

## Ombudsman's Determination

<b>Applicants</b>	Mr Colin Lloyd, Ms Heather Palmer, Mr Thomas Lloyd & Mr Simon Lloyd
<b>Scheme</b>	Fidelity SIPP ( <b>the SIPP</b> ) Account Numbers EBSQ000026, EBSQ000068, EBSQ000060 & EBSA100159
<b>Respondent</b>	Fidelity Worldwide Investment ( <b>Fidelity</b> )

### Complaint Summary

1. Mr Colin Lloyd, Ms Palmer and his two sons complain that due to delays on the part of Fidelity in effecting “in specie” transfers of their SIPP investments to Charles Stanley between November 2013 and July 2014 they have been unable to trade during the period in question and consequently have each suffered a financial loss.
2. Mr Colin Lloyd and Ms Palmer also contend that they have suffered further financial loss through payment of higher SIPP charges to Fidelity during the protracted transfer process.

### The Ombudsman's determination and reasons

3. My decision is that this complaint should be upheld against Fidelity.
4. My reasons are essentially the same as in Mr X's Opinion of 1 December 2015 (**the Opinion**) a copy of which is attached. My additional comments follow.
5. Fidelity did not accept the views set out in the Opinion on the basis that:
  - when they told Mr Lloyd via Charles Stanley Direct (**CSD**) on 13 March 2014 that his family's “in-specie” transfer request made on 20 November 2013 had been rejected, Mr Lloyd had to make a new transfer application for his family;
  - once the transfer was rejected, any suspension on “new deals” for the SIPP accounts would have been lifted;
  - whilst the new “in-specie” transfer was being processed, if Mr Lloyd felt that his family was losing money by not being able to switch to the “clean pricing” charging structure offered by CSD, it was reasonable to expect that he could have switched the SIPP investments from Fidelity's “bundled” to “clean pricing” charging structures in order to mitigate their financial losses;

- they did not expect to process the new request until May 2014 at the earliest;
  - Mr Lloyd therefore had at least one month when he could have switched the SIPP investments from “bundled” to “clean pricing” charge structures with them;
  - they have been very fair in offering to compensate Mr Lloyd’s family for the difference between the “clean pricing” charges offered by CSD and Fidelity and pay the additional goodwill compensation payment as suggested by Mr X for the loss of opportunity to trade during the lengthy transfer process;
  - the complaint has been made retrospectively by Mr Lloyd because he never informed them that he wished to switch to the “clean pricing” structure with CSD;
  - it is therefore unreasonable to expect them to compensate his family for switching from “bundled” funds with Fidelity into “clean pricing” funds with CSD when there is no proof that this was always his intention when the SIPP assets were still with Fidelity;
  - for similar reasons, they cannot compensate Mr Lloyd’s family for any hypothetical investment losses through being unable to trade during the protracted “in-specie” transfer process; and
  - in order to try settling this complaint they have already paid each member of Mr Lloyd’s family £200 compensation in August 2014 as a gesture of goodwill; and
  - as the payments made to Mr Lloyd and Ms Palmer have not been allowed for in the additional “distress and inconvenience” compensation payments, they will deducting £200 from each payment now due to Mr Lloyd and Ms Palmer
6. I agree with the view expressed by Mr X in the Opinion that Mr Lloyd and his family most probably did not make any adjustments to the charging structure of the SIPP portfolios during the lengthy “in specie” transfer (and before the eventual re-registration with CSD) because it was inconvenient to do so and it also made sense to complete a transfer before restructuring. They were expecting the transfer to be relatively quick and until March 2014, there was no clear point at which they knew that there would still be a significant delay. They knew the transfer had taken longer than they expected, but not when it would be completed.
7. The Fidelity Client Terms (April 2014) states that:
- “(e) If you tell us that you want to transfer or re-register all of your Investments, we will suspend your account so that no new deals can be made. Once any outstanding deals are complete, we will then move our Investments to your new provider and your account will be closed in line with clause 5.3.”
8. Mr Lloyd notified Fidelity (via EBS) that his family wanted to transfer the SIPP assets from Fidelity to CSD in November 2013. Although their request should have come from CSD, there can be no dispute that Mr Lloyd had notified Fidelity that he wanted

to transfer. In my view, it was therefore reasonable for him to assume that the SIPP account had been suspended and no new deals could be made by him, particularly when Fidelity's website showed in February 2014 that the SIPP account was closed.

