Ombudsman's Determination

Outcome

Applicants	Mr and Mrs N
Scheme	Fidelity SIPP (**the Scheme**)
Respondent	Fidelity International Ltd (**Fidelity**)

1. I do not uphold Mr and Mrs N's complaint and no further action is required by Fidelity.

Complaint summary

2. Mr and Mrs N's complaint is that Fidelity provided them with misleading information when they converted their investments in the Scheme from bundled into unbundled funds.

Background information, including submissions from the parties

3. Mr and Mrs N are both members of the Scheme and Wealth clients of Fidelity, the Scheme provider. Mr N has power of attorney over Mrs N's investments in the Scheme and may give instructions to Fidelity, on her behalf. Fidelity has provided Mr N with a relationship manager (**Relationship Manager).**

4. Mr and Mrs N each hold investments in the Scheme and formerly held units in BlackRock Emerging Markets Eq Trk Acc A class, now called iShares Emerging Markets Equity Fund A class (**BlackRock A**). They also held investments in BlackRock property funds of the same class (**BlackRock property A**). All funds in the Scheme were subject to an annual management charge that included charges for management and administration, plus commission (**a bundled fund**).

5. In 2013, the Financial Services Authority (**FSA**) announced that the industry's bundled fund structure lacked transparency for investors and that, from 6 April 2014, all charges on new investments must be calculated and shown separately (**an unbundled** or **clean fund**).

6. Fidelity provided information about this in a letter to Mr and Mrs N, headed "Converting between bundled and clean share classes" (**the 2014 Letter**). It said:

"Following the launch of our lower cost pricing on 9 February 2014, all new investments made with Fidelity have been in 'clean' share classes of funds. Investments made before this date remain in our 'bundled' share classes. Many investors have already chosen to switch from bundled to clean share classes as they normally cost less. If you haven't already done this, our new conversion process gives you another option to move your funds to their clean share class equivalent.

Although the ongoing fund management charges will still apply to the funds under our new charging structure, most funds in our range will cost less overall. This is because you will benefit from our low-cost service fee if you convert your bundled funds to our clean pricing. Please note that we must receive your form by 5 December 2014, in order to ensure your conversion request is processed in January 2015."

7. The 2014 Letter also made the following statements, under the heading "Key advantages":

"You won't be out of the market whilst the conversion takes place, so you won't miss out on any growth or income. You won't be required to pay any bid-offer spreads upon conversion to the new clean share classes There will be no charge for the conversion process itself."

Mr and Mrs N decided not to convert their investments at this time.

8. On 1 May 2015, Fidelity contacted Mr and Mrs N again and explained that the FSA required all fund holdings to be moved into the new pricing structure, by April 2016. Fidelity also provided both Mr and Mrs N with a report (**Report**) that compared the relative costs of bundled and unbundled unit class variants of the same funds held in the Scheme. A summary of the relevant sections of the Report is set out in the Appendix. The Report compared the following charges for the bundled and unbundled variants of each fund:-

- Ongoing charge figure (**OCF**)**.** This is the annual management charge plus additional expenses.
- Service and platform charge.
- Refund of service fee.
- Total cost of ownership figures.
- Switching Considerations. Fidelity noted where bundled or unbundled classes were cheaper.

9. The Report concluded that by converting units in the bundled BlackRock A fund to units in an unbundled BlackRock Emerg Mrkts Eq Tracker H Acc fund (**BlackRock H**), Mr and Mrs N would reduce their costs. It also stated:

"If you do not want to switch at this stage, we will contact you before April 2016, to let you know our plans."

The Report did not include references to investments in BlackRock property funds.

10. In November 2015, Mr and Mrs N instructed Fidelity to convert their bundled BlackRock A units in the Scheme to unbundled BlackRock H units. Fidelity confirmed this in a comparison letter (**Comparison Letter**) adding, "If you have any questions, please call us".

11. Mr and Mrs N also decided to convert bundled units in BlackRock property A funds into unbundled units in BlackRock property H funds (**BlackRock property H**).

12. On 4 April 2018, Mr N raised a complaint with Fidelity. He said that:-

- His personal financial advisor had now informed him that converting his BlackRock A units to BlackRock Equity Index (UK) D Acc units (**BlackRock D**), would have been more cost effective than converting to BlackRock H units. There was a smaller difference between the offer price and the bid price (**bid-offer spread**) for Blackrock D units than for BlackRock H units and only a slightly higher annual charge. So, converting to BlackRock D units would have been cheaper overall. This also applied to the conversion of BlackRock property A units into BlackRock property H units.

