PO-29035

Ombudsman's Determination

Applicant	Mr E
Scheme	Fidelity SIPP (**the SIPP**)
Respondent	Fidelity International Ltd (**Fidelity**)

Outcome

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

Complaint summary

2. Mr E's complaint is that Fidelity refused to allow him to re-invest dividend income into the SIPP when he ceased to be a UK resident, due to cross border regulations.

3. Fidelity also required him to sell partial shares held in the SIPP, following amendments to its terms and conditions (**Terms and Conditions**) and to retain the proceeds in cash, instead of re-investing them in the SIPP.

Background information, including submissions from the parties

4. In December 2016, Mr E set up the SIPP with Fidelity. He was resident in the UK at the time. On 2 June 2018, Mr E notified Fidelity that he had moved to Germany.

5. On 9 June 2018, Fidelity wrote to Mr E, explaining that there would be restrictions on his SIPP account, as he was no longer a UK resident, including a prohibition on switching investments between funds in the SIPP.

6. On 15 January 2019, Mr E raised a switch request with Fidelity. He directed that all income from his investments in the SIPP should be re-invested and not held as cash in the SIPP account (**switch request**).

7. On 18 January 2019, Fidelity informed Mr E that it could not complete his switch request because there were restrictions on his SIPP account, now that he had moved to Germany. Fidelity explained that he was only allowed to switch investments into cash and not cash into investments, though he could transfer the SIPP to an overseas scheme. Fidelity added that a full list of Qualifying Registered Overseas Pension Schemes (**QROPS**) was available on the UK government's website.

8. Dissatisfied with this response, Mr E raised a complaint with this Office. He said that he had been “locked out” of his investment in the SIPP when he moved to Germany and was not allowed to re-invest income into the existing funds. He claimed that Fidelity should allow this and, also reimburse him for his investment losses.

9. On 9 February 2019, Mr E received a letter from Fidelity dated 7 February 2019, (**February 2019 letter**) setting out changes to its business Terms and Conditions and explaining as follows:

   - Fidelity’s SIPP accounts were moving to a new online dealing service so there would be some changes over the next few months.
   - Under the new system, the SIPP could only invest in whole shares and partial shares would be sold and retained in the SIPP in cash.
   - There would be a share dealing transaction fee of £1.50 for each transaction, replacing the current 0.1 % dealing charge.

10. The February 2019 letter also included a paragraph headed, “A reminder of the options available to investors resident outside the UK,” that explained:

    - Some of the new services would not be available to non-UK residents.
    - Non-UK residents could re-invest income online but could not switch from one investment to another or pay in new contributions.
    - Non-UK residents could move funds in a SIPP into cash.

11. On 22 February 2019, Mr E informed Fidelity that he had received the amended Terms and Conditions but objected to his partial shares being sold. He explained that as Fidelity would not allow him to re-invest the cash proceeds into the SIPP, he would not receive investment income.

12. Fidelity replied on 1 March 2019, it said:-

    - The new share dealing platform required all partial shares, held in the SIPP to be sold, in line with industry practice. It apologised that a sale of partial shares could not be avoided.
    - It is entitled to change its Terms and Conditions by giving Mr E one month’s notice which it did in the February 2019 letter. This complied with section 10 (Changing or ending these Terms) of the Terms and Conditions.

13. In April 2019, Fidelity sent a further letter to Mr E (**April 2019 letter**) headed “Enhanced Services are now available with your SIPP,” informing him that:

    - He could now directly re-invest income from his investments in the SIPP, automatically online.

- As a non-UK resident, he could not switch funds from one investment to another or pay new contributions into the SIPP.

14. On 30 April 2019, Fidelity sold Mr E's partial shares in the SIPP and Mr E complained. He reminded Fidelity that he had previously objected to the sale of the partial shares because he could not re-invest the proceeds into the SIPP, under Fidelity's Terms and Conditions. He said that he now held 2% of his fund, uninvested, in cash and claimed compensation for lost investment returns.

15. On 3 June 2019, Fidelity responded that it had acted within its Terms and Conditions. Although it sympathised with Mr E's position, he had agreed to the client eligibility requirements in the Terms and Conditions when he opened the SIPP. In the December 2016 version of the key features document called "Doing Business with Fidelity", Mr E was informed that restrictions would apply, if he became a non-UK resident. Under the subheading 'Your commitment' (**Your Commitment**), it states:

    "If you move abroad, we reserve the right to place restrictions on your account in accordance with regulations. This may mean you can't make new investments or switch between funds in your account. We may also inform foreign authorities about your investments, if we are required to do so."

16. Fidelity said restrictions were in place to avoid potential infringement of cross border regulations. So, while Mr E lived in Germany, Fidelity could not allow him to reinvest income into the SIPP. Fidelity did not have any non-UK distribution authorisations and it would be a breach of local legal and regulatory requirements to allow a client who lives in Germany to trade in investments.