9. Furthermore the Fidelity Client Terms do not stipulate explicitly that Fidelity would only suspend a SIPP account if the transfer instructions came from a party which they recognised (e.g. CSD). I therefore consider it reasonable for Mr Lloyd to have assumed in March 2014 that an embargo on "new deals" was still in place unless Fidelity had clearly explained to him that it had been open to him to trade and also switch his SIPP investments into the "clean pricing" charging structure until the "in specie" transfer was completed which from the available evidence, Fidelity did not do this.
10. I therefore agree with Mr X that the complaint which Mr Lloyd's family has made against Fidelity can be upheld and make a direction below aimed at remedying that injustice.

### **Directions**

11. To put matters right, within 56 days of the date of this Determination, Fidelity shall arrange to pay each member of Mr Lloyd's family the following amounts of compensation in recognition of their loss of opportunity to trade during the lengthy transfer process:

Name	Compensation
Colin Lloyd	£800 (i.e. £1,000 less £200 already paid to Mr Lloyd in August 2014)
Heather Palmer	£300 (i.e. £500 less £200 already paid to Ms Palmer in August 2014)
Thomas Lloyd	£100
Simon Lloyd	£75

12. Additionally, Fidelity shall also pay Mr Colin Lloyd and Ms Palmer the difference in Fidelity "bundled" and CSD "clean pricing" charges for their SIPP policies assuming that the transfer process was completed on 20 February 2014 for a **four** month period.

**Karen Johnston**  
Deputy Pensions Ombudsman  
28 January 2016



I am authorised by the Pensions Ombudsman to give opinions on the merits of cases, including whether or not they can be upheld and, if applicable, what should be done to put matters right. The letter accompanying this document explains what your options are depending on whether or not you accept my opinion; please read it carefully.

## Opinion by investigator for the Pensions Ombudsman Service

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### Complaint summary

1. Mr Colin Lloyd, Ms Palmer and his two sons complain that due to delays on the part of Fidelity in effecting “in specie” transfers of their SIPP investments to Charles Stanley between November 2013 and July 2014 they have been unable to trade during the period in question and consequently have each suffered a financial loss.
2. Mr Colin Lloyd and Ms Palmer also contend that they have suffered further financial loss through payment of higher SIPP charges to Fidelity during the protracted transfer process.

### My opinion

3. I have looked very carefully at the case and it is my view that this complaint should be upheld against Fidelity because I am satisfied that Fidelity was chiefly responsible for the delays incurred during the lengthy transfer process and should therefore be liable for any financial loss which Mr Lloyd’s family might have suffered through higher SIPP charges being applied by Fidelity until the transfer to the new platform provider was completed
4. I also consider that Mr Lloyd’s family would have suffered some distress and inconvenience as a result of losing the opportunity to change the investments held in the SIPP portfolios during the time between setting the transfer in motion and its eventual completion for which they should be suitably compensated.