- In 2015, his Relationship Manager had told him that his funds in the Scheme were being converted into the "cheapest fund", in line with the Report. The Report should have referred to the bid-offer spread as a factor in the costing comparison and it would have shown that the Blackrock D class was cheaper.

- He had been misled about the charges relating to the bid-offer spread and when he came to sell the BlackRock H units, he would be worse off than if he had converted to BlackRock D units.

- He asked Fidelity to retrospectively convert his and Mrs N's BlackRock A units to BlackRock D units, including new purchases, instead of BlackRock H units. This also applied to the conversion of BlackRock property A units into BlackRock property H units.

13. On 12 July 2018, Fidelity responded to Mr N's complaint, saying that he and Mrs N had been placed in the cheapest fund in the conversion exercise, in terms of ongoing charges. It explained that the bid-offer spread was not a charge, but a pricing mechanism used to protect the interests of long-term investors.

14. Fidelity added that both the BlackRock A and BlackRock H units had a bid-offer spread of approximately 5% whereas BlackRock D units had a lower bid-offer spread but a slightly higher ongoing charge. The bid-offer spread was a cost that was incurred at the point of purchase of the original A class units, not an ongoing charge. It would only crystallise on a sale or switch of those units. It was not a relevant cost to

be taken into account in the Report, though Fidelity appreciated that Mr N's Relationship Manager may not have made this clear.

15. Mr N did not accept Fidelity's explanation. He and Fidelity then corresponded in detail regarding the two main issues, namely:-

    - Was the bid-offer spread a cost that should have been included in the Report?

    - Should Fidelity have included BlackRock D units in the Report as a cheaper, cleaner alternative to BlackRock A units?

16. Mr N and Fidelity also disagreed about the level of loss that Mr N would suffer as a result of the conversion from BlackRock A units to BlackRock H units. Mr N summarised the reasons for his and Mrs N's complaint, as follows:-

    - At the time of the conversion, his Relationship Manager had told him that he would be placed in the "cheapest funds". The omission in the Report of the bid-offer spread from the total cost of ownership of the BlackRock H units and the exclusion of the BlackRock D units meant that they had been materially misled about the alternatives to BlackRock A units.

    - According to his calculations, on selling the investment after conversion, the BlackRock H units would always be worth less than BlackRock D units, so BlackRock H units were not the cheapest. Fidelity's own online documentation stated that the bid-offer spread was a charge.

    - The Report neglected to include the bid-offer spread charge and thus misrepresented the total cost of conversion. Given the size of the bid-offer spread on the BlackRock H fund, compared to the BlackRock D fund, this was a significant omission.

    - They will suffer a financial loss when they sell their investments in the BlackRock H fund due to the omission of the cheaper BlackRock D fund from the Report.

<u>Submissions from Fidelity</u>

17. Fidelity submitted that:-

    - The purpose of converting funds from bundled to unbundled was to make fees more transparent, in line with FSA requirements. The bid-offer spread was a cost that needed to be considered at the outset when deciding to invest in a fund. It was not an ongoing charge.

    - When Mr and Mrs N converted their BlackRock A units to BlackRock H units in November 2015, there was a conversion on a bid price to bid price basis, as set out in the 2014 Letter, not a switch. The bid-offer spread had already been taken into account. They were purchased at the offer price and valued using the bid price. They were then converted into an equivalent number of BlackRock H units using the bid price, so no bid-offer spread was incurred at the point of conversion.

- The BlackRock D units were not the “direct equivalent” of the BlackRock A units. The bid-offer spread for the D units was lower, but its ongoing charges were higher. To include them in the Report would involve Fidelity giving investment advice not information on converting the bundled funds into clean funds.

- The BlackRock H units had the lowest ongoing charges and a similar 5% bid-offer spread to the BlackRock A units. Therefore, the funds recommended in the Report as cleaner and cheaper were BlackRock H units.

- The prices for each unit on the day of the transfer, 20 November 2015, were shown in the table below, with the bid-offer spread and ongoing charges.

Units	Offer Price (£)	Bid Price (£)	Bid-Offer Spread	OCF
BlackRock A	1.072	1.016	5.22%	0.61%
BlackRock H	1.073	1.017	5.22%	.0.23%
BlackRock D	1.026	1.021	0.49%	0.25% (estimated)

- Immediately prior to the transfer, Mr and Mrs N held 5,755.91 BlackRock A units, valued at £5,848.00 (5,755.91 units multiplied by the bid price of £1.016). The conversion factor used to calculate the number of BlackRock H units Mr N would receive was 0.999017 (which derives from the bid price of the A units divided by the bid price of the H units to account for the slightly different prices of each unit.)

