2021, Fidelity contacted the IFA to confirm that the case was still under investigation and again reiterated that the case could be referred to TPO.
21. On 5 August 2021, Fidelity contacted the IFA to explain that the case was still under investigation and reiterated that the case could be referred to TPO for investigation.
22. On 19 August 2021, Fidelity provided its response to the complaint which included the following reasoning:-
 - It agreed that on 10 March 2021 the RSPI sent to the ceding scheme was not completed fully and was not signed.
 - The LOA, EOW and nomination forms were sent to the ceding scheme within its normal SLA time frame.
 - Following a request for information the correct forms were sent to the ceding scheme on 25 March 2021.
 - Fidelity posted its end of year deadlines on its website and all instructions would have had to have been received by 16 March 2021 to be paid before the end of the financial year.
 - It was very unlikely that even if the correct transfer forms had been sent on 10 March 2021 that the transfer would have concluded before 16 March 2021.
 - Fidelity awarded Mr S £261.68 for distress and inconvenience which included a payment for lost interest of £11.68.
23. On 16 January 2021, Mr S brought his complaint to the Financial Ombudsman's Service (**FOS**).
24. On 27 January 2022, the FOS transferred Mr S' complaint to TPO.

Adjudicator's Opinion

25. Mr S' complaint was considered by one of our Adjudicators who concluded that Fidelity was responsible for maladministration which has resulted in Mr S being liable for an unnecessary tax charge. The Adjudicator's findings are summarised below:-
 - Due to delays caused by Fidelity the RSPI was not completed correctly until 8 April 2021. Although these delays were within Fidelity's SLA period of three months for transfers, they were unnecessarily long and meant that the transfer was not completed before the end of the 2020/2021 tax year.

- Fidelity was aware of Mr S' financial situation and his urgent need for the transfer to be completed, it was chased a number of times to complete the transfer within the 2020/2021 tax year.
- When comparing the timeline of events, the ceding scheme received the correct forms on 8 April 2021, the funds were transferred on 12 April 2021 and the payment was made to Mr S on 16 April 2021, a period of 7 working days. Had Fidelity not caused earlier delays, it was the Adjudicators opinion that the transfer could have been completed by 18 March 2021, (if the correctly completed forms had been sent on 10 March 2021). This would have left 10 working days before the end of the tax year.
- Fidelity had numerous opportunities to progress this transfer before the end of the tax year and did not do so. Fidelity has admitted it caused maladministration, and it could have avoided the tax charge affecting Mr S. Due to Mr S' circumstances this tax charge would have caused him further serious distress and inconvenience.
- The Adjudicator said that due to the delays caused by Fidelity Mr S suffered an avoidable tax charge given that the transfer was not completed before the end of the 2020/2021 tax year. Fidelity should act to compensate Mr S for the tax charge incurred to put him back in the position he would have been in had the transfer been completed on time.

26. Fidelity disagreed with the Adjudicator's Opinion and made the following comments:-

- Covid-19 had impacted its ability to conduct business in the office.
- February, March and early April were the busiest times of the year for the business.
- It had posted its deadlines on its website and provided instructions to Financial Advisors. It would have needed to have received the transfer paperwork by 16 March 2021 to process the requested payments in the 2020/21 tax year.
- Even if the forms were completed correctly, it could not have processed them as they would have been received on 18 March 2021 which was two days after its deadline.
- It had reviewed its communications with the IFA and was unable to find any record of them informing it of the urgency of the transfer.

27. The Adjudicator addressed the points raised by Fidelity. In summary he said:-

- Although Covid-19 had affected many businesses this was not mentioned at the time of the delays and Fidelity's SLAs were not adjusted to take this into account.
- Without Fidelity's delays the correct forms could have been received on 18 March 2021 which is two days outside of the 16 March 2021 deadline. Although Fidelity

have set deadlines to assist with processing transfer applications at busy times of the year this deadline would not have prevented Fidelity from completing the work before the end of the tax year and due to Mr S' circumstances his case should have been prioritised.

- In the initial complaint application made on 14 April 2021, the IFA explained that this transfer was made under the FCA 'Carve out rules' for financial hardship. This point was later accepted by Fidelity in its response to Mr S' complaint. Additionally, the complaint response on 19 August 2021 acknowledged the financial hardship of Mr S at the time of the transfer (Page two, paragraph one):-
 - '(the IFA) made several calls to us to make enquiries, you also expressed the very difficult financial circumstances your client was in and the urgent need to make the payment to him.' **(Quote one)**
- On the balance of probabilities, Fidelity was aware of Mr S' circumstances and should have prioritised his case as per the FCA rules.
- Without Fidelity's maladministration it would have been very possible for the transfer to have been completed in the 2020/21 tax year given Mr S' situation.

