

Ombudsman's Determination

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| Applicant | Mr Y |
| Scheme | Fidelity Buy Out Plan (the Plan) |
| Respondents | Fidelity International (Fidelity) |

Outcome

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

Complaint summary

2. Mr Y's complaint concerns the provision of incorrect information, from Fidelity, regarding the level of protected tax-free cash (**PTFC**) he was entitled to receive from the Plan.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points.
4. Mr Y was a member of the Telewest Communications Pension Plan (**the Former Plan**), a defined benefit occupational arrangement administered by Mercer. Under this arrangement, Mr Y held a PTFC entitlement in excess of the standard 25%.
5. On 1 April 2011, the Former Plan was wound-up, and the membership benefits were secured through a buy-out plan with Fidelity.
6. In June 2011, Fidelity wrote to Mr Y and confirmed that the transfer of the Former Plan into the Plan was complete. It said that he should review his current online statement and confirm if any of the information held was incorrect.
7. In 2016, Mr Y appointed an independent financial adviser (**IFA**) to review his three separate pension plans with a view to potentially consolidating each of the plans.
8. On 28 June 2017, Fidelity wrote to Mr Y and explained that under the Plan he was entitled to a PTFC lump sum. The current value of the Plan was £97,926.77 and, based on the information it held, he was entitled to a PTFC lump sum of £34,287, which represented 35.01% of the Plan's overall value. Transferring his benefits to another provider would result in the loss of his PTFC entitlement.

9. In view of Mr Y's PTFC entitlement under the Plan, the IFA advised Mr Y not to transfer the Plan, otherwise he would lose this entitlement.
10. On 9 February 2021, Fidelity sent Mr Y a benefit statement which said that, as at 8 February 2021, the Plan's value was £113,425.05. Of this amount, he was entitled to a PTFC lump sum of £34,081 which represented 30% of the Plan's overall value.
11. On 15 February 2021, Mr Y telephoned Fidelity to query the reduction in his PTFC entitlement from 35.01% to 30%. During the course of the telephone call Mr Y raised a formal complaint.
12. On 14 April 2021, Fidelity issued its response to Mrs Y's complaint. In summary it said:-
 - After the 6 April 2006, changes in pensions legislation meant that the maximum lump sum that could be taken from a HM Revenue and Customs approved scheme was 25%. However, his benefits were derived from a scheme that predated 6 April 2006. This meant that the rules and method of calculating his entitlement were different as it was broadly calculated based on salary and length of service.
 - When his benefits were transferred from Mercer to Fidelity, the data Fidelity received confirmed that he held a PTFC entitlement in excess of 25%. When this was calculated in June 2017, it resulted in a PTFC entitlement of 35.01%.
 - In 2019, Fidelity conducted a review of the data it held for the Plan's membership. This review highlighted that Mr Y's PTFC entitlement of 35.01%, was calculated on the basis of a pensionable service start date of 26 July 1995. However, it held no evidence to confirm that this date was correct. Based on the evidence that was available it appeared that Mr Y's actual pensionable service start date was 1 April 2000. The amendment of this date meant that Mr Y's PTFC entitlement was recalculated and reduced to 30%.
 - Fidelity was satisfied that his PTFC entitlement of 30% was correct; however, if he was able to provide any evidence to suggest otherwise, it would review any evidence provided.
 - It was unable to pay him a PTFC lump sum in excess of 30%, as anything over this amount would be treated as an unauthorised payment, which would incur a tax charge.
 - It recognised that he should have been informed of the outcome of its data review in 2019, and that his PTFC entitlement had reduced. In recognition of this, it offered him £500.
13. On 16 April 2021, in response to Fidelity, Mr Y said:-
 - Since he was informed that his PTFC entitlement was 35.01%, in June 2017, he obtained advice from several IFAs, each of whom told him not to transfer his Plan

benefits. Consequently, he made a number of financial decisions on the basis his PTFC entitlement was 35.01%.