- After the conversion, Mr N held 5,750.25 BlackRock H units, which was also valued at £5,848.00 (5750.25 multiplied by the bid price of £1.017) The value of the BlackRock A units before the conversion and the value of the BlackRock H units after the conversion was identical at £5,848.00. This demonstrated that no additional bid-offer spread was incurred as a result of the conversion.

- When the BlackRock H units are sold in the future, the prevailing bid price at the time will apply. The conversion took place on a bid price to bid price basis, so there would be no additional deduction for the bid-offer spread when the units were sold.

- Had Mr N wished to convert his BlackRock A units into BlackRock D units, this would have been a switch rather than a conversion. The BlackRock A units would have been sold at the bid price, and the BlackRock D units subsequently purchased at the higher offer price. He would have received 5,699.81 D units (£5,848 multiplied by the D class offer price of £1.026). The value of these units would have then been £5,819.50 (5,699 units multiplied by the D class bid price), which would have effectively crystallised the bid-offer spread charge on the A class units that Mr N wanted to avoid.

- Fidelity did not mislead Mr and Mrs N by not including the BlackRock D units in the Report. They had a lower bid-offer spread but were not the cheapest for the purposes of the Report as the ongoing charge was higher.

- In addition, the Report made clear that the bid-offer spread was not a relevant factor in the conversion exercise and explained what was included in the total cost of ownership. If Mr N had been concerned about the bid-offer spread, he should have asked about it. There was also information about all other funds online for Mr and Mrs N to consider.

- Accordingly, Mr N did not make a loss on conversion by converting the BlackRock A units to BlackRock H units rather than BlackRock D units. Nor would he make a loss on a future sale of BlackRock H units, for this reason.

<u>Mr N's submissions</u>

18. In response, Mr N made the following submissions:-

- All charges should have been taken into account in the Report, when determining “cheapness”. The Money Advice Service's and Fidelity's own website referred to the bid-offer spread as a significant charge to all investors. So, it should have been included as a cost in the comparison table in the Report.

- At the time of the conversion, Mr N's Relationship Manager had told him he would convert his BlackRock A funds to the “cheapest” . He did not mention “equivalent” classes.

- It was wrong for Fidelity to say that the BlackRock D fund should not be included in the Report because it was not the “direct equivalent” to the BlackRock A fund. Taking into account all the charges, the BlackRock D fund was cheaper than the BlackRock H fund. The ongoing charge was higher, but it had a lower bid-offer spread that outweighed this, for the following reasons.

- For the BlackRock D fund, the difference between bid and offer prices was 0.49%. For the BlackRock H fund, the difference was 5.22%. This difference was much greater than the relative difference in ongoing charges between the two classes of units of 0.25% and 0.23% respectively. As a result, holding H class units rather than D class units would always effectively result in higher charges.

- He conceded that if the 2014 Letter had applied to the conversion in November 2015, then Fidelity was correct to say that the bid-offer spread was not relevant upon conversion. However, he would still suffer a loss in the future when he came to sell the BlackRock H units.

- It is at the point of future sale that the differences in the bid-offer spreads would affect the overall value of his investments. He would have gained more if he had converted to BlackRock D units rather than BlackRock H units. He illustrated this with the following calculation:

> "Using prices as at 18th August 2020, taken from a fund data provider… selling the BlackRock H and BlackRock D units, using the bid price, results in:
>
> H units 5750.55 units at £1.7160 = £9,867.95
>
> D units 6013.97 units at £1.7280 = £10,392.14
>
> so, the D units are worth £524.19 more than the H units."

- Mr N also argued that Fidelity should make a payment in respect of the distress and inconvenience caused.

The Pensions Ombudsman's position on the provision of incorrect information

19. The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow incorrect information, for example, retirement quotes, transfer values or early retirement. A member is only entitled to receive the benefits provided for under the scheme rules, that is those based on correct information accurately reflecting the scheme rules.

20. Broadly, the Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early.

21. The Ombudsman will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so. An example of this is where the member had already decided to take early retirement before receiving the incorrect information. In this case it is unlikely that any claim for financial loss would be upheld on that basis alone.

22. The above sets out the Ombudsman's views very generally on the application of, negligent misstatement. It is for guidance only; each case will turn on its own facts.

Adjudicator's Opinion

23. Mr and Mrs N'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 below:-

    - Mr and Mrs N did not suffer a loss in converting BlackRock A units to BlackRock H units. The conversion was made using bid-offer prices that were automatically included in the valuation of the funds not a switch through its normal dealing service using market prices.