17. In June 2019, Mr E made further submissions in relation to his complaint, as follows:-

    - Overall, he would like the assets in the SIPP to be invested and not held in cash. It is unfair of Fidelity to object to this. He was currently unable to reinvest around £300.

    - The term "reserve the right to place restrictions" in Your Commitment is very vague and should not apply to investments by EU citizens.

    - Fidelity sold partial shares held in the SIPP when he explicitly objected and charged high fees.

    - Fidelity claims that he cannot re-invest income due to cross border regulations. However, the system recently allowed him to automatically re-invest cash online, into the SIPP, whilst a manual instruction is still rejected.

    - If cross border regulations do not allow him to re-invest in the SIPP because he is resident in Germany, Fidelity should also have rejected the re-investment that he made online. However, it did not.

18. Fidelity reviewed the position in July 2019, as follows:-

- Non-UK residents are not allowed to give manual directions, switching from cash to investment, for regulatory reasons. On the previous share dealing system, directions for income to be re-invested could only be given manually, not online. So as Mr E is now living outside the UK, he is not allowed to give manual directions to re-invest income.

- Its new share dealing system allows income to be re-invested automatically into funds in the SIPP, online. This means that Mr E is now permitted to reinvest future dividend income automatically online, even though he is not UK resident. However, he can still not re-invest income already held in cash in the SIPP, manually or online, or give instructions manually.

- Mr E was informed of these changes in the February 2019 and April 2019 letters and made aware that he would be able to re-invest income automatically online when the new system was in place, even if he lived outside the UK.

- Fidelity had not explained this earlier in the correspondence relating to Mr E's complaint and apologised for this. The reason was that Mr E had been moved onto the new share dealing system after he had made his initial complaint in January and February 2019. At that time, Fidelity was not aware when the changes outlined in the February and April 2019 letters would take place or what they would entail.

- The February and April 2019 letters informed Mr E that, under the new system, there would be dealing fees for selling shares and re-investing income. They also explained that Mr E would only be able to invest in whole numbers of shares and any partial shares would have to be sold. Mr E was informed of this, two months before Fidelity sold the partial shareholdings in the SIPP.

19. An exchange of correspondence followed where among other things, Mr E said he was still unable to re-invest approximately £2,000 held in cash in the SIPP and Fidelity maintained its position. It said it had not done anything wrong and did not agree that it should compensate Mr E.

Adjudicator's Opinion

20. 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 below:-

- Mr E raised a complaint in February 2019 because Fidelity would not allow him to re-invest income in the SIPP when he became non-UK resident. However, in June 2019, Fidelity's share dealing systems changed and Mr E is now able to re-invest income distributions into the SIPP automatically online, even though he lives in Germany. Accordingly, this part of his complaint has been resolved.

- Despite this, Mr E has an outstanding complaint. He is still claiming that he cannot re-invest approximately £2,000 held in cash in the SIPP, resulting in lost investment income. He is also complaining that Fidelity unfairly sold partial shares in the SIPP, even though he objected, and the sale proceeds cannot be re-invested. However, the Adjudicator considered that this part of his complaint cannot be upheld.

- It was the Adjudicator's view that there has been no maladministration because Fidelity has acted in accordance with the SIPP's Terms and Conditions. Mr E agreed to these when he set up the SIPP and restrictions that applied to non-UK residents were clearly drawn to his attention in the Your Commitment section.

- The Adjudicator considered that Fidelity had duly informed Mr E of changes to its share dealing service in the February and April 2019 letters, and apologised that a sale of partial shares in the SIPP would be required.

- It was the Adjudicator's view that Fidelity had clearly explained that Mr E cannot give manual instructions to re-invest cash in the SIPP when he is resident in Germany, due to regulatory cross border requirements. Hence, he could not re-invest £2,000. However, Fidelity advised him that he could move his funds to a QROPS in order to re-invest.

21. Mr E did not accept Fidelity's submissions or the Adjudicator's Opinion and the complaint was passed to me to consider.

22. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points for completeness.

Ombudsman's decision

23. I have considered Mr E's complaint and noted the changes in Fidelity's share dealing service that took place before his complaint reached me.

24. I find that Fidelity acted in accordance with its Terms and Conditions in not allowing Mr E to give manual instructions to re-invest income and sale proceeds into the SIPP, whilst he is resident outside the UK. Fidelity says that this restriction applies because it is not authorised to undertake cross border transactions and I accept this.

25. I consider that Mr E was clearly informed that such restrictions might apply if he moved from the UK and he agreed to those Terms and Conditions. Fidelity also informed him that he could transfer from the SIPP to a QROPS in order to re-invest income, if he so wished.

26. I also consider that Fidelity properly informed Mr E about the benefits and restrictions of its new share dealing system. I find that Fidelity acted in accordance with its Terms and Conditions in requiring the SIPP to sell partial shares, even though Mr E could not give manual instructions to re-invest the proceeds, as a non- UK resident. Accordingly, I do not find that Fidelity's actions amount to maladministration.

27. I do not uphold Mr E’s complaint.

Anthony Arter

Pensions Ombudsman
9 September 2019