## Background

5. EBS Management Plc (**EBS**), a wholly owned subsidiary of Charles Stanley Group Plc, wrote to Fidelity on 20 November 2013 and asked them to:
  - close the four SIPP accounts for Mr Colin Lloyd's family;
  - transfer all the assets held in them "in specie" to Charles Stanley, the new platform provider.
6. Mr Lloyd had power of attorney over the SIPPs for Ms Palmer and his two sons.
7. EBS asked Fidelity to liaise with Charles Stanley Direct (**CSD**) to process the "in-specie" transfers but if they had any queries, they should contact them.
8. On 3 January 2014, EBS telephoned Fidelity for an update on the transfers. Fidelity replied that they had received their requirements for the transfers to proceed on 24 December 2013 but were slightly behind in sending out Stock Transfer Forms (**STFs**) to the relevant fund providers. EBS subsequently informed CSD that Fidelity had told them the transfers would be processed in the next few days.
9. CSD notified EBS on 27 January 2014 that they had not yet heard from Fidelity. EBS replied on the next day that they would contact Fidelity to find out how the transfers were progressing.
10. In February 2014, Fidelity sent each member of Mr Lloyd's family a letter which said that:
  - from 9 February 2014, the cost of investing was reducing;
  - they currently paid a single fee which bundled together all the charges on each fund they held;
  - from 9 February 2014, these charges would be split into two using an approach known as "clean pricing";
  - this meant that management costs would still be taken from a fund by its provider but the investment platform through which the fund was bought would charge a separate service fee;
  - the new service fee was 0.35% under the new pricing structure;
  - if more than £250,000 was invested across all accounts held with Fidelity (including funds held under the old pricing structure), the service fee would drop to 0.20% so savings could be significant;
  - no service fee would be charged on assets above the £1,000,000 level;
  - they should read the enclosed guide for further details about the two different approaches to charging;
  - the new pricing structure would generally mean lower charges for most of their clients;
  - they could choose to switch some (or all) of their existing investments into the new "clean pricing" structure; and
  - they would continue to receive the annual charge discount on any eligible funds held under the under the old "bundled" pricing structure.
11. Mr Lloyd informed CSD on 10 February 2014 by e-mail that Fidelity's website showed the SIPP accounts for his family had been closed. CSD sent a copy of this e-mail to EBS on the next day and asked them to look into this.
12. Fidelity informed EBS on 12 February 2014 that the "in specie" transfers would be processed shortly. They said that they had to await the return of completed

renunciation forms from Mr Lloyd's family before they could proceed and had only received them on 5 February.

13. EBS sent an e-mail to Mr Lloyd on 12 February 2014 which said:

- Fidelity had received the renunciation forms and sent the STFs to the relevant fund managers;
- these fund managers would now re-register their funds to his family's new accounts held with CSD;
- they were aware of which funds were being transferred "in specie";
- there should hopefully be no further problems or delays with the transfers; and
- transfers from Fidelity were usually slow so it could be a few more weeks before the "in specie" transfers were completed.

14. EBS informed CSD in an e-mail dated 20 February 2014 what Fidelity had said on 12 February and also told CSD that they could liaise directly with Fidelity if they wished to do so.

15. On 28 February 2014, EBS told CSD that Fidelity had notified them the transfers were in "a queue" awaiting "Charles Stanley" acceptance. EBS also said that they had asked Fidelity to contact CSD directly about this.

16. Fidelity wrote to CSD on 13 March 2014 (at the EBS address) to inform them that they were unable to process the "in specie" transfers because they had not been provided with full registration details for the CSD accounts, i.e. the account names, addresses, designations, and account numbers. They also said that:

- they were working with other providers and platforms to fully automate the re-registration process;
- a key requirement for automation was that information which was exchanged as part of the re-registration process followed the market practice set out by the UK Funds Market Practice Group (**UKFMPG**); and
- they therefore needed the transfer instructions to be resubmitted with all the information required by this market practice.

17. On 28 March 2014, EBS expressed their concern to Fidelity that the transfers were still ongoing. They also informed Fidelity that:

- CSD required valuations of the SIPP accounts from Fidelity with full asset descriptions and Stock Exchange Daily Official List (**SEDOL**) numbers;
- on receipt, CSD would send Fidelity written acceptance of the SIPP assets and also re-registration details; and
- as four months had elapsed since CSD originally requested these valuations, Fidelity should deal with this request urgently because Mr Lloyd's family were "losing money" in the meantime.

18. Mr Lloyd informed CSD on 31 March 2014 that Fidelity had told him that the delay to the transfers was caused by not having all the necessary information in order to do so but they would now give these transfers priority. He also said that as the SIPP assets were being transferred under the old "bundled" structure, Fidelity was charging him and his family excessive fees whilst the transfers were still ongoing.

