

Ombudsman's Determination

Applicant	Mr E
Scheme	Buy Out Plan - Ex Mercer Master Trust (the Plan)
Respondent	Fidelity International (Fidelity)

Outcome

1. I do not uphold Mr E'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 L says Fidelity repeatedly failed to provide confirmation on his protected tax free cash entitlement, equalisation of his benefits, and to provide other information originally requested in November 2016. Fidelity also failed to administer his Plan correctly and mishandled his complaint.

Background information, including submissions from the parties

4. On 17 May 1990, the European Court of Justice ruled that an occupational pension scheme had to treat men and women equally. The judgment was incorporated into Section 62 of the Pensions Act 1995 and applies to pensionable service on or after 17 May 1990. Section 62 came into force on 1 January 1996.
5. Mr E's benefits were formerly held in the Mercer Master Trust (the **Master Trust**), an occupational money purchase scheme established on 12 May 1997. Legal and General were the fund managers.
6. Mr E was a member of the Master Trust between September 2001 and January 2005.
7. Under the rules of the Master Trust, a member may elect to receive a lump sum of up to 25% of the total value of their pension pot at the time of payment. A member who is no longer employed by the relevant employer may, on leaving service on or after age 50, or on earlier ill-health, take an immediate pension.
8. From 6 April 2010, the normal minimum pension age increased to age 55.

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9. In 2014, Mr E's benefits were transferred from the Master Trust to the Plan, a section 32 buy out policy.
10. Fidelity has explained that, as the Plan is a buy-out policy, it is not required to retain details of the terms and conditions or scheme rules that applied to the previous scheme.
11. Prior to implementation of the Plan, Fidelity was provided with data for all affected members by Mercer UK (**Mercers**), the previous administrators. The data was used to decide how Mr E's pension account should be reflected in the Plan.
12. An extract from the data provided by Mercers shows that Mr E's benefits were valued at £72,984 as at 6 April 2006. The extract shows that he had a tax free cash sum entitlement of £18,246 as at that date. The details indicate that he had no protected cash entitlement, that is, a tax free lump sum entitlement greater than the normal 25%. The extract confirms the date he joined his employer, the Master Trust, and also the date he entered pensionable service.
13. The pension data Fidelity obtained from Mercers, is not readily available to the teams that administer the Plan on a daily basis. Fidelity has clarified that only the final and relevant position is reflected on Mr E's pension account.
14. On 7 June 2015, in response to a request for information, Fidelity sent Mr E's advisers a transfer out illustration. In the quotation, Fidelity said that tax free cash protection and protected pension age did not apply to benefits under the Plan.
15. The 'transferring plan declaration' (the **Plan Declaration**) issued with the quotation said:

"Equalisation:

We are unable to confirm if benefits accrued under the Buy Out Plan (Ex Mercer Master Trust) on or after 17 May 1990 have been equalised for both men and women. Therefore no equalisation indemnity will be provided."
16. On 2 July 2015, in response to questions from Mr E's advisers concerning equalisation, Fidelity said that the wording in the Plan Declaration may have been misleading and was not relevant to buyout policies. Fidelity explained that each pension under the Plan was strictly speaking a closed one member scheme. Consequently, there was no equalisation issue. Fidelity enclosed an updated declaration which stated that equalisation of benefits was not applicable for benefits held in the Plan.
17. On 22 November 2016, Mr E's advisers wrote to Fidelity for pension illustrations. They enclosed a detailed questionnaire requesting various other details, including the maximum tax free cash sum available to their client, and whether his benefits could be taken before age 55.

