

The complaint

Mr T complains about the time it took Financial Administration Services Limited (Fidelity) to transfer the proceeds of his in-house Additional Voluntary Contribution (AVC) arrangement which it managed, into a new self invested personal pension (SIPP). He wants to be compensated for the financial loss he says he suffered because of a delay in the transfer.

What happened

Mr T had taken out an in-house AVC arrangement alongside his occupational pension scheme benefits which had been managed by Fidelity since 2017. He stopped the AVCs when he left his employment in 2002 and took his main scheme benefits – but the AVCs remained invested. In September 2019 Mr T received a “pre 75th birthday” letter advising him of his options regarding the AVCs. The value of the plan at that time was £30,262.84.

However, because the benefits couldn’t be taken under Mr T’s preferred “drawdown” type arrangement, he decided to transfer them into a new SIPP with Fidelity.

On 19 February 2020, having contacted Fidelity to discuss the situation and the options available to him, Mr T’s transfer request was entered onto the electronic transfer system (Origo). But the system notes confirmed that Fidelity subsequently considered the transfer “out of scope” as it believed it could only accept the transfer request from the scheme trustees. So, on 27 February 2020 Fidelity passed Mr T’s transfer request to the scheme administrator.

Mr T says he was provided with a copy of that request asking the AVC scheme administrator to “*please deal with it accordingly*”, so he contacted Fidelity to discuss the problem. As a result, Mr T said he didn’t think Fidelity’s “managed transfer process” could be followed, so on 6 March 2020 Mr T sent a paper transfer agreement form – provided by the administrator and partially completed by him, to Fidelity. A covering letter requested that the form should be forwarded to the scheme administrator so that the disinvestment and transfer could progress. But the form wasn’t forwarded until 18 March 2020 and then it wasn’t completed properly by Fidelity – so it was returned.

On 1 April 2020 Fidelity was contacted by the administrator and the outstanding information that was required was then provided in order to progress the transfer. Fidelity received the cash from the plan on 22 April and the funds valued at £24,754.29 were transferred on 5 May 2020. Mr T invested two tranches of £10,000 to different funds on 29 May and 2 June 2020, with the rest remaining in cash.

In April 2021 Mr T complained about the length of time it took to complete the transfer of his AVC funds.

On 9 July and 4 August 2021 Fidelity apologised that it hadn’t responded to Mr T’s complaint and said it would include a total of £50, as a goodwill gesture for the ongoing delays, within its final response.

In its final response Fidelity said it’s file notes showed that it should have contacted Mr T on

25 February 2020 to find out the scheme trustee details. It said this hadn't been done and it also didn't obtain that information when Mr T contacted Fidelity in early March 2020. In addition it apologised for the issues Mr T had with logging into his account in May 2020. It increased the compensation to a total of £225 for the delays and poor service it had provided during this time.

In respect of the delay to the actual transfer Fidelity accepted it had caused a delay of 21 working days to the process and thought it should, without the delay, have sold the assets within the plan on 11 March 2020. So it said it would apply the additional units that Mr T would have received from disinvesting on this date to his new pension plan – which amounted to a difference of £1,298.55. It also awarded him simple interest – calculated at 1.75%, for the deprivation of the additional units. The interest was added to the £225 compensation for the inconvenience caused by the delays and poor service – so a total of £258.92 was paid to Mr T's bank account as compensation.

Mr T didn't accept that outcome as he thought the delays in disinvesting were greater than Fidelity had established, and it hadn't considered the investment loss he'd suffered from the delay either. So he brought his complaint to us where one of our investigators looked into the matter. He thought Mr T's transfer had been delayed and was satisfied with Fidelity's position that it had caused a delay of 21 working days. He considered other potential delays in the process but was satisfied they wouldn't have made any material difference to Mr T's investment of his funds. So he thought Fidelity should backdate the allocation of the transfer value on 11 March 2020 as if Mr T's investments had been made 21 working days earlier. He also thought that the amount Fidelity had paid Mr T in lost interest and as compensation for the distress and inconvenience caused was fair and reasonable – so it didn't need to do anything further in that respect.