- Fidelity also neglected to inform him of the outcome of its data review, in 2019, nor did it appear that Fidelity was ever going to inform him that his PTFC had reduced. He only found out that his PTFC had reduced when he requested a benefit statement in February 2021.
 - As of 14 April 2021, the Plan's value was £116,545.04, at 30% his PTFC entitlement would be £34,963, at 35.01% his entitlement would have been £40,802. So, his PTFC entitlement had reduced by £5,839. The figure of £5,839 was now subject to income tax at a rate of 20%, causing a loss of £1,167.
 - Fidelity should consider increasing the offer of £500 as it did not, in his view, sufficiently recognise the distress and inconvenience he had suffered.
14. On 7 May 2021, Fidelity responded to Mr Y and apologised that he was provided with incorrect information about his PTFC entitlement in 2017. However, it was unable to authorise, and pay, a PTFC lump sum in excess of his entitlement of 30%. The offer of £500 was open for him to accept if he wished to do so.
 15. In May 2021, Mr Y continued to correspond with Fidelity about his PTFC entitlement. During this time, Mr Y located a historic payslip, from 1995, which confirmed that his pensionable service start date was 26 July 1995. Fidelity accepted this evidence and therefore agreed to recalculate Mr Y's PTFC entitlement, the results of which meant that his entitlement increased from 30% to 39.36%.
 16. Following that, on 28 May 2021, Fidelity sent Mr Y an updated benefit statement which explained that as at 27 May 2021, the Plan's value was £116,441.08. He was eligible to claim a PTFC lump sum of up to 39.36% (£45,833) of the Plan's current value.

Summary of Mr Y's position

17. Fidelity made the decision to amend the start date of his pensionable service without informing him. His pensionable service start date was changed to 1 April 2000, based on "factual information" which was incorrect.
18. He believed that, if he simply accepted the reduction in his PTFC entitlement from 35.01% to 30%, Fidelity would never have asked for any evidence of his pensionable service start date. It was only after he raised a complaint that he was asked to provide evidence.
19. The offer of £500 did not take into account the inconvenience he suffered in having to locate and provide evidence of what his actual pensionable service start date should be. Consequently, he believed that the offer should be increased to more sufficiently recognise the severity of Fidelity's actions.

20. At no point during his correspondence with Fidelity did it offer an apology for the provision of incorrect information about his PTFC entitlement.

Adjudicator's Opinion

21. Mr Y'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:-

- There was no question that Mr Y was subjected to the provision of incorrect information about his entitlement to a PTFC lump sum, caused by his pensionable service start date being erroneously amended.
- The Adjudicator appreciated that conducting a data review exercise on the entire Plan's membership was likely a lengthy process. However, given the substantial changes made to Mr Y's pensionable service start date, and subsequently his PTFC entitlement, Fidelity should have been more proactive in contacting members, including Mr Y, who were affected by the data exercise.
- After an exchange of correspondence between Mr Y and Fidelity, it was established that Mr Y's pensionable service date was, and always should have been, 26 July 1995. As a result of Mr Y's service dates being changed, his PTFC entitlement went from 35.01%, to 30% and then up to £39.36%. Two out of three times Mr Y's PTFC entitlement was incorrectly calculated which amounted to a further instance of maladministration by Fidelity.
- As two instances of maladministration were identified, Fidelity was required to return Mr Y to the position he would have been in, if not for the errors. Having reviewed the remedial steps undertaken by Fidelity, the Adjudicator was satisfied that Mr Y had been returned to his correct position. This was achieved by correcting Mr Y's pensionable service start date back to 26 July 1995, and correctly calculating his PTFC entitlement. The Adjudicator also noted that there was no evidence that the entitlement of 39.36% was incorrect.
- It was noted however, that if Mr Y did not provide evidence in the form of a historic payslip, his pensionable service start date and PTFC entitlement would have remained incorrect. Further, if Mr Y did not request a benefit statement in early 2021, he would have been unaware of the decrease in his PTFC lump sum.
- In recognition of the service Mr Y received, Fidelity offered him £500; however, Mr Y did not agree that the offer was sufficient. However, the Adjudicator agreed that the offer of £500 sufficiently recognised the errors that Mr Y had encountered, and that appropriate remedial actions were undertaken within a relatively short amount of time. He also reminded Mr Y that the Ombudsman awards were not intended to be punitive.

