

Ombudsman's Determination

Applicant	Mr R
Scheme	The Fidelity Self Invested Personal Pension (the SIPP)
Respondents	Fidelity Management Limited (Fidelity)

Outcome

1. Mr R's complaint against Fidelity is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld), Fidelity should make a further compensation payment to Mr R to reflect the distress and inconvenience he suffered as a result of the maladministration identified.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr R has complained that Fidelity delayed the payment of his transfer to Hargreaves Lansdown, and then misinformed him that he would not incur any loss due to these perceived delays.

Background information, including submissions from the parties

4. In July 2015, Mr R elected to transfer his Fidelity SIPP to Hargreaves Lansdown.
5. Hargreaves Lansdown submitted a transfer request to Fidelity via Origo on 30 July 2015.
6. Fidelity did not receive all the necessary information to complete the transfer until 19 August 2015.
7. Mr R's interpretation of the SIPP's terms and conditions was that the transfer would take approximately two working days to complete. He cited clause 5.2 of the terms and conditions as the basis for this assumption. Clause 5.2 states:

"...when you instruct us to sell Units, we will sell the Units as soon as practicable, after we receive your instructions, to the provider of the Collective Investment Fund. The proceeds will be added to your holding in

the SIPP Cash Account. Any sell instruction received will be transacted within two (2) business days.”

So he had expectations that his transfer to Hargreaves Lansdown would take place around Friday 21 August 2015. The correct clause regarding transfers is clause 10 which does not stipulate a timeframe within which the transfer will be completed.

8. On Monday 24 August 2015, Mr R called Fidelity for an update as he felt the normal processing time had now been exceeded. During this telephone call, Mr R was informed that “an error” had occurred and that his transfer should have been actioned on 20 August 2015. Mr R was concerned that due to market volatility, his fund value had decreased. Fidelity informed him during this telephone call that he “would be reimbursed for any loss and that the sale date would be backdated to 20 August 2015”. He was also told the new unit sales would be raised on 25 August 2016. Satisfied with this, Mr R waited for the completion of his transfer.
9. The sales were requested (dealt) on 24 August 2015, the day of Mr R’s earlier call and 4 working days after the necessary information had been received from Hargreaves Lansdown. When the sale went through, it was not backdated to 20 August 2015, nor was Mr R reimbursed for any fall in fund value from 20 August 2015 to 25 August 2015 (the date funds were actually to be disinvested).
10. When Mr R complained about this, he was informed by Fidelity that the information provided on 24 August 2015 was incorrect but that Fidelity had acted correctly and in keeping with its normal timeframes regarding his actual transfer. Fidelity apologised for the misinformation and made a payment of £250 in respect of the “inconvenience” caused. Fidelity do not however acknowledge that the provision of misinformation amounts to maladministration and as such feel £250 is sufficient compensation.

Adjudicator’s Opinion

11. 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 briefly below:
 - Fidelity has agreed that misinformation was provided during the telephone conversation on 24 August 2015, so there is no dispute that a problem has occurred.
 - Mr R was incorrect in believing that clause 5.2 of the SIPP terms and conditions guaranteed his transfer would be completed in two working days, as this clause only deals with selling units.
 - The correct clause regarding transferring funds was clause 10. This clause does not stipulate a timeframe in which a transfer will be completed.

- The information provided by Fidelity on 24 August 2015, was incorrect and misleading and amounted to maladministration.
 - Fidelity acknowledged the information it provided to Mr R was incorrect and that he should be compensated for this. However, the compensation offered was not sufficient.
12. Fidelity did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Fidelity has not provided any further reasons for disputing the Opinion. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to Fidelity for completeness.

Ombudsman's decision

13. Mr R's complaint falls into two separate parts. A perceived delay in completing his transfer and misinformation he received both about the transfer and during the actual process.
14. In the first instance, I do not find Fidelity at fault for the time taken to complete the transfer, as this was finalised within a reasonable timeframe and within Fidelity's, unpublished, service level arrangement of five working days. Further, Mr R's expectation that the transfer would be completed within two working days was based on his reading of the incorrect clause in the SIPP's terms and conditions. I find no maladministration by Fidelity in processing the actual transfer.
15. In the second instance, Fidelity has acknowledged that it provided Mr R with misinformation and has offered £250 in compensation. The Adjudicator recommended that Fidelity pay an additional £250 to adequately compensate Mr R for its maladministration. Fidelity has disputed this additional amount because:
- “...depending on what definition you view of maladministration some include misinformation some don't.”
- And
- “Providing misinformation to someone after carrying out their instruction is not maladministration”
16. Fidelity's argument then appears to be that there has been no maladministration and as such the current offer of £250 is sufficient compensation. It is my opinion that the provision of incorrect, misleading and inaccurate information to Mr R on 24 August 2015, was the very definition of maladministration and I find it startling that an organisation like Fidelity could take any other view. For the avoidance of doubt, the provision of misinformation, in this case, is maladministration.
17. I acknowledge that Mr R was not entitled to the loss calculation described to him on 24 August 2015, and while I do not think he has suffered any financial loss as a result

of the maladministration, I do think that Fidelity have caused him significant distress and inconvenience.

18. When making awards for distress and inconvenience, my role is not to penalise providers but to provide a remedy for non-financial injustice, in so far as money can achieve this. The level of compensation is meant to recognise the distress and inconvenience Mr R suffered after discovering that what he was told on 24 August 2015, was untrue. It is not intended to put him in the position he would have been in had he received the correct information. Fidelity unduly raised Mr R's expectations and it must have been extremely distressing for Mr R to have then discovered the truth after the remedial action was to have taken place. In those circumstances, I consider that an additional payment is appropriate and make the relevant direction below.
19. Therefore, I uphold part, but not all, of this complaint.

Directions

20. Within 28 days of this determination, Fidelity must pay Mr R an additional £250 in compensation.

Anthony Arter

Pensions Ombudsman
11 November 2016