Fidelity explained that, as it hadn't been apparent that Mr T had an investment objective during the transfer process – and that he'd waited for at least 24 days before investing the funds, it didn't seem reasonable to use the backdating of the investments as a method of redress. It thought its resolution of adding interest onto the late payment was appropriate in the circumstances.

The investigator remained of the view that it was reasonable to conclude that Mr T would have taken the same (investment) actions 21 working days earlier, had the delay not occurred. He also confirmed that, even if he accepted Fidelity's resolution of an interest payment instead of backdating the purchase price of the investments, he thought it should be applied at the rate of 8% simple and ought not to be subjected to tax – as the loss had occurred from a pension fund.

Fidelity didn't agree. Whilst it accepted that delays may have been caused it said that Mr T would still have waited until the same dates to invest his money – so it didn't think he had suffered any financial loss. It asked for the matter to be referred to an ombudsman.

Mr T largely accepted the view, but he did make a number of references to the fact that had the transfer not been delayed he would have invested into funds similar to the original AVC arrangement investment strategy.

The investigator didn't think it was fair to assume, as Fidelity had suggested, that Mr T would have invested on the same dates (29 May and 2 June 2020). He said Mr T had confirmed he simply wanted to reflect on his options and would have invested after the same period of deliberation but just 21 working days earlier if Fidelity hadn't caused a delay. He also considered whether there was another period of eight working days that could be included within the overall delay timeframe.

But as no further points were raised or discussed, and the matter remained unresolved – the complaint has been passed to me to review.

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.

And having done so I agree with the conclusion the investigator reached. So I'll explain my reasons.

The AVC brochure issued by the trustees at inception set out Mr T's options at retirement. These included drawing taxed and tax free cash from the plan, purchasing an annuity with the proceeds, or "income drawdown". Also it explained that "*you may need to transfer your AVCs out of the fund to access all options.*"

But when he received a letter from the AVC administrator in 2019 – just before his 75th birthday, Mr T was made aware that if he wanted to either purchase an annuity or drawdown plan his benefits would need to be transferred to a different provider/arrangement. As he wanted to access his benefits through drawdown, I think it was reasonable for Mr T to find out what his options were and establish the process for transferring them to a vehicle which allowed him access in the way he desired.

So I've looked into what happened after Mr T had considered his options and requested the transfer – and whether any delays occurred during this process.

The first period of delay

Mr T said he first made his transfer request on 19 February 2020 after Fidelity had told him that it could manage the application itself using the online electronic transfer system. But he says he discovered on 3 March 2020 that the transfer request had been sent to the AVC scheme administrator when Fidelity realised it was "*outside of its scope*" to manage the process itself. In reality Fidelity, when it began to process the application, had become aware that the AVC scheme trustees required any transfer to be instigated by them. So it sent Mr T's request to the trustees at that point.

This would seem to be at odds with what Fidelity had told Mr T, and Mr T has been consistent in telling us that Fidelity told him it could handle the transfer so I've no reason to dispute his version of events. But I've also been provided with a transcript of the calls he had with Fidelity, and I've seen that from the notes of his conversation on 19 February 2020, when Mr T said he wanted to transfer his funds across, he was told, "*may not be possible as fund may not be supported at Fil. Client asks if he needs to speak to OPM, agent said shouldn't need to though they may require a form, if that's the case we will be in touch with client.*"

So while I think Fidelity could have been clearer and more decisive about the possibility it couldn't manage his transfer, and I can understand why Mr T may have assumed Fidelity would manage the process itself, I think Fidelity did just enough to show there was the possibility of needing to contact and involve the scheme trustees in order to complete the process.

I've considered whether Fidelity was at fault for the delay in the process from

19 to 26 February 2020 and whether it raised Mr T's expectations of its ability to conduct the transfer process. But I think it did raise the possibility of not being able to solely conduct the transfer, and I think it wasn't unreasonable for it not to be entirely sure of how the transfer would be managed until it started to process the application and became aware of all the requirements of the parties involved. And even if Fidelity raised Mr T's expectations about the way the transfer could be progressed – for which compensation has been offered and which I'll cover later in the decision, I think the process Fidelity did ultimately have to follow was the correct one and so it would still have had to send the request to the administrator in any case and would have needed to make Mr T aware of such an action.