22. Mr Y did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr Y provided further comments which did not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr Y. In summary he said:-

- Fidelity had not provided, or explained, what evidence it held that suggested his pensionable service start date was actually 1 April 2020, instead of 26 July 1995.
- Once he realised that his PTFC entitlement was reduced, due to a change in his pensionable service start date, he contacted Fidelity 10 times over the telephone. One of the conversations lasted an hour, albeit to no avail in proving his start date was 26 July 1995. It was only when he found a 24-year-old payslip, that Fidelity agreed to amend his start date back to 26 July 1995.
- During the one-hour phone call, the representative did not take any responsibility for Fidelity's actions in providing incorrect information. The onus was on himself to provide proof of his pensionable service start date. He repeatedly asked for an apology, which he did not receive. He found Fidelity's lack of empathy truly "astounding".
- He believed it was possible that there were countless other members of the Plan who were unaware of Fidelity's unilateral amendments after the data review exercise. He believed that his case was the "tip of the iceberg" and that any affected member of the exercise should be contacted.
- No remedial action would have been undertaken by Fidelity without him providing proof in the form of his historic payslip. He believes that the £500 does not sufficiently recognise the distress and inconvenience he suffered.

Ombudsman's decision

23. Mr Y's complaint relates to the provision of incorrect information following a review of his Plan data. This resulted in a decrease in his PTFC entitlement.

24. I agree with the Adjudicator that there have been two instances of maladministration on the part of Fidelity. The nature of the errors and the remedial actions taken by Fidelity, are set out above. I am satisfied that, in spite of the identified maladministration, Mr Y was returned to the position he would have been in if not for Fidelity's errors.

25. It would have been helpful for Fidelity to have explained, or provided evidence, to Mr Y how and why, following the data review exercise, it was decided that his pensionable service start date needed to be amended. In not doing so, I find that Fidelity's actions amount to poor administration needlessly complicating an already frustrating situation for Mr Y. In any event, once Mr Y provided the historic payslip, Fidelity appears to have corrected this error without question.

26. Mr Y believes that the offer of £500 is insufficient and does not recognise the distress and inconvenience he suffered. I disagree. There is no doubt that Mr Y has suffered undue distress as a result of Fidelity's inaction to communicate effectively about the change to his pensionable service start date following its data review. If it had then it is likely that the matter would have been resolved sooner than it otherwise was. That being said, the errors caused by Fidelity were still corrected within a relatively short period, between February and May 2021. There is no requirement for Fidelity to increase the award of £500 as I find it sufficiently recognises any distress Mr Y experienced.
27. I understand that Mr Y has concerns that other Plan members may be affected. He believes that his experience may be the "tip of the iceberg" following the data review exercise. Mr Y has said that there may be a number of other Plan members completely unaware of amendments to their data, or their entitlement to a PTFC.
28. I appreciate Mr Y's concerns regarding other Plan members. However, at present his worries are speculative and are based on his own personal experience with Fidelity. . Furthermore, Mr Y's complaint was accepted on the basis of his own experience of dealing with Fidelity. I am unable to investigate any other member of the Plan's benefits unless those individuals bring a complaint to my office.
29. I appreciate that this outcome will disappoint Mr Y; however, while there was maladministration, this has since been remedied and a sufficient offer of £500 has been made in recognition of this.
30. I do not uphold Mr Y's complaint.

Dominic Harris

Pensions Ombudsman
23 January 2025