

Ombudsman's Determination

Applicant	Mr D
Schemes	Friends Life Group Personal Pension (GPP) Fidelity Self-Invested Personal Pension (SIPP)
Respondents	Fidelity Pensions Service (Fidelity) Friends Life

Outcome

1. I do not uphold Mr D's complaint and no further action is required by Fidelity or Friends Life.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr D has complained that an incorrect amount was transferred to Fidelity against his wishes. Mr D has also complained that in order to raise this incorrect amount, Friends Life had to sell units that Mr D had expressly wanted to remain invested with Friends Life.

Background information, including submissions from the parties

4. In May 2014, Mr D opened a SIPP with Fidelity. In order to complete the set up process Mr D had to complete an online application form which asked him to provide some personal details, scheme information and an "estimated" amount to be transferred and from which provider/fund.
5. Prior to arranging this transfer Mr D had arranged to sell units held in a GPP administered by Friends Life, and then transfer the proceeds into his new SIPP with Fidelity. The amount Mr D proposed to transfer was £125,000. Mr D has said he did not intend to transfer all his holdings within the Friends Life GPP.
6. On 23 May 2014, Friends Life transferred £147,367 to Fidelity. To fund this transfer, it had to sell all Mr D's holdings in the Friends Life Global Equity Fund (as he had already sold other shares in the BlackRock European Equity Index Fund).

7. Once Mr D received notification that a full transfer had been finalised, and that his entire Friends Life Global Equity Fund had been sold, he contacted Friends Life to complain. He said it had not followed his instructions to transfer only £125,000, and it had transferred the entire proceeds of the Global Equity Fund.
8. Friends Life emailed Mr D on 10 June 2014, to explain that it had actioned the request made by Fidelity to proceed with a “full transfer”. This request was made via Origo, which is the standard system used by all major SIPP providers to process transactions such as disinvestment and transfers. Origo is not however used to process partial transfers.
9. On the same day Friends Life said:

“Fidelity had requested the transfer via Origo which cannot process partial transfers through. Fidelity had also requested the transfer amount of approximately £125,000.00.”

This suggested that any issue lay with Fidelity as it was the receiving scheme that raised the original transfer request on Origo.
10. On 17 June 2014, Mr D contacted Fidelity and queried the assertion made by Friends Life that Fidelity was at fault. Fidelity responded on 1 July 2014, saying that no record of a partial transfer request could be found and that the request on Origo was for 100% cash to be transferred.
11. Mr D maintains that his instructions, which were clear, had not been followed and that he had suffered a significant loss as funds he had wanted to keep had been sold without his permission.

Adjudicator’s Opinion

12. Mr D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Fidelity or Friends Life. The Adjudicator’s findings are summarised briefly below:-
 - When setting up the SIPP with Fidelity, Mr D detailed an “estimated value of pension” to be transferred of £125,000. Due to the variable nature of fund values, neither Friends Life nor Fidelity knew that this amount was the exact amount Mr D wanted to transfer.
 - When receiving a transfer, Fidelity have a “20% tolerance” level on the amount originally stated on the transfer request and the amount actually received. This is to adjust for market movement. As the actual transferred amount was within this tolerance threshold, Fidelity did not feel an error had occurred and so it proceeded with the transfer.

- The request logged online by Mr D said the transfer amount was to be for “100%”. As Mr D did not specify exactly from which funds the transferred amount was to be taken, the transfer has been processed on a literal basis, which is 100% of the total GPP to be transferred.
- A misunderstanding appears to have occurred in the processing of Mr D’s transfer and as a consequence, the amount eventually transferred exceeded his wishes. The online request facility could perhaps be clearer on the process to follow when transferring specific units or funds, however this does not mean the process is inherently flawed or that there has been maladministration.
- Mr D was sent a “Welcome pack” once his SIPP with Fidelity had been opened. Among other things, this pack contained a 30 day cancellation notification. However, Mr D was aware of this cancellation clause and the incorrect transfer amount within this 30 day period, but chose not to exercise this cancellation clause.
- The application to transfer seemed clear to both Fidelity and Friends Life, as such neither saw any issue with the request.

13. Mr D did not agree with the Adjudicator’s views and submitted the following, in summary:-

- The Pension Advisory Service (**TPAS**) recognised the validity of the complaint and confirmed that an error in the transfer process has led to a financial loss and the Adjudicator has failed to consider the financial loss suffered.
- Friends Life had ample reason to question the election to transfer, as the rules of the “Nomura Scheme” are that employees must leave a minimum of £10,000 in the GPP when transferring.
- The instructions to transfer were clear, to transfer £125,000 from Friends Life to Fidelity. The wording the Adjudicator refers to in the Opinion regarding the “transfer summary dated 15 May 2014” relates to “the destination of the funds transferred once they reach the Fidelity SIPP” and “...There is no way this could be read as requesting that 100% of my pension with Friends Life be transferred to the Fidelity SIPP”.
- Fidelity’s Welcome Pack was a generic one, it did not alert him to the fact that the amount transferred was different from the one requested.
- There was no legal basis for Friends Life to sell his “units in a Fund without an instruction” from him and as such “Fidelity and/ or Friends Life should fully compensate [him] for the return lost as a result of these units having been sold against [his] wishes”.
- Fidelity and Friends Life have failed to comply with their obligation to treat customers fairly.