- The Report showed that Mr N was informed that the conversion would be made into an equivalent fund, not just the cheapest. So, Fidelity did not provide inaccurate or misleading information and had done nothing wrong regarding conversion from bundled to unbundled funds.

- The relevant costs were the administration and service fees set out in the Report and not the bid-offer spread.

  Mr and Mrs N had not shown that they had incurred a financial loss as a result of the conversion from the BlackRock A units to the BlackRock H units, instead of the BlackRock D units.

- In any event, they had not yet sold their investments and could not complain about losses from a prospective sale that had not yet happened.

- Although the Report did not cover investments in BlackRock property funds, the same conclusion applied to these investments.

24. Mr and Mrs N did not accept the Adjudicator's Opinion and provided further calculations to evidence their loss.

25. The complaint was passed to me to consider. Further submissions from Mr N do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised.

Ombudsman's decision

26. Mr and Mrs N's complaint is that Fidelity provided incorrect information about the charges that applied to each class of BlackRock units in the Scheme, on conversion from bundled to unbundled funds. They say that they suffered a financial loss because they converted their BlackRock A units into BlackRock H units, rather than BlackRock D units that had a lower bid-offer spread.

27. Fidelity claims that Mr and Mrs N have not suffered any financial loss. They converted their BlackRock A units into an equivalent number of BlackRock H units on a bid price to bid price basis. The bid-offer spread was not a relevant cost in the conversion.

28. By way of background, I accept that Fidelity was following requirements imposed by the FSA (as it then was) in converting Mr and Mrs N investments in the Scheme from bundled to unbundled funds to ensure transparent pricing. The FSA did not specify the charges that had to be taken into account in the conversion exercise.

29. Although the Report did not cover investments in BlackRock property funds in the same class, the same principles apply to these investments and so my findings apply

equally to the conversion of BlackRock property A units into BlackRock property H units.

30. Fidelity stated in the 2014 Letter that most funds in the Report would “cost less overall” after conversion and that the unbundled fund would be “equivalent” to the bundled fund but priced transparently. I accept Fidelity’s confirmation that conversion of the funds listed in the Report took place on a bid price to bid price basis, not through the usual market transaction, using bid and offer prices. They were then converted into an unbundled fund, using the offer price so that the bid-offer spread was automatically included in the valuation of the funds at conversion.

31. On that basis, I consider that the relevant costs for the conversion exercise were the administration and service fees set out in the Report and not the bid-offer spread. Whether or not Fidelity’s or the Money Advice Service’s website considered the bid-offer spread to be a charge to investors was not relevant.

32. Mr N claimed that all charges, including the bid-offer spread, should have been used in the comparison exercise and that the unbundled funds should have been “cheaper” not “equivalent”. I have reviewed the Report and I consider that Mr N was informed that the conversion would be made into an equivalent fund, not just the cheapest.

33. Fidelity acknowledged that Mr N’s Relationship Manager might not have made this clear and I accept that Fidelity’s explanations about the conversion and bid-offer spread could have been clearer.

34. That said, Mr N could have asked for more information. The Comparison Letter also informed him that he could ask questions, if he wished, but he did not do so until May 2018. There is no evidence that Mr N was given inaccurate or misleading information in its Report by omitting a reference to the bid-offer spread, which in any event he had accepted when he purchased the BlackRock A units.

35. I accept Fidelity’s confirmation that the BlackRock A units and BlackRock H units had similar bid-offer spreads and annual costs and I find that they were equivalent and transparently costed as cheaper overall, at conversion. I also accept Fidelity’s assertion that the value of the BlackRock A units immediately prior to the conversion was equivalent to the value of the BlackRock H units immediately after the conversion so that there was no financial loss.

36. Mr N said that he accepted this but argued that he will suffer a loss when he eventually sells the BlackRock H units. He provided calculations to show that the amount he received from the sale would always be less than if he had converted his BlackRock A units to BlackRock D units, instead of BlackRock H units. I do not accept this. I consider that Mr N’s argument is based on an incorrect calculation.

37. Mr N claimed that he would have converted his BlackRock A units to 6,013.97 BlackRock D units but Fidelity confirmed that he would have received 5,699.81 BlackRock D units. This would have been arranged by a market switch rather than a conversion. It would have resulted in the bid-offer spread on the BlackRock A units

crystallising under the normal market process. The value of 5,699.81 BlackRock D units, as at 18 August 2020, was less than the value of the 5,750.55 BlackRock H units he actually held. So, I do not agree with Mr N's argument that he will necessarily make a loss when he sells the BlackRock H units.