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18. Fidelity issued a transfer out quotation on 30 November 2016. In the transfer statement, Fidelity advised a transfer value of £146,586, and stated that protected pension age and 'protected cash protection' did not apply to him.
19. In the covering letter, Fidelity said that its policy was not to complete or sign documentation provided by administrators or insurers of other pension schemes including any relating to equalisation. The plan declaration enclosed in the transfer pack said that equalisation was not an issue for benefits held in the Plan. Fidelity said that the receiving scheme would need to confirm whether it was willing to accept the transfer on this basis.
20. Fidelity has stated that the details it provides in transfer packs, are generally sufficient for the majority of transfers from defined contribution schemes.
21. Mr E's representative and adviser (the **Adviser**) has explained that some of the information they requested was missing from the response they received on 30 November 2016. When they contacted Fidelity, they were asked to contact Legal & General. They later discovered that Legal & General had never administered the Master Trust. They eventually received confirmation from Mercers that it no longer held information on the Master Trust and that it had provided details to Fidelity at the time of the transfer.
22. On 14 February 2017, Mr E's advisers contacted Fidelity for a response to their earlier request for information.
23. Mr E's advisers says Fidelity replied on 2 March 2017, and promised to provide details by 6 March 2017. Instead, Fidelity issued new transfer forms the following day. In the transfer out illustration issued on 7 March 2017, Fidelity quoted a transfer value of £160,741, and stated that protected pension age and protected tax free cash did not apply to Mr E. The covering letter accompanying the illustration contained similar wording on Fidelity's policy of not completing or signing transfer paperwork supplied by other pension schemes.
24. After chasing Fidelity again, Mr E's advisers received a reply on 13 March 2017. However, they have explained that all the information they had requested was missing from the response.
25. On 13 March 2017, Mr E's advisers complained to Fidelity that it had failed to provide the required details. A copy of the letter was faxed to Fidelity on 23 March 2017, after Fidelity confirmed that it had not received the complaint, and was acknowledged by Fidelity on 29 March 2017. Around the same time, Mr E also complained to Fidelity about the same issue.
26. On 19 May 2017, just over 8 weeks after his advisers complained, Fidelity issued its formal response. In regard to equalisation, Fidelity said that it had confirmed the position on 2 July 2015, in response to the enquiry from the advisers. Fidelity explained that the transfer pack, issued on 30 November 2016, contained the updated wording on equalisation. It said that, following a further enquiry, it had replied

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on 6 December 2016, confirming answers to questions that were relevant to the Plan. Fidelity said that it could not provide details about the original scheme.

27. Fidelity is satisfied that it provided appropriate information and does not accept that it is liable for any financial loss Mr E has suffered. Fidelity says that it confirmed the type of scheme, transfer value, whether there were any guarantees or protections that might be lost on transfer, and his options on retirement. There was nothing preventing Mr E from proceeding with the transfer or taking his benefits.
28. Mr E's further comments are set out below.
 - If he takes his benefits he might lose out on any protected cash entitlement that may apply to him. He had planned to use the tax free lump sum from the Plan to pay off his mortgage.
 - He is unable to achieve his retirement goals without the information required from Fidelity, he may suffer a drop in the value of his funds in the meantime.
 - Fidelity referred them to various other providers, including Legal General, who had never administered the original scheme.
 - Fidelity did not take his complaint seriously, his complaint was acknowledged, but a formal response was not issued within the eight week timescale Fidelity had advised.
29. Fidelity acknowledges that Mr E's letter of complaint, was wrongly allocated to a different team. Fidelity accepts that it misled Mr E's advisers about Legal General's role in relation to the Master Trust. Fidelity says that it appreciates that the manner in which the information was presented could have been clearer. In recognition of this, Fidelity has agreed to offer Mr E £100 for any distress and inconvenience caused to him.
30. Mr E's advisers have explained that they require Fidelity to confirm Mr E's employment start and end date; tax free cash sum entitlement and fund value as at 6 April 2006; whether a protected retirement age applies to his funds; and whether retirement ages, employer contributions, and entry conditions were the same for men and women under the Master Trust.
31. In addition to the information his advisers require, Mr E considers an amount to make good any reduction in his fund value, and proper redress for distress and inconvenience, would be reasonable compensation.

Adjudicator's Opinion

32. Mr E'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:-

- The information provided by Fidelity ought to have been sufficient to have enabled Mr E to decide whether or not to proceed with the transfer, or take his benefits from the Plan.
 - In the transfer statements to his advisers, Fidelity stated that Mr E did not have entitlement to either protected tax free cash or protected retirement age. This is consistent with the Master Trust scheme rules. In the absence of information from their client that indicated that the information provided by Fidelity was wrong, Mr E's advisers could have proceeded on the basis of the information provided in the transfer illustration dated 30 November 2016.
 - Mr E joined the Master Trust in 2001, this is after the date Section 62 of the Pensions Act 1995 came into effect. There is no indication in either the evidence Mr E has provided, or in the data extract, that he transferred any benefits into the Master Trust.
 - While Fidelity ought to have made the position on equalisation clear, Mr E's advisers should have been able to establish the position with their client at the time of obtaining preliminary background information from him. Although he may not have been able to remember his exact dates of service, he should have been able to determine whether he joined before or after 1 January 1996, the date Section 62 of the Pensions Act 1995 came into effect. In any event, it is not uncommon for pension schemes to refuse to sign or provide an equalisation indemnity.
 - Mr E has provided no real evidence to support the assertion that his Plan has not been correctly administered by Fidelity. While Fidelity held further information on the Master Trust that could have been made readily available to the teams that administer the Plan, it was not unreasonable for Fidelity to have taken a proportionate view and reflected only the final and relevant position on his pension account.
 - Fidelity has acknowledged that it wrongly referred Mr E's advisers to Legal & General. This error, along with the delay in issuing a response to Mr E complaint, would have likely caused him some inconvenience. However, the matter does not justify compensation of £500, the minimum the Pensions Ombudsman would award for distress and inconvenience.
33. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E's advisers have provided further comments on his behalf but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made for completeness.