14. As Mr D did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr D for completeness.

Ombudsman's decision

15. The issue in this case is whether there has been maladministration by either Fidelity or Friends Life, in completing a full transfer rather than a partial transfer.
16. In his response to the Opinion, Mr D has said TPAS acknowledge clear maladministration in this case and that TPAS also agreed he has suffered a financial loss. In this I must respectfully disagree. TPAS emailed Mr D on 4 April 2016 saying:

"To my mind, if you wanted Fidelity to accept a partial transfer payment, it would have been reasonable for them to expect clear instructions from you in this respect. If it is the case that the only indication of this you gave, was that the estimated transfer amount stated on your transfer application was £125,000, I agree with them that this would appear insufficient indication of a desire for a partial transfer".

I agree with TPAS, that the only indication Mr D gave of his request to partially transfer was insufficient.

17. Prior to joining the SIPP, Mr D sold certain units he held with Friends Life. There was no need for him to have done this as the sale of the requisite units would have formed part of the overall transfer process. As such there was no need for Mr D to sanction the individual sale of specific units. Mr D appears to believe the selling of units and onward planning was known to both Fidelity and Friends Life and factored into their subsequent actions. This is not the case. Mr D's choice to buy and sell units before he transfer was entirely his own decision, and Fidelity or Friends Life could not have second guessed his reasons for doing so. Both respondents can only action specific requests made by their members.
18. When initially commencing the transfer process Mr D completed an online application which specifically asked for an "estimated" fund value to be transferred. The word estimated should have indicated to Mr D that this was not a guarantee that the exact amount stated would be transferred.
19. None of the available documents detailing the request to transfer show that Mr D wanted to enact a partial transfer. In fact both the "transfer summary" and "Fidelity About You" screen print make no reference to a partial transfer. The "transfer summary" even specifically asks:-

"Transfer All Funds: Yes"

It is unclear therefore, how Mr D believes either Fidelity or Friends Life could have reasonably known exactly how, and in what manner a partial transfer was to be

carried out. No mention is made of the “Friends Life Global Equity” Funds in which Mr D wished to remain invested.

20. Also, the request logged online by Mr D said the transfer amount was to be for 100%. Mr D says this was meant to mean 100% of his selected funds with Friends Life, however no specific funds were selected. While Mr D feels this is maladministration I do not agree. As Mr D did not specify exactly which funds the transferred amount was to come from, the transfer has been processed on a literal basis, which is 100% of the total policy to be transferred.
21. Mr D has also suggested that the rules of the Nomura Scheme are that “£10,000 must remain in the fund at all times”, and that as such transferring 100% of his Friends Life holding is against the Nomura GPP rules. His belief is that this fact alone should have prompted Friends Life to challenge his decision to transfer and cites this as further evidence of maladministration. However, Mr D’s interpretation of the Nomura Scheme rules appears to be based on a misunderstanding of the pension and saving schemes provided by Nomura.
22. Friends Life were selected by Nomura to provide its GPP scheme, which it offered as a core benefit to all employees. Nomura also operates a SIPP, but this was not classed as a core employee benefit and to join this SIPP an employee would need to first opt-out of the GPP. The £10,000 limit to which Mr D refers is in relation to members opting out of the GPP and transferring into the SIPP, and in that scenario, without a residual £10,000 the GPP would be closed. This rule has been inserted specifically to account for the increased number of partial transfer requests being made. Friends Life as a general rule do not allow partial transfers, unless otherwise granted by way of a concession. These concessions are only granted on request from the Employer (Nomura). In this case, Friends Life carried out a full transfer and so reference F64509/1679 closed and F64509/6753 was created to receive Mr D’s ongoing contributions into the GPP.
23. The Origo system, on which the transfer request was made, is not designed to deal with partial transfers and as such, it is unsurprising that a full transfer was carried out. This is without taking into account Fidelity’s 20% tolerance on the amount transferred. This tolerance is utilised to allow for market fluctuations during the transfer process.
24. The only evidence to support Mr D’s claim that he wanted a partial transfer is that the estimated value to be transferred corresponded approximately to the cash fund value held with Friends Life. However, it would be reasonable for both respondents to expect a clearer instruction that a partial transfer was to be carried out rather than an approximate fund value.
25. M D has suggested that he discussed the matter of his transfer with Friends Life and Fidelity, but unfortunately no call recording exists. As there is no mention anywhere, in the documents submitted, requesting a partial transfer I do not find that Friends Life or Fidelity have acted in error.

26. Mr D has also suggested that there was no legal basis for Friends Life to sell his “units in a Fund without an instruction”. However, the necessary online form was completed in such a way as to authorise both respondents to action a full transfer. Part of this transfer out process would be to sell any outstanding units and by authorising the transfer Mr D agreed to any and all remedial actions needed to comply with his request.
27. Turning now to Mr D’s assertion that both Friends Life and Fidelity failed to treat him fairly, in keeping with the Financial Conduct Authority’s Treating Customers Fairly initiative. I am not unsympathetic to Mr D’s complaint but his request was not as clear as he believed. I do not agree that either respondent is guilty of maladministration. As responsible scheme administrators it is the responsibility of Friends Life and Fidelity to action its members requests in a timely fashion.
28. Mr D has suggested that his request to partially transfer some of his holdings from Friends Life to Fidelity was clear and unambiguous. However, having reviewed the information submitted, I do not agree. I cannot see how either Friends Life or Fidelity could have reasonably known that Mr D wished to carry out a partial transfer nor, which funds, if any, he wished to remain with Friends Life.
29. Therefore, I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman
5 June 2017