

Ombudsman's Determination

Applicant	Mrs D
Scheme	Fidelity FundsNetwork SIPP (the SIPP)
Respondent	Fidelity International Limited (Fidelity)

Outcome

1. Mrs D's complaint against Fidelity is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) Fidelity should, within 28 days, pay Mrs D £400 for the significant distress and inconvenience she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs D's complaints against Fidelity are:
 - the SIPP investment request that she made was unavailable and Fidelity provided misinformation on numerous occasions relating to this;
 - she would like compensation to be calculated based on the investments she made on her Instant Savings Account (**ISA**), held with Fidelity;
 - she believes the charges should be less, because she has a SIPP and an ISA with Fidelity that equate to over £250,000; and
 - she should have been advised by Fidelity about the opportunity to take out a SIPP operated solely by them, so she could move away from the FundsNetwork SIPP which was partly run by Standard Life.

Background information, including submissions from the parties

4. On 11 January 2016, Mrs D instructed Fidelity to direct her entire Regular Savings Plan (**RSP**) amount into the SIPP Bank Account. From February 2016, her RSP has been invested in cash.
5. Fidelity received further instructions on 18 July 2016, to replace the member contributions with employer contributions of £341.40 per month. The final member

contributions were made on 4 July 2016, but Fidelity was unable to start the employer payments until 11 August 2016 (when it received the first payment). To make up for the missed July employer contributions it took a further payment on 28 August 2016.

6. On 8 August 2016, Mrs D instructed the SIPP to purchase Investment Trusts. Mrs D was told this would be possible over the telephone. However, this option was not available within the SIPP and, on 12 August 2016, a secure message was sent to Mrs D explaining what she had requested was not possible. Fidelity expected Mrs D to respond to this but she did not.
7. It was not until 17 August 2016, that Mrs D was made aware that she would need to make alternative choices.
8. The new switch instructions were processed several days later. Fidelity acknowledged that it had caused a delay. So, it arranged for the potential financial loss to be calculated. It found that Mrs D had been disadvantaged in six funds. On 30 August 2016, Fidelity purchased the extra units within the six funds which amounted to £712.38. It also sent £100 to Mrs D for the distress and inconvenience she had suffered. Mrs D believed that Fidelity should calculate her loss based on the original Investment Trusts she wanted to hold in the SIPP. Fidelity said it would be unable to do this because, although Mrs D was misinformed, the original instructions she made were not possible.
9. Mrs D raised a further complaint relating to the charging structure of the SIPP, which was addressed by Fidelity on 13 October 2016. She believed that as she held the SIPP and another saving account with Fidelity that together amounted to over £250,000 her charges should have been lower. Fidelity said that:

“The fact that customers holding £250,000 and above and therefore fall under our “Wealth Customer” category is only something rolled out to our “Personal Investing” customers. These are customers who invest with us directly, not via any adviser. It’s not that we do not consider the Standard Life SIPP a Fidelity product – it’s purely because the Standard Life SIPP is a product with an adviser link.

If a customer has an IFA linked to an ISA which has say Fidelity funds, then this ISA value would not be included in the Wealth threshold. It was a business decision to only introduce the Wealth service to non-advised customers.”
10. Mrs D complained that Fidelity had not made her aware that she was able to move from a SIPP that was partly run by Standard Life and Fidelity, to one that was solely operated by Fidelity. Fidelity explained that it may have been classed as giving advice had it said this was an option. Furthermore, Mrs D would have had access to the information Fidelity provide on their website.
11. Mrs D remained dissatisfied so she brought her complaint to the Pensions Ombudsman to be independently reviewed.

12. In Fidelity's response to this Office, it provided a substantive response about how the loss calculation was made it said:

"We placed all Mrs [D]'s switches (totalling £157,617.83) from cash to funds by 19 August and we have backdated these deals to 9, 10 and 11 August. Please note, the majority of the switches Mrs [D] requested on 8 August have all been backdated to 9 August as this is the date her switches into funds would have priced. The CF Lindsell Train UK Equity Acc Fund (LTUEA) has been backdated to 10 August as this fund has a later dealing cut-off time.

With regards to the switches Mrs [D] requested on 10 August, all these deals have been backdated to 11 August as this is the date her fund switches would have priced had we made no error.

