

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Curtis Banks SIPP
Respondents	Curtis Banks Ltd ( <b>Curtis Banks</b> ) Fidelity Worldwide Investment ( <b>Fidelity</b> )

## Outcome

1. Mr Y's complaint is upheld and to put matters right Curtis Banks and Fidelity should:
  - a) recalculate the compensation amount payable to Mr Y at the date of settlement;
  - b) Curtis Banks shall pay 64% of this amount into Mr Y's Fidelity SIPP;
  - c) Fidelity shall pay 36% of this amount into Mr Y's Fidelity SIPP; and
  - d) Each shall pay Mr Y £250 in recognition of the distress and inconvenience which he has suffered dealing with this matter.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y complains that delays on the part of Curtis Banks and Fidelity in effecting a transfer of his pension rights from the Curtis Banks SIPP to the Fidelity SIPP have resulted in an actual financial loss of around £14K. He also contends that he has suffered distress and inconvenience because of these delays.

## Background information, including submissions from the parties

4. Fidelity sent details of Mr Y's transfer request electronically to Curtis Banks on 4 December 2014 using the electronic pension transfer system ORIGO. On the same day Curtis Banks received a letter from Mr Y notifying them of his proposed transfer and replied that they would await the relevant forms from Fidelity before processing his request.

## **PO-8890**

5. Having received the transfer request on 5 December 2014, Curtis Banks changed ORIGO's records to show that the transfer was "in progress".
6. Fidelity telephoned Curtis Banks on 9 January 2015 for an update on the transfer. Curtis Banks replied that the transfer could not be carried out using ORIGO because it was "out of scope" and they would send Fidelity the appropriate transfer out and discharge forms in order for it to be processed manually.
7. Fidelity received the forms on 13 January 2015 but only sent the discharge form with their letter of authority to Mr Y on 30 January 2015.
8. Mr Y returned the completed letter of authority and discharge form to Fidelity on 5 February and 19 February 2015 respectively.
9. Curtis Banks received their completed forms back from Fidelity on 20 February 2015 but had to ask Mr Y to complete a new discharge form because the member declaration on the original one was spoilt.
10. Curtis Banks received this new form back from Mr Y on 25 February 2015 and sent the transfer payment of £190,701 to Fidelity on the next day. Fidelity received it on 2 March 2015.

### **Curtis Banks' Position**

11. They accept that:
  - taking nearly three months to complete Mr Y's transfer was too long;
  - they should have notified Fidelity on 5 December 2014 that they were unable to carry out the transfer request using ORIGO and sent them the relevant transfer forms for completion; but
  - due to an oversight on their part, they failed to do this until 9 January 2015, 23 working days later.
12. They have determined that if there had not been any undue delays the transfer process could have been completed by 29 December 2014 and Mr Y has therefore suffered a financial loss of £13,917.06 (calculated as at 14 November 2016).
13. They say that they are prepared to compensate Mr Y for 50% of this loss (i.e. £6,958.53) if Fidelity agrees to pay the other 50%. They consider that an equal split to be fair because, in their view, Fidelity ought to have requested an update 10 working days after sending the transfer request via ORIGO on 4 December 2014 instead of waiting until 9 January 2015 before doing this.
14. They are willing as a gesture of goodwill towards Mr F to pay him an additional £250 in recognition of the distress and inconvenience which Mr F has suffered dealing with this matter.

### **Fidelity's Position**

15. They agree that taking nearly three months to complete Mr Y's transfer was too long and also accept that:
- they delayed the transfer process by taking 13 working days to send the discharge form which they had received on 13 January 2015 to Mr Y for completion; and
  - Curtis Banks have calculated the actual financial loss correctly.
16. However, they contend that:
- the onus was on Curtis Banks as the transferring scheme administrator to respond to the transfer request within the 10 working days service level agreement set by ORIGO; and
  - they were under no obligation to seek an update on the transfer and only did so because over one month had passed without a reply.
17. They do not therefore accept that they were partly responsible for the first delay which in their view was solely caused by Curtis Banks failure. They are therefore only willing to pay 36% of the redress amount, i.e.  $13/36 \times 100\%$  because they consider that they are only responsible for 13 days of the total "delay period" amounting to 36 days (i.e.  $13 + 23 = 36$ ).
18. They say that:
- "If the request had no response after 2 weeks then we would accept that we should have chased them and we would own up to this error. But Curtis Banks had updated ORIGO to say that they were working on the transfer and had given them no indication that there was any issues with this. They would have had the same RAG update as us, and we believe they should be responsible for their own failings. Our position on this transfer does not entail us telling Curtis Banks what to do...Fidelity should not be held responsible for them picking up and then forgetting about a client's pension transfer."
19. They are also willing as a gesture of goodwill towards Mr F to pay him £250 in recognition of the distress and inconvenience which Mr F has suffered dealing with this matter.

## **Adjudicator's Opinion**

20. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Curtis Banks and Fidelity. The Adjudicator's findings are summarised briefly below:
- both Curtis Banks and Fidelity were responsible for delays in the transfer process;

- as the administrators of the receiving scheme, good administrative practice dictated that Fidelity should have monitored the progress of the transfer and contacted Curtis Banks after 10 working days when they had not heard from them;
- if they had done so, the error made by Curtis Banks would have come to light much earlier than 9 January 2015 and the transfer process finalised much earlier; and
- Fidelity should not therefore be totally absolved of any blame for the first period of delay and splitting the redress amount equally was reasonable.

21. Fidelity did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Fidelity provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Fidelity for completeness.

### **Ombudsman's decision**

22. I agree with the Adjudicator that both parties were responsible for delaying Mr Y's transfer of pension rights from the Curtis Banks SIPP. However I find that Curtis Banks were responsible for the first period of delay and Fidelity for the second.
23. The initial period of delay was due in my view to Curtis Banks recording the transaction as in progress when it was not, and then losing track of it. They explained that because the initial input to Origo was made in error, they were not aware of the 10 day timeframe for response in this particular instance. Therefore they were unaware of the outstanding issue until Fidelity contacted them on 9 January. I conclude that Curtis Banks should have had checks in place, which in this particular case they did not. I can see no reason to hold Fidelity responsible for that oversight because the remedy was always within Curtis Banks' control. The argument that Fidelity should have chased Curtis Banks earlier during the first period of delay, could equally well apply in reverse to limit Fidelity's liability during the second. In the circumstances I consider that each party should bear responsibility for the period of delay which occurred while an outstanding task was actually in their hands and within their control.
24. Therefore, I uphold Mr Y's complaint against both Fidelity and Curtis Banks and make directions which apportion liability pro rata to the delay in the tasks undertaken by each of them.

### **Directions**

25. Within 21 days of the date of this Determination, the parties shall:
- a) recalculate the compensation amount payable to Mr Y as at date of settlement;

**PO-8890**

- b) Curtis Banks shall pay 64% of this amount into Mr Y's Fidelity SIPP;
- c) Fidelity shall pay 36% of this amount into Mr Y's Fidelity SIPP; and
- d) each shall pay Mr Y £250 in recognition of the distress and inconvenience which he has suffered dealing with this matter

**Karen Johnston**

Deputy Pensions Ombudsman  
16 December 2016