So overall I don't think Fidelity should be held responsible for the initial one week's delay – but after it discovered that it needed to request permission from the AVC scheme trustees to transfer I think it ought to have made Mr T aware of that straight away. So I've looked carefully at that part of the process.

Fidelity itself has accepted that it didn't make Mr T aware of the fact it had passed his request on to the administrator. It also accepted that it missed the opportunity to make him aware when he contacted it on 3 March 2020 after he'd received a copy of the request from the administrator. At that point Mr T realised that Fidelity wasn't going to be able to manage the transfer itself and he filled out the necessary part of a paper transfer request form provided by the administrator and sent it to Fidelity. But there was period from 28 February to 6 March 2020 when his transfer wasn't being processed and he hadn't been made aware of that fact.

I've considered that period of delay but concluded that, as Fidelity has accepted responsibility for the delay after 3 March until 1 April 2020 – and from 28 February to 3 March 2020 was only three working days, I don't think it's an unreasonable delay in the circumstances. If, in the normal course of events when it discovered it needed to contact the scheme trustees Fidelity had taken three working days to contact Mr T – and I accept that it was only Mr T's efforts that meant he found about the situation here, I don't think I would suggest that was an unreasonable delay in making contact and progressing matters.

The second period of delay

Fidelity has accepted responsibility for a delay between 3 March 2020, when Mr T was made aware that Fidelity had rejected the transfer and forwarded the request to the AVC administrator for it to progress things, and 1 April 2020 – which is when Fidelity spoke with the administrator and was given the outstanding information required. Fidelity said this was a delay of 21 working days and, to compensate, it has increased Mr T's pension plan by the additional transfer value he would have received if the disinvestment had taken place on 11 March 2020.

The investigator considered this to be a fair and reasonable period for which Fidelity accepted responsibility – so I've carefully considered the timeline involved. Using the day after 3 March 2020 as the date the process could have begun, I've calculated that Fidelity has allowed a period of five working days in which to disinvest the funds within the AVC plan.

I don't think that's unreasonable, and it seems a fair time frame in which to complete the disinvestment. So I don't think Fidelity has added further delay by using those dates as its benchmark.

But even if I am wrong in my assumption about the disinvestment date, I've taken into account that Mr T didn't return the transfer form until 6 March 2020 – which could be seen as the date from which the last outstanding requirements were returned and therefore that the

transfer process could begin. So I think because Fidelity could have considered using the later date of 6 March 2020 in its calculation, which would have meant a period of two to three days for reinvestment to have taken place, it's fair to accept the earlier date but not to conclude that Fidelity caused a delay over the disinvestment.

So I think it's fair and reasonable to use a period of 21 working days as the overall delay up to the point the process should have begun, and I think it's reasonable to therefore use 11 March 2020 as the date of the transfer value that should have been used.

Looking at the period after 1 April 2020, I can see that when Fidelity received the funds on 22 April they weren't transferred until 5 May 2020 (4 May 2020 was a bank holiday) – which was around eight working days. And Fidelity hasn't given any explanation for why the funds weren't transferred for that length of time. But this delay only affects the possible investment loss Mr T may have suffered because the transfer value that should have been used has now been "locked in" on 11 March 2020. But I've taken into account Mr T's cautious nature and inexperience regarding investment and that he has been consistent in telling us that the delay was unlikely to have made any difference to the time he took to make his investments. I've also considered that a period of eight working days to transfer the money wasn't entirely unreasonable given the difficulties experienced due to the national lockdown that was in place at the time as a result of the pandemic.

The loss of investment growth

So, while there's broad agreement between the parties that a delay did occur to the transfer process for most of March 2020, investment of the funds wasn't made immediately after the transfer. In fact investment took place some weeks later. Fidelity says that the lack of immediate investment suggested that Mr T didn't have an investment strategy – so it isn't fair to ask it to calculate whether Mr T had suffered any investment loss because of the delay, and it thinks its offer of interest on the additional units it gave Mr T is sufficient.