28. On 30 October 2024, the Adjudicator sent a timeline of events to confirm with Fidelity (Appendix two). This timeline included the events as they happened and compared it to a potential timeline had Fidelity completed the RSPI the first time it was sent. The result was that the transfer from the ceding scheme to Fidelity would have taken place on 16 March 2021. This would have meant that the transfer would have been completed on the day of the cut off (as per Fidelity's own cut off dates).
29. On 31 October 2024, Fidelity responded to this timeline and highlighted that although the funds were transferred from the ceding scheme to Fidelity on 16 March 2021, they would not have settled in Mr S' account until 17 March 2021 (Appendix two). Fidelity argued that as this is after their deadline for processing pension transfers it would not have been able to complete the holdings being transferred to Mr S' drawdown account and Tax-Free Cash (**TFC**) payment in the remaining 11 working days.
30. The complaint has now been passed to me to consider. I have noted the additional points made by Fidelity, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

31. Fidelity has argued that it processed Mr S' pension transfer within its SLA. It has accepted that it incorrectly completed the RSPI, but that despite this Mr S' transfer would still not have been completed before the end of the 2020/21 tax year.
32. Fidelity have also said that Covid-19 had impacted the amount of time required to process pensions transfers. This may have been the case at the time, but was not highlighted to Mr S or to the IFA at the start or during the transfer process. In

Fidelity's initial response and final response to Mr S' complaint it did not mention the impact of Covid-19 on his transfer request.

33. Fidelity have further said that even if no maladministration had occurred the transfer would not have been completed before the end of the tax year. This was made clear on its website which provided payroll cut off dates.
34. I agree with the Adjudicator's position that if no maladministration had occurred the transfer could have been completed on 16 March 2021 which would have left 11 working days before the end of the tax year. The cut off dates on Fidelity's website do not prevent the transfer from going ahead and due to Mr S' financial situation this case could have been prioritised to be completed before the end of the tax year.
35. Based on the potential timeline of events (Appendix two), Mr S could have received his funds the next day on 17 March 2021. Fidelity then would have had 10 working days for the holdings to be transferred to Mr S' drawdown account and TFC payment. Based on the actual timeline of events it would have taken three working days from the day that the funds settled in Mr S' account to the day that the holdings were transferred to Mr S' drawdown account and TFC payment was made. This would have meant that the transfer process could have been completed on 22 March 2021 leaving a further seven working days before the end of the tax year.
36. Fidelity said that it was not aware of the urgent financial situation Mr S was in and had not been chased by the IFA. Part of the information reviewed included Fidelity's initial response to Mr S' complaint, that the transfer request was completed under the FCA 'Carve out rules' for financial hardship and Fidelity went on to acknowledge Mr S' situation and the number of attempts Mr S' IFA made to progress this transfer as shown in Quote one. Based on this information I disagree with Fidelity, and it appears it was aware of Mr S' situation prior to the transfer.
37. In regard to non-financial loss, it is clear that Mr S was in a position of financial difficulty which led to his initial transfer request. Additionally, Mr S' IFA explained this to Fidelity on a number of occasions. Despite this, Fidelity has not acted to prioritise Mr S' case. This has caused Mr S serious distress and inconvenience given his circumstances; so, I award Mr S £1,000 in recognition of this.
38. Therefore, I uphold Mr S' complaint.

Directions

39. To put matters right, the Employer shall, within 28 days of this Determination:
 - (i) Pay £1,520.80 to Mr S. This figure represents the amount of tax that Mr S has had to pay as a result of not receiving £7,604 in the 2020/21 tax year;

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- (ii) Pay Mr S £738.32 in addition to £261.68 already paid in respect of the serious distress and inconvenience he has experienced.

Anthony Arter CBE

Deputy Pensions Ombudsman

5 December 2024

Appendix 1

Code of Business Sourcebook

19.1 Pensions transfers, conversions, and opt-outs

Application

Except where a firm is providing abridged advice (see COBS 19.1A), this section applies to firm which:

- (1) Gives advice on pension transfers, pension conversions and pension opt-outs to a retail client; or
- (2) Arranges pension transfers, pension conversions or pension opt-outs.

In relation to:

- (3) A pension transfer;
- (4) A pension conversion; or
- (5) A pension opt-out from a scheme with safeguarded benefits or potential safeguarded benefits.

A firm should comply with this section in order to give appropriate independent advice for the purposes of section 48 of the Pension Schemes Act 2015.

Appendix 2

Event	Actual timeline	Potential timeline (if the forms were completed correctly)
IFA sends transfer application form to Fidelity	18/02/2021	18/02/2021
Confirmation of Mr S' bank details	02/03/2021	02/03/2021
Documents sent to Fidelity (LOW, EOW, nomination forms)	03/03/2021	03/03/2021
IFA chases Fidelity for RSPI to be sent to the ceding scheme	10/03/2021	10/03/2021
The ceding scheme updates that the LOA, EOW and nomination forms have been received	15/03/2021	15/03/2021
The ceding scheme asks that the RSPI to be completed again (as it was completed incorrectly)	22/03/2021	N/A
The IFA chased the ceding scheme again with the response that the RSPI had been completed incorrectly	30/03/2021	N/A
Deadline for Mr S receiving payment in the 2020/2021 tax year.	05/04/2021	N/A
Ceding scheme receives the completed RSPI from Fidelity	08/04/2021	15/03/2021
Funds transferred from the ceding scheme to Fidelity	12/04/2021	16/03/2021
Funds received into Mr S' account	13/04/2021	17/03/2021

The IFA complains to Fidelity	13/04/2021	N/A
Holdings are transferred to Mr S' drawdown account and TFC payment sent	16/04/2021	22/03/2021
End of tax year	N/A	01/04/2021