19. CSD informed Mr Lloyd on 1 April 2014 that Fidelity's letter of 13 March 2014 did not show the correct transfer process because after they had requested the "in specie" transfers (via EBS) on 20 November 2013, Fidelity should have sent them valuations for the SIPP accounts. In their view, Fidelity's comments that they did not

- have all their information to process the transfers were either “disingenuous” or showed that Fidelity was “oblivious to the transfer process”.
20. On 2 May 2014, EBS informed CSD that they had received valuations as at 5 April 2014 for Mr Lloyd’s family and sent them to CSD for review.
  21. EBS subsequently pointed out on 13 May 2014 to CSD that these valuations did not include SEDOLs and asked them whether or not they could provide Fidelity with their acceptance letter based on these valuations.
  22. CSD replied that it was unlikely that Fidelity would recognise their acceptance of the SIPP assets using these valuations (because they had not been provided by Fidelity directly).
  23. EBS asked Fidelity to send the SIPP valuations (including SEDOLs) to CSD. Fidelity sent EBS a breakdown of the assets held by Mr Lloyd’s family in the SIPP accounts on 15 May 2014. In their covering letter to EBS, Fidelity said that if Mr Lloyd’s family wished to re-register their accounts, they should be aware that:
    - their requests had to fulfil the “requirements set out by UKFMPG”; and
    - if they did not, this could result in delays to their requests of their instructions being returned to them.
  24. Fidelity sent STFs to the relevant fund providers during June 2014 for Mr Lloyd’s family and the funds were subsequently re-registered during late June/early July 2014. EBS received Confirmations of Transactions (**COT**) for these transactions during late June/early July 2014.
  25. Fidelity confirmed to Mr Lloyd’s family on 23 July 2014 that they had completed the “in-specie” transfers of the SIPP funds to CSD. They accepted that they had experienced problems completing these transactions in a timely manner and in recognition of the distress and inconvenience caused, offered each of them £200 in compensation.
  26. Mr Lloyd’s two sons have accepted this goodwill compensation payment because (their father had calculated that) the amount of their losses due to the changes in the pricing structure was less than £200.

## **Fidelity’s Position**

27. There was a considerable delay before they prepared the SIPP account valuations because:
  - EBS and not CSD had made the re-registration request; and
  - there was an unfortunate technical problem with their automated system at the time of the request.
28. It is standard industry practice for clients to ask their new platform provider to request the re-registration. When they received the request from EBS for Mr Lloyd’s family, they accept, however, that they should have informed EBS that it had to be resubmitted by CSD much earlier than they actually did.
29. Their Client Terms (relevant paragraphs reproduced in the Appendix) does not stipulate a specific timescale for completing “in specie” transfers. Section 1.5 (e) only states that re-registrations may take several months. Their guide entitled “Moving your investments to Fidelity” shows that completion times are between eight to ten weeks.
30. They inform their clients that completion times for both manual and electronic “in specie” transfers currently take between four to six weeks. If no problems occur,



electronic transfers can be completed within one week. Manual transfers take considerably longer because they have to rely on the postal system in sending/receiving correspondence to clients.

31. CSD did not cater for electronic transfers. As the transfer instructions had to be completed manually, this increased the time required.
32. At the time they received the transfer request for Mr Lloyd and his family, they were also experiencing higher than normal volumes of work.
33. The funds held by Mr Lloyd's family were under a "bundled" charging structure. On transfer to CSD, they were switched to a "clean pricing" structure. The service fee in a "bundled" charging structure is allowed for in the calculation of the daily fund price. For "clean pricing" funds, there is a transparent fee deduction after pricing.
34. Mr Lloyd's family did not take the opportunity to switch their holdings into "clean pricing" funds from 9 February 2014 (i.e. before Fidelity was able to send the STFs to the relevant fund providers in June 2014).
35. They have calculated that the difference in "bundled" and "clean pricing" charges for Mr Lloyd's SIPP funds assuming that the transfer process was completed on 20 February 2014 to be around £2,837 for a six month period. They are not prepared to pay this amount to Mr Lloyd because he could have mitigated his loss by converting the funds to "clean pricing" whilst they still were with Fidelity.
36. They are willing, however, to cover the difference between the Fidelity and Charles Stanley service fees of £532.29 by offering Mr Lloyd an additional compensation payment of £600 (on top of the £200 already proposed).
37. By agreeing to their Client Terms, Mr Lloyd's family had entered into a legal contract with them. Until the re-registration process was complete and the SIPP accounts closed, the Terms still applied.
38. They concede that they had provided EBS with wrong information on several occasions, in particular, during the telephone calls of 3 January and 12 February 2014 and cannot find any evidence that they had ever asked Mr Lloyd's family to completed renunciation forms in order for the transfers to proceed.
39. There were no dealing restrictions on the SIPP accounts during the transfer process. They accept that they did not make this clear to Mr Lloyd's family but any dealing instructions received during this time would have been processed as normal.
40. They did not, however, receive explicit instructions from Mr Lloyd or his family whilst the transfer was ongoing outlining their intention to switch or sell their SIPP investments. They accept that Mr Lloyd had made a number of fund redemptions and switches over the years to take into account market volatilities and the professional advice he received. They require new dealing instructions and cannot base any deals on historical transactions. They cannot therefore compensate Mr Lloyd's family for any retrospective deals which may have taken place.
41. They notified CSD on 13 March 2014 that they were unable to process the "in specie" transfers. Mr Lloyd and his family were therefore aware at this point that the transfer was being delayed and should have traded as normal after this date if they felt that their SIPP investments were affected by market volatility.