Deal corrections (totalling £712.38) were placed into Mrs [D]'s account on 30 and 31 August 2016. I have checked these calculations and confirm that further corrections are required within the Fundsmith Equity Fund I Class Acc (FDEIA) and the Lindsell Train Global Equity Fund B (LTGEQ) Funds to ensure Mrs [D]'s account is in the correction position. As outlined in the enclosed spreadsheet, Mrs [D] was advantaged by one of the delayed switches into FDEIA and LTGEQ and disadvantaged by the other. At the complaint handling stage, we offset the advantaged units against the disadvantaged units which is incorrect as both deals should have been treated separately. *For your reference, following an error we caused on an account, it is our procedure to cover any losses that arise or leave the entire benefits in an account.*

In summary, we need to purchase a further 23.51 units in FDEIA and 44.53 in LTGEQ to ensure Mrs [D]'s account is in the correct position. Deal corrections on the other funds have been placed correctly. "

Fidelity also offered to pay a further £200 for distress and inconvenience.

13. Mrs D said she did not agree with the method Fidelity was using to calculate her loss, she thought it should be based on the switches into Investment Trusts. She complained she was paying higher charges even though she had £250,000 over two Fidelity products. She also did not accept the higher award for distress and inconvenience.
14. This Office required some clarification on whether Mrs D should have lower charges on her SIPP.
15. Fidelity said as Mrs D's SIPP was partly run by Standard Life, she did not meet the £250,000 threshold with the products she had solely with Fidelity. Therefore, her charges were correctly being applied without the discount.

Adjudicator's Opinion

16. Mrs D's complaint was considered by one of our Adjudicators who concluded that further action was required by Fidelity. The Adjudicator's findings are summarised briefly below:-
- Fidelity misinformed Mrs D when it said she could hold Investment Trusts within her SIPP. This amounted to maladministration. It also took some time for Fidelity to rectify this and inform Mrs D that she had been misinformed.
 - Mrs D then revised her instructions to make switches that were possible and Fidelity completed a loss calculation to ensure there had been no loss, which was reasonable.
 - The explanation Fidelity provided relating to why Mrs D is not entitled to reduced charges was satisfactory.
 - It was not unreasonable for Fidelity to expect Mrs D to research other SIPP options available to her, if she was dissatisfied with the joint Fidelity and Standard Life one.
 - An award of £500 for distress and inconvenience should be made to Mrs D.
17. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs D provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by for completeness.
18. Fidelity agreed it would be willing to award a further £400 (in addition to the £100 already paid) for the distress and inconvenience Mrs D had suffered.

Ombudsman's decision

19. Fidelity misinformed Mrs D saying she could invest her SIPP Funds to Investment Funds within the SIPP, this was an administrative error which is not disputed. The dispute that arises is how Fidelity have calculated Mrs D's financial loss as a result of its error.
20. I find the method Fidelity have used to calculate her loss is correct. It is right that the switches should be backdated as though Mrs D made switches that would have been available within the SIPP on 8 August 2016.
21. Mrs D does not agree with the compensation calculations because she is comparing how her ISA has performed compared to her SIPP. This is not an accurate comparison and although Mrs D's ISA may have performed better it is not the same product as the SIPP. Therefore, it would not be correct to expect Fidelity to calculate compensation based on Mrs D's ISA's performance.

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22. There is no evidence that the “Wealth Customer” arrangement applied to Mrs D, this is because her benefits were linked to an IFA which means it did not fall into this category. This was a business decision Fidelity could make and therefore, she was bound by the standard charging structure.
23. I agree that it was not for Fidelity to recommend its own SIPP to Mrs D at the risk of providing financial advice to Mrs D, which it is not able to do. The information would have been available to Mrs D by other means and Fidelity cannot be held responsible that Mrs D did not explore other options relating to SIPPs, if she was dissatisfied.
24. Finally, I note that Mrs D has spent a considerable amount of time in dealing with this complaint and I agree Mrs D will have suffered significant distress and inconvenience which warrants an award of £500. As Mrs D has already received £100 from Fidelity, I consider the further £400 should be paid to Mrs D.
25. Therefore, I partially uphold Mrs D’s complaint.

Directions

26. Within 28 days of this Determination Fidelity shall pay Mrs D the outstanding £400 award for distress and inconvenience.

Karen Johnston

Deputy Pensions Ombudsman
22 March 2018