

## **The complaint**

Mr H complains that Financial Administration Services Limited, trading as Fidelity International ('Fidelity') sent him unwanted emails, even after he asked it to stop sending 'spam'. To put things right, he would like to be compensated for the distress this caused him and all unwanted emails stopped.

## **What happened**

Mr H held an individual savings account (ISA) which was transferred to Fidelity on 5 September 2021. This generated a welcome letter from Fidelity followed by further automatically generated 'service' emails which introduced new clients to the way Fidelity's platform worked.

Fidelity told Mr H the emails were a part of its procedure following his transfer from another financial business to inform him about the services it provided. It said it was sorry for the concern this caused him and confirmed that Mr H had been removed from the mailing list and his marketing preferences changed so he would not receive any more unwanted service emails or marketing contact.

Mr H didn't feel this went far enough to resolve things so he brought the complaint to us and one of our investigators looked into what happened.

Our investigator didn't feel he had seen enough to be able to uphold Mr H's complaint. He mainly said that when Mr H had registered for Fidelity's online platform he'd consented to Fidelity having his email address so he didn't miss out on key service updates. Our investigator didn't consider Fidelity had done anything wrong when it sent the emails he'd complained about as they provided information about Fidelity's platform. And as Fidelity had sent only three service emails and confirmed it would stop all future emails our investigator felt that no further action was needed.

Mr H disagreed with our investigator. He felt that the investigator had failed to appreciate his complaint and didn't properly understand privacy or what constitutes 'spam' email. In brief summary, Mr H said that:

- he never gave Fidelity consent to send the sort of emails which were sent
- he never wanted to be a Fidelity customer and had no choice
- Fidelity harvested his email to send him marketing.

Mr H asked for an ombudsman's decision and so his complaint comes to me to decide.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same conclusion as our investigator. I'll explain my approach and how I've reached my decision.

It's clear how strongly Mr H feels about his complaint and I want to assure him that I've carried out an independent review and considered everything that both parties have submitted. We provide an informal complaints handling service as a free alternative to the courts and this is reflected in the way I've approached the complaint. It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome – this means I might not mention everything Mr H has said, but I will comment on everything that makes a difference to the outcome of the complaint.

It's my understanding that the crux of Mr H's complaint concerns unwanted emails from Fidelity. Mr H put his concerns to me this way: *'The only person who can judge whether (an email) is spam or not is the recipient. I told you I was receiving unwanted email messages from the company after I had told them to stop. I consider these spam. The company continued to abuse my details to continue sending me these emails after I told them to stop and the emails contained more than just information about my account and were trying to sell me more of their products. .... The Financial Ombudsman did not care what I thought and allowed the company to continue abusing my confidential data for its gain and without my permission.'*

I've carefully considered the emails Fidelity sent Mr H. I don't find these were an abuse of Mr H's confidential data or otherwise improper, unfair or unreasonable.

When Mr H registered for the online platform he consented to the following statement: *'...it's important to provide your email address so you don't miss out on key service updates.'* So I think he would have understood he was signing up to receive email communications about service updates. And it seems reasonable to me that Fidelity wanted to make Mr H aware of information he would have needed to know about its platform in order to be able to manage his ISA and/or make other investment decisions.

On 2 November 2021, Fidelity emailed Mr H explaining it would be sending a short series of emails with useful tips to help new customers make the most of its service. A second email sent to Mr H on 11 November explained popular account features and included a link to register his online account. A week or so later, on 19 November 2021 Fidelity's third email to Mr H included details about *'...information, tools and guidance'* available to access via its platform.

I am satisfied that these introductory emails sent by Fidelity to Mr H can all properly be described as 'service' emails as they conveyed essential information about account and platform features that could reasonably have been of interest to Mr H as a new investor on the platform.

In coming to my decision, I've taken into account that, on registration, Mr H had left unticked the optional box which would have given Fidelity permission *'...to email carefully selected investment and retirement related articles and guides...'*

But Mr H did also sign up to receive other marketing information by phone and email.

After Mr H complained, and Fidelity understood that Mr H didn't want to receive any marketing emails or future service emails, on 30 November 2021 it amended the marketing preferences he had set up to exclude phone and email contact.

When Mr H complained to Fidelity after receiving its service email on 19 November, he specifically requested a reply by email. Fidelity responded with an automated generic email

acknowledgement. This was followed up with an email confirming that his comments had been forwarded to a complaint handler.

On 24 November 2021, Fidelity sent a letter confirming receipt of Mr H's complaint and posted its response to his complaint on 1 December 2021. It looks like that letter may have gone astray in the post – but that's not something I can hold Fidelity responsible for. Clients can set up and use a 'secure messaging system' instead of relying on post but Mr H hadn't registered for this. He might want to think about doing this in order to avoid postal problems arising in future as Fidelity doesn't consider emails are sufficiently secure to include personal information or private details that might compromise clients' data security or privacy.

Mr H sent further emails which Fidelity says would have received automated generic email acknowledgement.

As far as I can see, this explains why Mr H continued to receive some emails after his communication preferences were updated – none of these emails involved marketing material and I don't consider they can properly be described as 'spam'. They were sent in response to emails from Mr H, which seems fair and reasonable to me as they gave him the reassurance of knowing that his emails had been safely received and he could expect them to be acted on.

In order to be able to uphold Mr H's complaint I have to be able to fairly say that Fidelity has done something wrong or acted unfairly or unreasonably – and I haven't seen enough here to do so. This means I am not upholding his complaint and I can't award the compensation Mr H would like me to.

Whilst I appreciate Mr H will be disappointed, I hope that setting things out as I've done explains how I've reached my conclusions and even though this isn't the outcome Mr H hoped for, he will at least feel that his complaint has been fully considered by the Financial Ombudsman Service.

### **My final decision**

For the reasons I have given I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 February 2023.

Susan Webb  
**Ombudsman**