

The complaint

Mrs D complains that Financial Administration Services Limited (“Fidelity”) delayed a transfer from her stocks and shares ISA to another provider, preventing her from trading as she wanted, so incurring her a significant loss.

She’s also made a complaint against the other provider, which has been dealt with under a separate reference.

What happened

The circumstances of the complaint will be familiar to both parties, so I won’t repeat them in detail here. Rather, I’ll briefly recap the key points, then focus on giving reasons for reaching my decision.

- In August 2020 Mrs D requested that Fidelity transfer share holdings and cash to an ISA held with another provider. By November 2020 the transfer process was still ongoing, so she raised a complaint.
- Fidelity accepted failings in administrating the transfer and offered Mrs D £500 for the distress and inconvenience caused. It also identified that there’d been a period during which she’d been unable to access the cash (around £58,000) on the account to trade. As it was unable to determine how the money might’ve been invested, it offered to pay her interest on it at 8% simple for the period in question.
- Mrs D didn’t accept this. She said her intention, if the transfer had completed without delay, had been to invest all the cash along with the proceeds of selling all the transferred stocks – around £148,000 – into a single stock: Tesla Inc. As such, she felt she should be compensated based on having bought and sold this amount, consistent with actual purchases and sales of Tesla she’d made in October 2020 and January 2021, in the other provider’s ISA.
- An investigator at this service considered the matter and concluded that if the transfer had completed earlier Mrs D would likely have invested more money into Tesla. But he proposed compensation based on a compromise, given the difficulty in determining precisely how she would’ve invested. This involved putting her in the position she’d have been in had she invested only the £58,000 cash from the Fidelity ISA in Tesla in October 2020 and sold in January 2021, but not the proceeds from selling the other holdings.
- Neither party accepted this proposal. Mrs D maintained her view that she’d have invested the significantly higher amount into Tesla, so the compensation should be based on that. Fidelity felt Mrs D’s claim for investment loss was speculative and maintained that its offer of £500 along with 8% simple interest on the cash amount was fair in all the circumstances.

As no agreement could be reached, the matter was referred to me to decide.

I issued a provisional decision in which I set out my reasons for reaching a different conclusion to that reached by the investigator. In part, I said:

“As noted, the background set out above is only a brief synopsis of the circumstances before and after Mrs D made her complaint. Both parties have provided lengthy submissions to support their respective views, which I’ve read and considered closely. But I’m going to focus on what I consider to now be the crux of the matter and my reasons for provisionally reaching a different conclusion to that reached by the investigator. Where the evidence is incomplete or inconclusive, I’ve based my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence.

Whether or not there were avoidable delays in the transfer caused by Fidelity is not really in dispute. There’s some disagreement around specific dates and how some aspects of the transfer should’ve been administered. But I don’t think that disagreement really impacts the crux of the complaint, which to my mind is whether (or not) it can be reasonably determined what Mrs D would’ve done if the transfer had completed earlier and she’d had all the holdings and cash from her Fidelity ISA available in her other ISA from late September/early October 2020.

This type of situation and complaint is not unusual. It’s commonplace for there to be delays when transferring ISA holdings between providers. Complications exist due to a combination of strict ISA rules, different types of holdings and the way in which providers communicate with each other. Our usual approach when it’s apparent that a provider has made a mistake and caused a delay is to try and place the consumer back in the position they’d be in if the delay hadn’t occurred. To do so, we need to determine how, more likely than not, they might otherwise have invested.

Making such a determination usually involves looking at the actions of the consumer during the period of delay, along with a consideration of the wider circumstances – their trading history, personal circumstances, etc. What does the available evidence in this respect tell us about their likely intentions and possible courses of action?

There’s no dispute that Mrs D did purchase Tesla stock during the period in question. Her trading records for the other ISA show this. But the records also show Tesla being sold during the same period. In fact, there were around 10 trades in Tesla between August 2020 and January 2021, along with trades in other stocks. And the amounts involved were all much smaller than the amount she’s suggested she would’ve bought and sold but for the transfer delay.

Mrs D has said this was because she was limited by the amount of cash available in the other ISA. And it does appear to have been the case that there was no more cash available. But I nevertheless think it’s difficult to conclude that a record of making relatively small trades in a particular stock mean that, with considerably more money available, a very large trade would’ve been made.

From what I’ve seen of Mrs D’s trading history, she’s not previously made a single purchase of stock as large as that which she’s suggested she would’ve made in Tesla. The records from the other ISA provider that cover the period February 2020 through to March 2021 show her largest purchase to be one of around £20,000. The largest individual holding of the four that were transferred from Fidelity to the new provider was just under £49,000. Again, significantly less than the proposed purchase of Tesla.

Mrs D has also said in her submissions that “For the period of the transfer (from August 2020 to Feb 2021) I was on maternity leave (without my normal income). During this time I had to deal with the stresses of coping with a newborn baby, during covid-19 (without my

family support during lockdowns).”

These don't strike me as circumstances that sit comfortably with a decision to make a very large investment – effectively all her investable monies – into a historically very volatile stock. Mrs D did clearly continue to trade during this period. But, as I've highlighted, this was in much smaller volumes than that which she's proposed. And, as noted, it's also clear she bought and sold stocks other than Tesla within both ISAs during the same period.

