

complaint

Mr C is complaining about Financial Administration Services Limited (trading as Fidelity) because it cashed some of his investments when he applied to transfer them from another platform, rather than transferring them *in-specie* as he requested.

background

In 2016, Mr C applied to transfer investments from a number of different sources onto Fidelity's platform. Some of these investments were previously held on Standard Life' platform.

After discussing his plans on the telephone with one of its relationship advisers, Mr C submitted the forms needed for the transfer to Fidelity. These were dated 20 September 2016. Mr C has provided a copy of a covering letter he says was sent to Fidelity with the forms. This said he wanted the transfer in-specie, meaning he wanted his assets to be re-registered in their existing form, rather than being sold and converted to cash for example.

Fidelity says it didn't receive the covering letter, but it did get the forms. When it started arranging the transfer, it noticed some of the funds Mr C held with Standard Life weren't eligible for an in-specie transfer. So it sold those investments and transferred them as cash.

When he realised what had happened, Mr C arranged for the investments to be returned to Standard Life and I understand he bought back into the funds he'd previously held. Because of price movements in the period his investments were out of the market, Standard Life confirmed it cost Mr C an extra £716.42 to buy back the units compared to the price they were sold for.

I previously issued my provisional decision explaining why I thought this complaint should be upheld. An extract is attached.

Fidelity didn't accept my provisional decision, making the following key points:

- The documentation it provided, including a letter dated 23 September 2016 and a transfer booklet – information it hasn't sent us before, were very clear about what would happen if any of Mr C's assets weren't eligible for in-specie transfer.
- Fidelity is an execution-only company and was only responsible for acting on Mr C's instruction, which it did. It doesn't provide advice. If Mr C had wanted advice about the transfer, he could have contacted an adviser.
- It was Mr C's responsibility to make sure any necessary arrangements were made with Standard Life so his assets could be re-registered.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having reconsidered the case, including Fidelity's response to my provisional decision, my conclusions haven't changed. I'm upholding it.

To Fidelity, or somebody else who understands the details and intricacies of the transfer and re-registration process well, the documentation given to Mr C may well be clear. My point is rather that Mr C is a layman and, to a layman, the process is complex and some of the statements could appear contradictory.

More importantly, the documentation is only part of the story in this case. Mr C also spoke to one of fidelity's relationship managers on the telephone and my main concerns centre on this communication.

During the conversations with the relationship manager, I think Mr C made it clear he preferred to transfer his assets in-specie. The relationship manager did say funds could only be re-registered if they had the same ISIN reference, but he didn't go any further. He didn't explain it was Mr C's responsibility to check this. He didn't tell Mr C about Fidelity's online eligibility tool. And he didn't warn Mr C what would happen if he didn't make any necessary arrangements to his existing investments first. Instead the relationship manager simply said he couldn't see any reason why any of his assets wouldn't be eligible for re-registration.

From the calls, I think it's clear Mr C didn't fully understand the process and was trying to ask the right questions to make sure the transfer of his assets progressed in line with his wishes. Instead of providing appropriate warnings and information about what else he could do to make sure this happened, the relationship manager provided a very bland reassurance.

I take the point Mr C could have sought advice if he wasn't sure about the process and I think that's what he was trying to do when he called the relationship manager. Based on what he was told during the call, I think it was reasonable for Mr C to believe things would proceed as he wanted without needing to take any further action and that there was no need to seek advice anywhere else.

As a layman, I think Mr C would reasonably have placed greater emphasis on his discussions with the relationship manager than the documentation he received. And I think the reassurance he was given would reasonably have allayed any fears he might have had if he'd read and understood the documentation fully.

I accept Fidelity is an execution-only company that doesn't offer advice. But that doesn't mean it shouldn't provide clear and accurate information when asked to. Fidelity itself accepted in its email to Mr C of 29 December 2016 that *"more clarity could have been provided"* during the calls with the relationship manager. And I think it's that lack of clarity that meant he didn't contact Standard Life to find out whether his existing assets could be re-registered as they were.

If the relationship manager had explained the situation properly, including the points I've said he didn't cover above, I think Mr C would have acted differently by either leaving the ineligible funds where they were or asking Standard Life to switch them into a transferrable share class. Either way, he wouldn't have had to pay an additional amount to put himself back into the correct position. This is the reason I'm upholding the complaint and requiring Fidelity to pay compensation.

my final decision

My final decision is that I uphold this complaint.

If Mr C accepts my decision, Financial Administration Services Limited must pay him compensation calculated using the method set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 July 2017.

Jim Biles
ombudsman

extract from provisional decision:

my provisional findings

From the information I've seen it seems it wasn't necessary for Mr C's investments to be cashed before they were transferred to Fidelity. In an email dated 9 January 2017, Standard Life said:

Standard Life have share classes available that are designed for Standard Life customers only, however there are occasions where these will be offered to a limited number of strategic partners of Standard Life Investments.

These fund cannot be reregistered however we do offer a conversion process which allow the funds to be converted to transferable share class (The conversion process is process ensures that there is no out of market exposure and is a same day transaction).

In response to Mr C's complaint, Fidelity said it's an *execution-only* company and that it was Mr C's responsibility to check the funds he wanted to re-register were eligible and to switch any of those that weren't into the appropriate share class that could be held on its platform. And that the documentation Mr C signed explained any investments that weren't eligible would be sold and transferred as cash.