Whereas Mr T has been clear in that, as an inexperienced investor, he needed time to decide how to invest but would simply have gone ahead earlier had the delay not occurred. Although he has suggested that he may have invested in a broadly similar way to the composition of his original AVC funds had he invested earlier, because the subsequent fall in the market meant he had to invest differently when he did.

But I agree with the investigator, and I think Mr T's investment should simply have happened 21 working days earlier – had the delay not occurred. Mr T did ultimately invest, and I think it's reasonable to assume that he would have behaved in the same way if he'd had the funds at his disposal earlier. I think it's entirely reasonable that Mr T took some weeks to invest initially because he was inexperienced in such matters, and I think he would have exercised caution in the beginning.

I've also considered whether as he suggested – if the transfer had completed earlier, Mr T might have put in place an investment strategy similar to the existing AVC. Although I appreciate Mr T might have been in a different investment position three weeks earlier, I don't think it's fair to decide now what would have happened in such circumstances. It would require considerable hindsight to work out what investment would have occurred without a delay.

So I think it's more appropriate to consider what did actually happen regarding Mr T's investment strategy and to apply that outcome to the redress formula. I've set out what I think needs to happen to put things right below.

The offer of the difference in transfer values and the compensation payment

Mr T has suggested that his financial loss runs to around £7,000 and I can understand how he would consider that figure appropriate when comparing the plan values of the AVC around 19 February and 11 March 2020 – although Mr T himself accepts this is unrealistic and would have had to involve “instantaneous” transfers (in-specie) which weren’t appropriate here.

But as I’ve set out above, I think the transfer value that was applied on 11 March 2020 is fair and reasonable in this situation and I think that should be used to calculate any investment loss from that point. Fidelity has already paid Mr T the additional units to the value of the difference between the plan values as compensation

Fidelity has also paid Mr T £258.92 in compensation which comprised £50 for the delay in resolving the complaint in a timely manner and £33.92 in interest for the deprivation of the additional funds from using 11 March 2020 as the disinvestment date. The rest of the compensation was a goodwill gesture for the distress and inconvenience the delay had caused Mr T. In the circumstances I’m satisfied that’s within the range of what I’d expect to see for such delays and, although a small amount was paid as additional interest, I think that should remain included as appropriate within the overall compensation figure.

Fair compensation

My aim is that Mr T should be put as closely as possible into the position he would probably now be in if there hadn’t been any unreasonable delays to the transfer and Fidelity had disinvested the AVC arrangement on 11 March 2020.

What must Fidelity do?

To compensate Mr T fairly, Fidelity must:

Compare the performance of Mr T’s SIPP with that of the benchmark shown below, had Mr T invested his (same) funds 21 working days before he did actually invest. The transfer value as of 11 March 2020 needs to be used to make the comparisons.

If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

Fidelity should also add any interest set out below to the compensation payable.

Fidelity should pay into Mr T’s pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Fidelity is unable to pay the total amount into Mr T’s pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income.

Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn’t a payment of tax to HMRC, so Mr T won’t be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr T is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr T would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Fidelity deducts income tax from the interest it should tell Mr T how much has been taken off. Fidelity should give Mr T a tax deduction certificate in respect of interest if Mr T asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists and liquid	The invested funds	Date the investments should have been made (21 working days before each investment was made)	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

The redress method set out above covers any investment loss suffered by Mr T as a result of the delay. But I need to take into account that the cash part of the plan was also delayed by 21 working days. So the same calculation needs to be completed for the cash element of the SIPP that was transferred. I'm satisfied that any loss attached to the additional units Fidelity allocated Mr T was compensated by the interest it paid.

I've also noted that Mr T did subsequently invest further funds in July 2022 – after the additional units were applied to the plan. But Mr T has explained that some funds were held in cash in order to cover future fees that might be applicable, and, in any case, that investment was made long enough after the initial investments not be part of that strategy.

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Fidelity totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

My final decision

For the reasons that I've given I uphold Mr T's complaint against Financial Administration Services Limited.

My decision is that Financial Administration Services Limited should pay the amount calculated as set out above. It should provide details of its calculation to Mr T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 March 2023.

Keith Lawrence
Ombudsman