42. The eight to ten week timescale that they quote for the completion of the majority of the re-registrations would have been imposed again from the point that Mr Lloyd's family re-applied for the transfers. In their view, it was reasonable to assume that they would have taken steps to trade on their accounts during this time.
43. Mr Lloyd's decision to seek appropriate financial redress based on trades that could have been pursued is speculative at best.
44. In their view, it was equitable to offer £200 compensation to each member of Mr Lloyd's family to recognise the distress and inconvenience caused by the delays attributable to them in the transfer process.

### **Mr Lloyd's position**

45. He hoped that by investing in "clean pricing" funds on the CSD platform (which had very competitive charges) would result in material lower costs and improved fund returns on the considerable SIPP investments (over £2 million in total for his family).
46. As a consequence of the transfer delay, Fidelity charged excessive fees on his family's funds under the "bundled" charging structure which would not have happened if the funds had been transferred to the CSD platform on a timely basis.
47. As EBS is a wholly owned subsidiary of Charles Stanley Group Plc, EBS did not make a mistake by requesting the "in specie" transfers on behalf of CSD.
48. In his view, Fidelity should have taken at most six weeks to complete the transfers from when they were requested. He has provided evidence of fund transfers made by other fund managers which have taken significantly less than six weeks. He therefore considers that Fidelity should have completed the transfers by 1 January 2014 at the latest. Using this date, he has calculated that the excess commission which Fidelity have charged him using the "bundled" charging structure was (for a period of six months to be as follows:

<b>Name</b>	<b>Loss</b>
Colin Lloyd	£3,661
Heather Palmer	£1,157
Thomas Lloyd	£139
Simon Lloyd	£91

49. Fidelity offers an annual charge discount/rebate which needs to be taken into account in any compensation calculations.
50. CSD informed him in their e-mail dated 7 July 2015 that:
- Fidelity were correct in saying that manual transfers are time consuming and at the time of his transfer request, there were "high volumes of re-registration applications" across the whole industry;
  - transfers (even manual ones) now tend to be considerably quicker than they used to be; and

- they would expect that the transfers should have been completed by 20 February 2014 at the latest, i.e. within 12 weeks from the date on which the transfer instructions were submitted on 20 November 2013.

51. The records of the SIPP accounts over many years show that there “was a pattern of fund redemptions and switches taking account of the prevailing market conditions and professional advice”. This opportunity was denied to him and his family during the protracted transfer process.

## **My findings**

52. Having considered all the available evidence carefully, I am satisfied that Fidelity was chiefly responsible for the delays incurred during the protracted transfer process.

53. Fidelity received the “in specie” transfer instructions from Mr Lloyd’s family via EBS on 20 November 2013 but only managed to complete the transfer process in June/July 2014. In my opinion, the root cause for the unacceptably drawn out process required to complete the “in specie” transfers was due to Fidelity’s failure to contact EBS in December 2013 and request that they ask CSD to resubmit the transfer instructions directly to them as soon as possible.

54. Fidelity might have been correct to reject the transfer instructions from EBS in accordance with their own procedures but I consider it reasonable then to expect that they would have notified EBS without undue delay in December 2013 that the transfer requests had to be resubmitted by CSD directly in order to be valid.

55. Fidelity had a further opportunity to do this when EBS phoned them on 3 January 2014. But instead of taking it, Fidelity compounded their error by supplying EBS with incorrect information about the good progress being made with the “in specie” transfers, when, in fact, they were not yet in a position to proceed without direct transfer instructions from CSD.

