

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Clifford Chance Group Personal Pension
Respondent	Fidelity International ( <b>Fidelity</b> )

### Outcome

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

### Complaint Summary

2. Mrs N's complaint was that she was not allocated any of the death benefits paid following the death of her husband, Mr N.
3. Since the complaint has been accepted by The Pensions Ombudsman (TPO), Fidelity has reconsidered its view and awarded 40% of the benefits to Mrs N and 30% to each of her two sons. It has also made a payment, of £2,000, in recognition of the severe distress and inconvenience caused.
4. Mrs N has accepted Fidelity's award of 40% of the benefits and £2,000 in recognition of the distress and inconvenience. However, she argues that Fidelity should pay the legal costs that she has incurred as a result of making this complaint.

### Background information, including submissions from the parties

5. Mr and Mrs N married on 13 July 1990. Mr and Mrs N had two children.
6. Mr and Mrs N sought a divorce and a Decree Nisi was agreed on 24 March 2014. This confirmed that Mr and Mrs N had lived apart for at least five years. However, no Decree Absolute was granted.
7. On 13 January 2017, Mr N died.
8. In February 2017, Fidelity were notified of Mr N's death. Fidelity has said that the individual who notified it of Mr N's death provided extensive information regarding Mr N's personal matters. It used this information when it allocated the death benefits. No benefits were allocated to Mrs N.
9. Mrs N complained to Fidelity.

10. On 4 April 2018, TPO responded to a query from Mrs N and said:-

“The Pensions Ombudsman’s advice is free and The Pensions Ombudsman provides the same service whether through a lawyer or directly. By using a lawyer as an intermediary, you may be incurring unnecessary costs.”

11. On 17 August 2018, Fidelity wrote to Mrs N’s representative, Mr S. It said that the death benefits paid to Mrs N were solely for the benefit of her two children. It confirmed that the remaining benefits were paid to other beneficiaries. It said that it had, “reviewed all evidence required under the discretionary trust and[,] once concluded[,] beneficiaries were paid a level of benefit in line with [the] ruling under the discretionary trust.”
12. On 5 September 2018, Mrs N wrote to Fidelity and asked for information on how the death beneficiaries had been decided and who had been paid.
13. On 14 September 2018, Fidelity wrote to Mrs N and said that it was unable to provide the identity of all persons with a competing interest in the death benefits.
14. On 21 January 2019, Mrs N complained that she was not given the opportunity to provide any information to show her financial dependency on Mr N.
15. On 10 July 2019, Fidelity responded, it admitted that it failed to make sufficient investigations into the level of dependency Mrs N had on Mr N. It said that it had reconsidered its allocation of benefits and decided to award 40% of the death benefits to Mrs N and 30% to each of her two sons. The 40% Mrs N was entitled to amounted to £14,498.05. Fidelity offered to increase this in line with interest calculated at 1.75%, which equated to £253.72. It also offered to make a payment of £2,000 in recognition of the severe distress and inconvenience its maladministration caused.
16. Fidelity also offered to, “review any reasonable, itemised, solicitor fees”.
17. On 19 July 2019, Mr S responded to the offer. He said that Mrs N accepted Fidelity’s offer of £16,751.77. He also said that there were no solicitor fees, as he was a barrister. He said that he had agreed costs with Mrs N which amounted to a “sum equal to 50% of any award,” plus VAT. The fee that he quoted totalled £10,051.07.
18. On 12 August 2019, Fidelity responded to Mr S’ request for payment and said that it was not willing to make a payment for the amount quoted. It said, “the information we have been provided regarding this is that this was an agreement between Mr [S] and Mrs [N] for payment of 50% of any settlement figure. This is not an agreement between Fidelity and Mr [S]. It is Fidelity’s understanding that this should be paid from the settlement and not in addition to.” It went on to say that it would be willing to review the original agreement.
19. On 16 September 2019, Mr S provided evidence of his agreement with Mrs N.

20. On 24 October 2019, Fidelity wrote to this office and explained that its legal department had reviewed the agreement and determined that the agreement is solely between Mrs N and Mr S. Therefore, settlement of the fees should be dealt with those privy to the agreement.

### **Adjudicator's Opinion**

21. Mrs N's complaint was considered by one of our Adjudicators who concluded that Fidelity should not be held liable for Mrs N's legal costs. The Adjudicator's findings are summarised below:-
- This office had made Mrs N aware that she could be incurring unnecessary costs if she continued to take legal advice. Although the Adjudicator accepted that making the complaint would have caused inconvenience to Mrs N, he did not agree that the case was so complex that professional help was required.
22. Mrs N disagreed with the Adjudicator's findings. So, the complaint was passed to me to determine.
23. Mrs N provided her further comments which do not change the outcome. Mrs N argued that:-
- Fidelity should pay her legal costs, which amount to £10,051.07.
  - She has limited English language skills, so would have found it hard to engage in correspondence without legal assistance from a barrister who is fluent in her native language.
  - By the time TPO had warned Mrs N that she could be sustaining unnecessary costs, Mrs N had already incurred legal fees.
  - Her extenuating circumstances meant that TPO should make an exception to its general position in relation to costs charged by professional advisors.
  - Fidelity cannot rely on the concept of privity of contract. Fidelity cannot successfully argue that, because the contract is between Mr S and Mrs N, it should be exempt from paying legal fees.
  - She should be put back in the same position she would have been in if Fidelity correctly exercised its discretion in the first instance. She argues that this must include legal costs.
24. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mrs N for completeness.

## **Ombudsman's decision**

25. It is not disputed that Mrs N was disadvantaged because Fidelity did not fully consider her claim for death benefits. Fidelity has now accepted that it did not sufficiently investigate the claim and has awarded Mrs N 40% of the death benefits. It has also paid Mrs N £2,000 in recognition of the severe distress and inconvenience the maladministration caused. Mrs N has confirmed that she is satisfied with this resolution.
26. The complaint only concerns whether Fidelity should be responsible for the legal costs incurred by Mrs N when making her complaint to Fidelity.
27. Mrs N has argued that English is not her first language, and so she was reliant on professional help when making the complaint. As a result, she believes that the associated legal costs should be borne by Fidelity.
28. The TPO website provides general guidance on TPO's position regarding professional fees. It clearly states that applicants are unlikely to get any costs repaid, even if the complaint is upheld. TPO is set up so that people should not normally need professional help.
29. If Mrs N believed that she needed additional help, I would have expected her to notify TPO. On 21 January 2019, Mrs N completed TPO's application form, she said that she did not have any language communication needs. Prior to her application, on 4 April 2018, Mrs N was informed that she may be incurring unnecessary costs by taking legal advice. If Mrs N felt that she needed additional support, she should have taken the opportunity to request it.
30. Mrs N has also said that Fidelity cannot successfully argue that it should not be liable for the legal costs which stem from a private contract between Mrs N and Mr S. I do not find this argument relevant to the complaint. The question I have considered was whether Fidelity should be responsible for any legal costs and whether the costs are too remote. When instructing respondents to put applicants back in the position they would have been had the maladministration not occurred, I would always expect applicants to mitigate any losses, this includes bringing a complaint to TPO themselves. Although, I accept that making the complaint would have caused inconvenience to Mrs N, I do not find the case was so complex that professional help was required.

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31. I do not find that Mrs N's legal costs should be paid by Fidelity, so do not uphold the complaint.

**Anthony Arter**

Pensions Ombudsman

26 November 2019