

Ombudsman's Determination

Applicant	Mr S
Scheme	Aspen UK Pension Plan (the Scheme)
Respondent	Fidelity Pensions Service Centre (Fidelity)

Outcome

1. Mr S' complaint is upheld and to put matters right Fidelity should pay compensation in recognition of the financial loss he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S' complaint is that Fidelity has not transferred his benefits from the Scheme to another pension arrangement of his choice, despite him completing all of the requirements within the timeframe set by Fidelity.

Background information, including submissions from the parties

4. Mr S joined the Scheme on 26 August 2014. All of the contributions into the Scheme were paid by his former employer, Aspen, and Mr S did not make any contributions of his own.
5. On 13 October 2015, Aspen notified the Scheme's administrator, Fidelity, that he had left employment and completed less than 24 months' service. On 15 October 2015, Fidelity wrote to Mr S and explained the following:

"We have been advised that you have now left the [Scheme]. In accordance with the default option under the [Scheme] rules, as you were a member for less than 24 months the only choice available to you is to transfer your pension account to another suitable pension arrangement. You cannot leave your account with Fidelity. You have three months from the date of this letter to inform us that you intend to transfer all your benefits. This is the only choice available to you and you must take immediate action or you will lose the entire value of your pension account. I enclose a Transfer Statement detailing the value available to you for a transfer.

To start the process for transferring your benefits, please sign and return the Transfer Statement. We will then send you an updated transfer quotation and the relevant documents to complete. You will then have a further three months to complete the transfer by returning these documents together with any requested information. If you do not complete the transfer within three months you will lose the entire value of your pension account.”

6. On 26 October 2015, Fidelity received Mr S’ signed Transfer Statement confirming his intention to transfer his benefits to another registered pension arrangement. Fidelity then sent Mr S a letter dated 2 November 2015 enclosing all of the relevant transfer documentation for him and the receiving scheme to complete. The letter explained that he had three months from the date of the letter to complete the transfer.
7. Mr S completed all of the transfer documentation as requested. The receiving scheme administrator, Virgin Money Unit Trust Managers Ltd (**Virgin**), wrote to him on 2 December 2015 confirming the following:

“We are now in a position to accept your pension transfer from Fidelity, and have asked them to send us the transfer payment. We’ll let you know when we’ve invested the transfer in your Virgin Stakeholder Pension.”
8. On 3 December 2015, Virgin wrote to Fidelity requesting the transfer payment. Virgin’s letter said:

“We’ve been contacted by [Mr S] with a request to transfer his pension benefits to Virgin... We enclose the completed transfer discharge form you require. Also enclosed are our HM Revenue & Customs approval letters and PSTR web print along with [Mr S]’ authority. Please send us a cheque for the transfer amount, made payable to Virgin Money. Alternatively, we can accept payment by BACS to the following bank account...”
9. Fidelity says that it did not receive Virgin’s letter dated 3 December 2015.
10. On 18 February 2016, Fidelity wrote to Mr S to say that his pension account had been closed and that he was not entitled to any benefits from the Scheme, as he did not make any personal contributions and the three month transfer deadline had passed.
11. On 25 February 2016, Mr S contacted Fidelity to enquire if the transfer had been completed. Fidelity confirmed that, as the three month deadline for completing the transfer had expired, he was not entitled to any benefits from the Scheme. On the same day, Mr S sent a letter of complaint to Fidelity.
12. Fidelity wrote back saying the funds had been returned to Aspen.

13. Virgin made further requests for the transfer payment on 23 March 2016 and 4 April 2016, and explained that it had not received a reply to its letter of 3 December 2015. This did not change the outcome of Mr S' complaint and he has referred the matter to us for an independent review.

Adjudicator's Opinion

14. Mr S' complaint was considered by one of our Adjudicators who concluded that the complaint should be upheld and further action was required by Fidelity. The adjudicator said that:-
- Fidelity should pay the transfer value of Mr S' pension benefits under the Scheme as at 8 December 2015, plus any lost investment returns, to Mr S' Virgin stakeholder plan.
 - The investment returns should be calculated, assuming the transfer value had been invested in the Virgin stakeholder plan on 22 December 2015.
15. The Adjudicator's conclusions were based on the following reasons:-
- Virgin sent all of the required documentation to Fidelity in order to complete the transfer within the three month timeframe. Virgin's letter to Fidelity dated 3 December 2015 was correctly addressed. A letter was also sent to Mr S at the time confirming that Virgin had requested the transfer payment from Fidelity. Therefore, it cannot reasonably be said that Virgin's letter to Fidelity was not correctly posted or that Mr S should have had concerns about the progress of his transfer request.
 - The majority of UK mail gets delivered to the intended destination. On the balance of probabilities, it is more likely, than not, that the letter of 3 December 2015 would have been received by Fidelity.
 - The transfer request would, most likely, have arrived at Fidelity's office within about three working days, by 8 December 2015. Allowing ten further working days for the transfer payment to be made to, and invested in, the receiving scheme, the funds could reasonably have been invested in Mr S' Virgin stakeholder plan on 22 December 2015.
16. Mr S agreed with the Adjudicator's Opinion and made no further comments.
17. Fidelity did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Fidelity provided its 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 Fidelity for completeness.

