

Ombudsman's Determination

Applicant	Mr H
Scheme	Lehman Brothers Buy Out Plan (the Plan)
Respondent	Fidelity

Outcome

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

Complaint summary

3. Mr H is complaining that Fidelity, as the administrators of the Plan, told him that he could extend the transfer closure deadline and only after the deadline had expired was he told this was incorrect.

Background information, including submissions from the parties

4. Mr H requested a transfer out of the Plan in October 2015 and was sent the relevant forms on 6 November 2015. In a number of places on the form (and in bold) it states that all forms must be received by Fidelity no later than 23 January 2016 in order to honour the transfer value quoted.
5. Mr H telephoned Fidelity on 27 November 2015. This conversation concerned the "statement of entitlement". At the end of the call, timeframes were discussed and the Fidelity representative confirmed the deadline for the receipt of the completed forms was 23 January 2016. Mr H acknowledged this.
6. Mr H says he telephoned Fidelity in December 2015 and was told he could have an extension of 10 working days beyond the 23 January 2016 to return the relevant forms. Mr H has not been able to provide the date of when he called and Fidelity have tried, unsuccessfully, to trace the call on the telephone numbers Mr H has provided.

7. As Mr H wished to transfer out of a defined benefit occupational scheme, he sought independent financial advice. He says it took some time to find an independent financial advisor (**IFA**) who would give such advice and it was not until 28 December 2015 that Mr H completed the forms for his advisor to review his financial position.
8. On 7 and 8 January 2016, Mr H's IFA requested further information from Fidelity. Fidelity responded in full on 25 January 2016, two days after the transfer value period ended.
9. On 1 February 2016, Mr H telephoned Fidelity and an extension to the guarantee period was discussed. Fidelity admit that an extension was given in error and apologised. Fidelity also state:

“I have listened again to the call Mr H made to the Fidelity helpline on 1 February 2016. During the call Mr H agrees that the deadline date was the 23 January 2016 and that he had previously called the Fidelity helpline in December, although I am unable to trace this call. He also states that his IFA was ‘a little bit late in providing him with advice’ and that he would like to confirm a 10 day extension. The administrator incorrectly informed Mr H that the completed transfer forms could be returned no later than 10 working days after 23 January 2016. Mr Singh then asked the administrator what date was 10 working days after the 23 January 2016. At that point both the administrator and Mr H came to the conclusion that 5 February was 10 working days after the 23 January 2016 and agreed this as the extended deadline date. This would indicate that Mr H had not previously been informed that he had until the 5 February to return completed transfer forms as he had to work out the date.”
10. As Mr H missed the transfer value guarantee date of 23 January 2016, he was unable to transfer out of the Plan for a further 12 months. He raised a complaint with Fidelity and, as he remained dissatisfied with their response, he brought a complaint to The Pensions Ombudsman.

Adjudicator's Opinion

11. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by Fidelity. The Adjudicator's findings are summarised briefly below.
 - Fidelity agreed that it had provided incorrect information, but the Adjudicator's view was that this was provided after the guarantee date and therefore Mr H had not suffered a financial loss.
 - There is no dispute that Mr H was aware that he had until 23 January 2016 to submit the relevant paperwork. The question was whether or not Mr H had, in a conversation in December 2015, been provided with incorrect information giving an extension to that deadline. On the information submitted, there was no

evidence of a telephone conversation in December 2015 and therefore the complaint could not be upheld.

- It was the Adjudicator's view that the advice provided to Mr H from his IFA after 23 January 2016 was a matter between him and his advisor. Fidelity were not responsible for the costs of any advice beyond 23 January 2016.

12. Mr H disagreed with the Adjudicator's Opinion and further submitted, in summary:

- in relation to the telephone call on 1 February 2016, Mr H says he did not request an extension as this had already been agreed and that his IFA was working toward an agreed deadline of 5 February 2016. He does mention that he does not recall the exact nature of this telephone call;
- Fidelity did not respond to his IFA until after 23 January 2016 and this meant that the IFA's work and therefore the fee was "wasted". He says his loss is a minimum of that fee (£1,000); and
- during the investigation, Mr H provided two telephone numbers for Fidelity to trace the December 2015 call. Mr H says that it is possible that he called from a landline and, "...at no point did Fidelity directly tell me they didn't have a record of this call, it only came up when you requested details of dates and phone numbers. If they had flagged this back in February I might have had a better idea of dates and where I was."

13. As Mr H did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr H 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 H for completeness.

Ombudsman's decision

14. To uphold the complaint I would have to be satisfied on the balance of probabilities that Fidelity made a clear and unequivocal representation to Mr H, prior to the expiry of the 23 January deadline, that they would extend it and that he relied upon that representation to his detriment. Fidelity have been provided with all of the information Mr H submitted in regards to a telephone call in December 2015. Despite this, they have not been able to trace the call and Mr H is unable to say, with certainty, when this call took place or where he called from. I can see that Mr H kept some details of the other calls he made to Fidelity, for example, in his email to Fidelity on 17 February 2016, he is able to provide the date and time of the telephone call on 1 February, but while he mentions the December call, he cannot provide any details of when that call was made.

PO-12135

15. Fidelity's record of the telephone call on 1 February 2016 does not support the conclusion that an extension had previously been agreed. From the available evidence I cannot conclude that Fidelity made a clear representation about an extension of time prior to 23 January.
16. Therefore, I do not uphold the complaint.

Karen Johnston

Deputy Pensions Ombudsman
31 January 2017