Ombudsman's decision

34. Mr E's advisers have clarified that, in order to fulfil their internal compliance requirements, and also regulatory obligations, they required confirmation that equalisation had taken place, before proceeding with the transfer with a full understanding of what their client was giving up. They are not prepared to provide their clients with anything other than complete and sound advice, taking into account all relevant factors and any potential loss of benefits. If it later became apparent that they had not carried out due diligence on the transfer, they would have been held liable for any financial loss Mr E would have suffered as a result of their advice. Furthermore, Mr E's preferred pension provider, Zurich, will not accept a transfer from a Section 32 buy out policy without confirmation on equalisation.
35. Mr E's advisers have explained that Fidelity repeatedly stated that their questions, such as whether equalisation was an issue, were not relevant because the Plan was a Section 32 policy. Fidelity failed to acknowledge that they were requesting information concerning the Master Trust, even though they confirmed the position on several occasions. Fidelity did not listen to them, or their client, despite their explanations as to why the information was needed. Fidelity held the details on file, and could easily have accessed them. However, it consistently stated that details on any 'safeguarded benefits', equalisation issues; and protected retirement ages were not held by Fidelity. They cannot, in good faith, take the word of a pension administrator when it cannot provide monetary values or relevant dates. To be told repeatedly that their questions did not apply, or that information was not held, proves this point. There were no means to determine whether or not equalisation was an issue. Since the Adjudicator's involvement, with the exception of the matter of equalisation, they have been able to obtain the details required. However, they should not have had to contact this office to obtain the information.
36. Mr E's advisers question why Fidelity did not confirm the position in writing to them, if Fidelity is confident that equalisation does not apply to the Plan, as this would have enabled them to complete the transfer. Zurich has since advised that it will not accept a transfer of Mr E's benefits because of Fidelity's refusal to provide confirmation. Contrary to the Adjudicator's assertion, their client has been financially disadvantaged by Fidelity's failure to provide the details. Mr E had planned to access his pension pot flexibly, use his tax free cash sum to repay his mortgage, and manage the investment of his remaining funds himself, as he is a highly experienced investor. Mr E has incurred additional mortgage interest, which he would not otherwise have accrued but for Fidelity's mistakes. Their firm has also incurred significant costs in trying to conclude the transfer.
37. Mr E's advisers maintain that it took almost 10 weeks for Fidelity to issue a formal response to his complaint, which is longer than the eight weeks specified by the Financial Conduct Authority. Fidelity did not give them any explanation for the delay. They therefore reject the offer of compensation of £100, and cannot accept that no action should be taken against Fidelity, or to compensate their client for the distress

he has suffered. In their opinion, pension providers should not be allowed to breach regulatory requirements without consequences.

38. Mr E's main complaint is that Fidelity failed to provide information on request, and that the lack of information prevented his advisers from giving him advice on the transfer, which lead to a financial loss. I am unable to agree that this was the case.
39. It seems that the main obstacle to completing the transfer was Zurich's insistence on receiving evidence from Fidelity that Mr E's benefits had been equalised, and Fidelity's refusal to provide this. Mr E's advisers ought to have known that there is no legal requirement for pension providers to provide indemnities. While Fidelity could have been clearer on the equalisation position, it cannot reasonably be held liable for the failure to complete the transfer. It was ultimately a commercial decision for Fidelity whether or not to provide confirmation on equalisation, and a commercial decision for Zurich whether to accept the transfer.
40. As the Adjudicator acknowledged in the Opinion, Fidelity did make some mistakes in relation to Mr E's Plan. However, I do not find that those mistakes are sufficiently serious to justify a finding of maladministration in this case. While I accept that Fidelity initially allocated Mr E's complaint to the wrong team, and delayed issuing its formal response to his complaint, I do not consider the delay to be significant.
41. Therefore, I do not uphold Mr E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
11 January 2018