

## Ombudsman's Determination

<b>Applicant</b>	Mr Martin Houghton and Dr Frieda Houghton
<b>Scheme</b>	The FundsNetwork SIPP
<b>Respondent(s)</b>	The Charles Stanley Alpha SIPP (the <b>Alpha SIPP</b> ) Fidelity Worldwide Investment ( <b>Fidelity</b> )  EBS Management plc ( <b>EBS</b> )

### Complaint summary

Mr Houghton and his wife, Dr Houghton, complain that Fidelity, the transferring scheme manager, and EBS, the receiving scheme administrator, arranged the transfer of the fund value without authority of their own accord and as cash, not in specie as intended.

### Summary of the Ombudsman's determination and reasons

The complaint should be upheld against EBS because they sent a letter that Fidelity reasonably understood as a request for a cash transfer.

## **DETAILED DETERMINATION**

### **Material Facts**

1. The FundsNetwork SIPP is provided by Fidelity, using a Standard Life wrapper. Standard Life Assurance administer it and Standard Life Trustee Company is the trustee. Generally I refer to Fidelity, though the disputed payment was made by Standard Life.
2. The Alpha SIPP is provided and managed by EBS plc and its trustee is Alpha Trustees Ltd. Both are subsidiaries of Charles Stanley Group Plc. Correspondence is headed "Alpha SIPP", sometimes described as "Alpha", but for ease I refer to EBS, Charles Stanley and Alpha jointly as "EBS", other than where the parties have themselves distinguished.
3. In mid-2012, the Houghtons, who were each members of the FundsNetwork SIPP, decided to join the Alpha SIPP and to transfer the funds then in the FundsNetwork SIPP to the Alpha SIPP.
4. Mr Houghton says that he made telephone calls to Fidelity and EBS. He does not know when, although he thinks they may have coincided with the draft letter referred to in paragraph 7, which would mean that the telephone calls were on or shortly before 18 May 2012.
5. The call to Fidelity was to a person who identified himself by his first name only (Mr Houghton made a handwritten phone note of the conversation). He says that he told Fidelity that he wanted to transfer in specie and was told that an in specie transfer was dependent on whether the assets could be received by EBS.
6. The call to EBS was to a named person. Mr Houghton says that EBS indicated that the SIPPs needed to be open before there could be discussion about the transfer.
7. I have seen Mr Houghton's file copy of a letter addressed to Fidelity. Mr Houghton does not know whether he sent it and does not claim to have done so, but it was created on his computer on 18 May 2012. He says that it is evidence of his and Dr Houghton's intent. It says:

"I wish to make an in specie transfer of my Fidelity Funds Network/Standard Life SIPP to Charles Stanley's Alpha SIPP. Please find enclosed a copy of a letter from Charles Stanley

confirming that they are prepared to accept the funds currently held in my Fidelity Funds Network as an in specie transfer...”

8. The Houghtons each completed an Alpha SIPP application form. It said:

“If the transfer is a transfer of assets in specie, please provide details of the scheme and a current asset list and valuation. Please note that a Transfer Scheme Details form must be sent to each transferring scheme for completion...”

They each ticked a box on the form which said:

“I shall arrange to execute the transfer of this plan to the Charles Stanley Alpha SIPP myself at no extra cost.”

They then supplied their own personal details confirming this instruction. The other option, which Mr and Dr Houghton did not select, was:

“I authorise the Charles Stanley Alpha SIPP to arrange and execute the transfer of this plan to the Charles Stanley Alpha SIPP on my behalf in accordance with the charges identified within the Charles Stanley Alpha SIPP fees and charges sheet.”

9. On 11 July 2012, Alpha wrote to Standard Life. Each page that related to the transfer was copied and sent by EBS to Fidelity on 11 July. The writer said:

“I write in connection to the transfer of the above plan and confirm that we will accept the transfer. I enclose the member’s written instruction in this regard.

[He gave further details of the Alpha SIPP.]

Please transfer the proceeds to the following account;

[He gave the bank account details.]

I trust all is satisfactory and look forward to receiving payment as soon as possible, however if you have any queries please do not hesitate to contact me.”

10. Fidelity’s description of what happened after they received the forms is this:

- Standard Life completed the disinvestment of all the funds (a process which they started on 17 July) on 25 July 2012, after all the final dividends were paid on certain funds.