18. In response to the Adjudicator's Opinion, Fidelity made the following points:-

- The transfer had to be completed by the notified deadline of 2 February 2016 and Fidelity did not receive the required documents by that date. Although Virgin has provided a copy of a covering letter that suggests the required documents were enclosed prior to the transfer deadline, Fidelity's records indicate that no items were received under the customer name of "Mr S" for the period from 26 November 2015 to 2 February 2016.
- The letter of 23 March 2016, was the first recorded contact from Virgin about the transfer. Aside from the forms signed by Mr S, the other documents provided were not copies of the supposed original enclosures of Virgin's letter dated 3 December 2015. For example, the screen shot of HMRC's website showing the receiving plan's HMRC registration is dated 9 February 2016, which indicates that it was printed after the transfer option expired and before Virgin took any further steps to follow up on the transfer in March.
- Virgin's letter to Mr S on 2 December 2015 has been signed by the sender, but the letter of 3 December 2015 addressed to Fidelity has not been signed. This may be a further indicator that, although produced, the final step in the "sign-off" process was not completed and therefore the letter was not posted.
- Virgin did not take sufficient steps to ensure the transfer was completed before the deadline expired. As the expiry date for the transfer option grew closer, it is reasonable to anticipate an additional enquiry from Virgin much sooner than 23 March 2016.
- The Trustees of the Scheme have also reviewed the relevant paperwork and have deemed Fidelity to have acted in accordance with the Scheme rules. Fidelity can only act on the instructions of the Trustees and would require their agreement for any reinstatement of the Scheme's assets and subsequent transfer,

Ombudsman's decision

19. Virgin has said that the letter of 3 December 2015 was sent by first class post, enclosing all of the documentation required to complete the transfer. Fidelity maintains that it did not receive this letter. In these circumstances, I have to make a finding, on the balance of probabilities, on what I consider is likely to have happened.
20. Fidelity has referred to a screen shot of HMRC's website confirming the receiving plan's HMRC registration. As the screen shot is dated 9 February 2016, Fidelity argues that it was printed after the transfer option expired. However, I have also taken into account a similar screen shot of HMRC's website that was included in the paperwork submitted to us by Mr S, which is dated 31 March 2015. It is, therefore, possible that this earlier screen shot was enclosed in the letter of 3 December 2015.

21. I have also noted Fidelity's observation that the copy of the letter in question was not signed. However, given that a confirmation letter was sent to Mr S informing him that Virgin had requested the transfer payment, it is very unlikely that the actual letter requesting the payment would not have been posted. The majority of UK mail gets delivered to the intended destination. As I have stated in a previous determination (ref: PO-12562), our general position is that if a letter is correctly addressed, then it is unlikely the letter was not sent and that it did not reach its intended recipient.
22. Virgin's letter of 3 December 2015 was correctly addressed to Fidelity. I consider it more likely, than not, that the letter would have been received by Fidelity, but it failed to take the appropriate action through human error. The letter would, most likely, have arrived at Fidelity's office within about three working days at the latest, by 8 December 2015. Allowing ten further working days for the transfer payment to be issued and processed by the receiving scheme, the funds could reasonably have been invested in Mr S' Virgin stakeholder plan on 22 December 2015.
23. In any event, Fidelity could have written to Mr S in the final weeks leading up to the transfer deadline to remind him of the consequences of not completing the transfer and that it had not yet received the required documentation, as it now claims. I do not consider this to be an unreasonable expectation of Fidelity, particularly as it was aware of Mr S' intention to transfer and better placed to understand the implications than Virgin.
24. Therefore, I uphold Mr S' complaint and Fidelity should pay compensation as directed below. The question of whether Fidelity wishes to pay this compensation from its own resources, or by recovering the funds from the Scheme Trustees, is a matter for Fidelity.

Directions

25. Within 28 days of the date of this determination, Fidelity shall pay the transfer value of Mr S' pension benefits under the Scheme as at 8 December 2015, plus any lost investment return, to Mr S' Virgin stakeholder plan. The investment return should be calculated, assuming the transfer value had been invested in the Virgin stakeholder plan on 22 December 2015.

Anthony Arter

Pensions Ombudsman
16 May 2017