56. Fidelity subsequently made further errors during January/February 2014, in particular by informing EBS on 12 February that:

- the “in specie” transfers would be finalised soon;
- the delay in the transfer process was due to the late receipt of completed renunciation forms from Mr Lloyd’s family (on 5 February).

57. Fidelity did not, in fact, contact CSD until 13 March 2014 after being asked to do so by EBS to inform them that they were unable to process the “in specie” transfers.

58. I consider that Fidelity’s failure to notify EBS on a timely basis that the “in specie” transfer instructions should have been provided by CSD and also their subsequent mistakes in January/February 2014 clearly amounted to maladministration on their part which contributed significantly to the time the transfer process took. Fidelity cannot, in my view, rely on the excuses which they have given (i.e. they were extremely busy and also had “unfortunate” systems issues at the time the transfer request was made) to absolve themselves of their shortcomings just because the instructions should have come from CSD. In my view, Fidelity should therefore be responsible for any financial loss which Mr Lloyd’s family might have suffered

through higher SIPP charges being applied/ by failing to complete the “in specie” transfers in good time.

59. But for this failure, I agree with CSD’s view that, on the balance of probabilities, the transfers should have been completed by 20 February 2014 at the latest if the maladministration identified has not occurred and one reasonably assumes that the rest of the transfer process from 15 May 2014 had taken the same time (i.e. approximately six weeks).
60. Furthermore I can see why Mr Lloyd’s family would not have made any adjustments to the charging structure of the SIPP portfolios during the transfer and before the eventual re-registration with CSD. It would have been inconvenient and it makes sense to complete a transfer before restructuring. But anyway, Mr Lloyd’s family was expecting the transfers to be relatively quick and there was no clear point at which they knew that there would still be a significant delay. They knew the transfer had taken longer than they expected, but not when it would be completed.
61. Mr Lloyd also contends that his family has suffered investment loss in their SIPP accounts because they were unable to trade during the lengthy transfer process. I have seen no clear evidence which corroborates his contention though. If from the start the whole (or even the major part) of the SIPP portfolio was to be sold then it would have been far more logical to disinvest and transfer in cash. That is a simpler process than an “in- specie” transfer.
62. However, Mr Lloyd’s family did lose the opportunity to alter the investments held in the SIPP portfolios during the time between setting the transfer in motion and its eventual completion. Of course the transfer would not have been immediate. Sometime would have been taken even if there had been no unwarranted delay.
63. The loss of opportunity, and the distress caused by it, will not have been insignificant given the time and the amount of money concerned though.
64. I therefore consider that the complaint made against Fidelity can be upheld.

### **Putting matters right**

65. To put matters right, within 28 days of the date of this Opinion, Fidelity shall arrange to pay each member of Mr Lloyd’s family the following amounts of compensation in recognition of their loss of opportunity to trade during the lengthy transfer process:

<b>Name</b>	<b>Compensation</b>
Colin Lloyd	£1,000
Heather Palmer	£500
Thomas Lloyd	£100
Simon Lloyd	£75

66. Additionally, Fidelity shall also pay Mr Colin Lloyd and Ms Palmer the difference in “bundled” and “clean pricing” charges for their SIPP policies assuming that the transfer process was completed on 20 February 2014 for a four month period.

Investigator  
1 December 2015

## **APPENDIX**

### **Fidelity Client Terms (April 2014)**

#### **3.4 Moving Investments out**

- (a) If you wish to re-register your Investments with another provider, we will do so if your new provider agrees. We or they may charge you for this.
- (b) If you ask to re-register this will normally be arranged through your new provider. We will re-register the whole of your holding in that Investment.
- (e) If you tell us that you want to transfer or re-register all of your Investments, we will suspend your account so that no new deals can be made. Once any outstanding deals are complete, we will then move our Investments to your new provider and your account will be closed in line with clause 5.3.

#### **4 (a,b,c,d and e)**

These cover charges and in conjunction with 5.3 (c) confirms their entitlement to continue taking charges whilst an account is open and being serviced.

#### **5.3 How closing your account works**

- (c) Until the whole process of closing your account is complete, these Terms will continue to apply.