- On 27 July 2012, Bestinvest, a financial adviser, called Fidelity asking why a cash transfer was proceeding when an in specie transfer was required. Fidelity asked Standard Life to respond and Standard Life told Bestinvest that Alpha had not requested an in specie transfer.
  - On 1 August Fidelity were told by Bestinvest to carry on with the cash transfer.
  - Also on 1 August 2012, before the payment was made, Mr Houghton contacted them, expressing concerns that the transfer should have been in specie rather than cash. He said he wanted the transfer to be reversed and his funds reinstated at no cost. Fidelity say that they explained to him that Alpha had instructed them to transfer the proceeds. Mr Houghton accepted the explanation.
  - On 2 August 2012, transfer values of £553,972.52 (Dr Houghton) and £256,273.62 (Mr Houghton) were paid.
11. The Houghtons expressed their dissatisfaction with what had happened. They complained and used the services of the Pensions Advisory Service. Essentially their position has been that they did not give an instruction to transfer, that EBS knew they intended an in specie transfer and that Fidelity should have identified from the application form sent to them that further instructions were required.
  12. Neither Fidelity nor EBS accept responsibility. In summary form, their observations are set out below.
  13. Fidelity say that the 11 July request was clear, that there was no mention of an in specie transfer, they were not asked to provide an asset list and that Standard Life do not ask for discharge forms.
  14. EBS say that the transfer should not have been paid because the instruction on the application form was not for a cash payment, that they needed to give bank details for any cash even for an in specie transfer. Further that they would expect there to have been a request about the form of settlement and if the instructions were unclear they should have been questioned. EBS add that it would seem that Mr Houghton had put Fidelity on notice that he wanted to transfer in specie. Fidelity did

not query the request made by EBS, nor did they have authority to make the payment.

15. On the matter of loss, Mr Houghton has said that he and Dr Houghton had to rebuild their portfolios. They suggested to TPAS (in April 2013) that compensation should be based on the movement of the FTSE index (as a proxy, since they were not actually invested in the FTSE) for the time they were out of the market. They have suggested using one of two dates for the end of that period: either 11 September 2012, when they say reinvestment started or 26 October when a larger group of purchases was made.
16. Mr Houghton also says that Dr Houghton has “fixed protection 2014” for tax purposes and is concerned that any payments made into her SIPP may invalidate it. Mr Houghton has asked that any compensation due to Dr Houghton be held until the matter is clarified by HMRC.

## **Conclusions**

17. This is a relatively straightforward matter. I find no fault with Mr Houghton, who had no reason to think that anything would be set in motion without further input from him. He told EBS that he would arrange the transfer himself. He told Fidelity nothing in writing, but did not need to - or at least not until he was ready. (I find in that regard that the draft letter referred to in paragraph 7 was not sent. Mr Houghton does not say it was and he does not have a final copy; Fidelity have not produced a copy from among their papers.)
18. The reason the payment was made was that Fidelity took the 11 July letter as an instruction. I find that was reasonable of them. The letter was in substance a request for a cash payment, whatever was intended. (I am completely unconvinced by any suggestion that the writer would have written in the same terms about the bank details if he had known that the main transfer was to be in specie.)
19. In substance what the letter said was that EBS had Mr Houghton’s instructions (which were enclosed) and that they expected a cash payment. I do not find that Fidelity should have thought that the letter was overridden or made ambiguous by the statement on the application that Mr Houghton would arrange matters himself and in effect that strictly the purported instructions were not enclosed. That

statement was primarily addressed to EBS and was not anyway in direct contradiction to a cash payment. The letter was, in my judgment, the direct cause of the payment.

20. I find therefore that EBS are liable to compensate Mr and Dr Houghton for the time that they were out of the market.
21. Strictly that should be done by calculating the notional values of each fund, based on their actual holdings, as at a relevant date. EBS would be able to make that calculation (though if they and the Houghton's agree, the change in the FTSE index could be used as a substitute). I consider that the later of the two dates – 26 October 2012 – given that the reinvestment will have taken time, and was not complete even then.
22. The Houghtons have been put to considerable inconvenience both in having to reconstruct fully invested portfolios and in needing to pursue the matter. They should be compensated for that.

### **Directions**

23. I direct that Fidelity should forthwith provide EBS with schedules of the holdings in each FundsNetwork SIPP as at the date they were encashed.
24. Within 21 days of receiving those schedules, EBS are to calculate the value of those holdings based on published prices as at 26 October 2012. They are then to pay to each Alpha SIPP the differences (if positive) between the sums so calculated and the amounts transferred. They are to add simple interest at the average rate for the time being payable by the reference banks from 26 October 2012 to the date of payment to Mr Houghton's SIPP.
25. EBS are to pay the compensation due to Mr Houghton into his SIPP account, but to hold the compensation due to Dr Houghton, until such time that she instructs that it be paid to her SIPP account (or, on production of evidence that fixed protection is prejudiced by such a payment, directly to her).

26. Within 21 days of the date of this Determination, EBS are to pay Dr and Mr Houghton £500 each.

**Tony King**

Pensions Ombudsman

18 February 2015