38. I consider that the BlackRock H units had the lowest ongoing fees and was the nearest equivalent to the BlackRock A units. The BlackRock D units had a lower bid-offer spread but the ongoing charge was higher. They would have been acquired by a switch on the market that involved the bid-offer spread.

39. In addition, a conversion to BlackRock D units was a fundamentally different investment to a conversion to BlackRock H units. BlackRock A units and BlackRock H units were invested in emerging market equities, whereas BlackRock D units were invested in UK equities. The conversion exercise was intended to reduce costs in an existing fund selection, not suggest a different investment fund. Fidelity could not have recommended BlackRock D units in the Report without giving financial advice which it was not authorised to do. So, for the reasons set out above, I find that BlackRock D units were not equivalent to BlackRock A units and need not have been included in the Report.

40. Even if I agreed that the BlackRock D units should have been presented as a potential alternative alongside the BlackRock H units, which I do not, Mr and Mrs N have not shown that they incurred a financial loss. The bid price to bid price conversion from the BlackRock A units to BlackRock H units did not cause a financial loss.

41. Furthermore, the BlackRock H units have not been sold and Mr and Mrs N are not able to show that they have suffered any quantifiable loss. They cannot complain about hypothetical losses from a prospective sale that has not yet occurred.

42. I do not uphold Mr and Mrs N's complaint.

[redacted]

Anthony Arter

Pensions Ombudsman
28 December 2020

Appendix

Fidelity SIPP
Extracts from Bundled and Unbundled Comparison Report for Mr N (similar Report for Mrs N), dated 1 May 2015.

"This information has been prepared for you at your request and does not constitute and official account statement. The information displayed has been obtained from internal sources which we believe to be reliable, but which cannot be guaranteed. The information contained herein is therefore subject to change without notice. Please refer to your Fidelity Worldwide Investment Account . Statements for an official statement of your account activity and account positions. Your account positions and historical account activity can also be viewed online…"

Bundled Fund Name	OCF	Service and Platform Charge	Refund of service fee	Total cost of ownership	Switching considerations
BlackRock Emerging Markets Eq Tkr A Acc	0.61%	0.20%	0.30%	0.51%	Cheaper in Clean - Please see note 4 below

Unbundled Fund Name	OCF	Negotiated Fund Manager Discount	Service Fee	Total cost of ownership	Switching considerations
BlackRock Emerg Mrkts Eq Tkr H Acc	0.23%	NA	0.20%	0.43%	Cheaper in Clean – Please see note 4 below

Notes

1 OCF. This is the Annual Management Charge plus the additional expenses.

2 Total Cost of ownership. This is the Annual Management Charge plus the additional charges, less any Annual Charge Discount or rebate applicable on the fund. For clean shar -classes, no Annual Charge Discount is paid.

3 Cheaper in the bundled model. You could be better off in your current fund. This could be due to the rebates that you are receiving on the fund charges.

4 Cheaper in Clean. By switching the indicated fund, you could reduce your costs.

Disclaimer.

“If you choose to Switch Please note that it is important for you to understand that, if you choose to switch, you will be out of the market while we move you across to the new charging structure, as we have to sell your holdings in the bundled share class and then invest the money in the clean share class. This can take up to two working days. You will be out of the market, so you could miss out on growth and income if the market rises during this time. Also, you will probably have a different number of units in the fund after you move as the prices of bundled and clean share classes are normally different.

This information has been prepared for you at your request and does not constitute an official account statement. The information displayed has been obtained from internal sources which we believe to be reliable, but which cannot be guaranteed. The information contained herein is therefore subject to change without notice. Please refer to your Fidelity Worldwide Investment Account Statements for an official statement of your account activity and account positions. Your account positions and historical account activity can also be viewed online by logging onto Account Management at https://www.fidelity.co.uk/investor/login. “

Will I be better off with the new charges?

“We expect that most Fidelity investors will be paying less with this new charging approach.

To see how much you might save with our online tool, visit fidelity.co.uk/pricing, to enter the investments you currently hold with Fidelity. Please note that Fidelity is required by regulation to move all your fund holdings into the new pricing by April 2016. Switching dual priced funds may result in a loss. Switching any fund will result in you being out of the market which could also result in a loss. If you do not want to switch at this stage we will contact you before that date to let you know our plans. Therefore, any savings shown in the tool will only apply for a maximum of two years.

The value of investments can go down as well as up and you may get back less than you invested. Fidelity only gives information about products and services and does not provide investment advice based on individual circumstances. If you are unsure of the suitability an investment you should speak to an adviser.”