I've carefully reviewed Mr C's communication with Fidelity, including the transfer documentation he signed and the recordings of his telephone conversations with the relationship manager. I don't think Fidelity was as clear as it should have been about what happens to funds that aren't immediately eligible for re-registration.

The "Letter of Authority" section of the transfer forms included the following note:

Note *If any ISA fund which you apply to re-register is not offered via Fidelity or is otherwise not eligible for re registration, the Shares or Units will be sold and the cash proceeds will be transferred to us and held in the ISA Cash Pot pending your further instruction to invest in one or more alternative funds available through Fidelity.*

The declaration section Mr C signed authorised Fidelity to re-register or transfer his ISA holdings and noted that:

Any holdings that are not eligible for re-registration must be transferred to Fidelity in cash.

In itself, this seems quite clear. But the declaration section of the application form Mr C signed also said:

I authorise Financial Administration Services Limited to . . . in respect of ISA investments - switch my holdings into a different share class of the same fund, if applicable.

When these statements are read together, I think it would be reasonable for a layman to believe Fidelity would make sure funds were switched into eligible assets before re-registration if possible. And that only if that wasn't possible would assets need to be transferred as cash. If Fidelity wasn't willing or able to switch holdings in this way, it presumably wouldn't have asked Mr C to authorise it to do so.

Fidelity also says it has an *eligibility tool* on its website and that Mr C should have used this to check whether his funds were eligible for re-registration. It doesn't seem that Mr C did this, although the declaration section of the application form says:

I/We have checked the eligibility status of my/our current investments using the online tool provided by Fidelity as part of this transfer journey and where applicable instruct Fidelity to switch holdings into the eligible fund share class.

But this comment is a small part of a very large declaration and I don't think it was sufficient for Fidelity to communicate this requirement or expectation in this way. If it was important for Mr C to use the eligibility tool and that the consequences of not doing so were that his money could be taken out of the market, without Fidelity taking any action that may have been available to prevent this, I think that should have been made very clear to him. Mr C was a layman and Fidelity had a much better knowledge of its transfer and re-registration process than he did.

In the paperwork I've seen and the recordings of Mr C's telephone conversations with Fidelity's relationship manager, I don't think this point was made clear at all:

- The possibility of funds not being eligible for re-registration wasn't discussed in the initial call on 1 September 2016.
- It was mentioned in the second call on 15 September 2016, but only briefly. The relationship manager simply said existing funds could be re-registered as long as they had the same ISIN reference number. He didn't then go on to tell Mr C about the online eligibility tool or the importance of checking this. He also didn't tell Mr C that his funds would be sold and transferred as cash if they weren't eligible. Instead, he simply said he couldn't see any reason why any of the funds wouldn't be eligible. The conversation then moved onto other things.

I'd be surprised if Fidelity disputed my view on this issue given the comments in its email to Mr C dated 29 December 2016 where it acknowledged "*more clarity could have been provided*" during the calls.

Taking all of the above into account, I don't think Fidelity did enough to make it clear to Mr C that he needed to make sure all of his funds were eligible for re-registration to Fidelity before submitting his application. And that if he didn't, Fidelity wouldn't take available steps to switch the holdings into eligible asset classes and simply sell them and transfer as cash instead.

I've also looked at the letter Fidelity says it sent Mr C on 22 September 2016 – immediately after it received his transfer application. This said:

We have identified that the funds Standard Life Investments . . . held in your Unit Trust/OEIC account with Standard Life Wrap is not eligible for re-registration to FundsNetwork.

Should you wish to proceed with your application we would suggest that you contact Standard Life Wrap to clarify the details of the investment. We will then require a new application form to be completed.

Any other re-registration requests that you have submitted for other companies will continue to be processed separately.

In my view, this letter offers Mr C the option to proceed with the transfer (or not) and goes against any suggestion Fidelity had no choice but to sell his holdings and transfer them as cash. Mr C says he didn't get this letter. But if he had done, I think it would only have added to the confusion and lack of clarity created by the documentation he'd already seen and his telephone conversations with the relationship manager.

putting things right

I think the evidence is clear Mr C wanted to transfer his holdings in-specie and Fidelity acknowledged this was his intention in its email of 29 December 2016. In view of his actions after he realised some of his holdings had been sold, I also believe he wanted his money to remain in the same funds offered on the Standard Life platform.

If it had been clearly explained to Mr C that he should check whether his funds would be eligible for re-registration, and that if he'd understood some of his holdings may be sold automatically and transferred as cash, I think he would have acted differently.

In my view, Mr C would either have left the ineligible funds where they were or asked Standard Life to switch them into a transferrable share class. Either way, he wouldn't have had to pay an additional amount to put himself back into the correct position.

To put things right, I currently think Fidelity should make good Mr C's loss and pay compensation of £716.42 – the extra amount he had to pay to buy back into his original funds. To compensate him for not having the use of this money in the interim, it should also add simple interest at 8% per year from the date Mr C bought back into the Standard Life funds to the date compensation is paid.

my provisional decision

My provisional decision is that I currently intend to uphold this complaint. I currently think Financial Administration Services Limited should pay Mr C compensation calculated using the method set out above.