I've also considered whether Mrs D put Fidelity on notice of her desire to trade Tesla, or do any other specific trading, at any point during the period in question. Whether, for instance, she chased the transfer and expressed concern at the delay because she was potentially missing out on a particular investment opportunity.

But it appears she didn't mention anything along these lines when she first made her complaint to Fidelity in November 2020 (which seems to be the first time she contacted it about the matter). In an email to Fidelity of 19 November 2020 she said “...it has now been over three months and the shares have not been transferred. What is the reason for the hold up and provide a date on when the transfer will take place.”

And neither did she mention any specific intention when she referred her complaint to this service a couple of months later in January 2021. She said she was unhappy that the transfer was still ongoing (as it was at that point) because “I want to purchase shares in companies that I can access on the (other provider's) platform”. (Tesla could not be traded with Fidelity as it didn't handle US stocks).

I note here Mrs D's reference to 'companies', which doesn't suggest her intention was to invest everything in any one company. No mention made of what by that point would've been a missed opportunity to make a significant return from an investment in Tesla. Rather, the desired resolution Mrs D set out on her complaint form was simply for Fidelity to compensate her “for not being able to trade my shares since the end of September 2020 (which is when Fidelity said the transfer would be complete by)”.

When, once the complaint had been allocated to an investigator, Mrs D made further submissions to us in June 2021 she did then say, “My intention was to invest the full amount of my investments and cash held within my Fidelity ISA...into Tesla stock...at the beginning of October 2020.” She said the value would've been just over £148,000. To illustrate her potential loss, she provided evidence of two of the Tesla purchases she'd made in the other ISA on 9 and 16 October 2020 (a total of 39 shares) and one of the sales on 8 January 2021 of 47 shares. Using these examples gave a return of 103.66%, so a claimed investment loss of nearly £154,000.

But, as I've already stressed, these weren't the only trades in Tesla Mrs D had done during the period in question. So, while it's clear Tesla was a stock that Mrs D had invested in prior to initiating the transfer with Fidelity and one she continued to trade during the period in question, I don't think a consideration of the evidence and the wider circumstances support a determination of a specific investment loss. Certainly, I don't think there's sufficient evidence to support a finding that, if the transfer had completed without delay by the end of September 2020, Mrs D would more likely than not have invested almost £150,000 into Tesla.

And further, for similar reasons, I don't think it's likely she would've invested as much as £58,000 – the cash amount transferred from the Fidelity ISA and suggested by the investigator as a compromise amount. I accept it's possible she would've re-invested some additional money into Tesla. But I think it's equally possible that she would've put more money into the other stocks she invested in. And there remains the possibility that she might've done something else entirely.

I recognise Mrs D will be very disappointed I've reached a different conclusion to that reached by the investigator. But, as it stands, I find I'm unable to conclude on balance that there was a specific course of investment action Mrs D would more likely than not have taken if the transfer hadn't been delayed. And that being so, I'm of the view that the offer already made by Fidelity, to pay 8% simple interest on the cash amount for the period it couldn't be invested, along with £500 for the distress and inconvenience caused by delays is fair."

Fidelity confirmed it had nothing it wished to add in response to my provisional decision.

Mrs D made further comprehensive submissions to support her position, which can be broadly summarised as:

- There was clear evidence of her chasing Fidelity to complete the transfer and she provided further email and call recording evidence of this.
- She did have some large holdings, including in one technology trust that would've itself included Tesla stock. This trust holding and direct Tesla holdings combined would've equated to around £75,000, which indicated her willingness to invest large amounts in this asset type.
- When the transfer did eventually complete, she invested £55,000 of the £58,000 within 42 days, including £40,000 in a single day. This was in other stocks, but by this point the Tesla opportunity had been missed.
- The majority of trades she'd carried out in Tesla with the other provider had been purchases, including a single purchase of £31,000 on 8 January 2021.
- Her maternity situation hadn't impacted her trading behaviour – that situation was more relevant in respect of the distress and inconvenience the matter had caused.
- Why had I considered the other provider to not be at fault?
- The initial date for calculating the loss should be 7 September 2020 and as 87% of her holdings with the other provider were in Tesla, that proportion should be used for any calculation.
- But as a compromise it should be assumed that she'd have invested £58,000 in Tesla on 9 October 2020 and sold on 8 January 2021 and the loss determined in this way should be split between the two providers.
- The fact I'd concluded that I was unable to determine the amount that would otherwise been invested was unfair.

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.

I've noted carefully all Mrs D has said in response to my provisional decision. But having done so, my view remains unchanged. On balance, I'm unable to conclude that there was a specific course of investment action that I can reasonably say she would more likely than not have taken if the transfer hadn't been delayed.

I've looked at the additional evidence she's provided in response to my provisional decision – including listening to the recording of the telephone call she had with Fidelity on 7 January 2021 – and I accept it shows that she was actively chasing the transfer and clearly very frustrated that by this point had taken so long. But that said, there is nothing in any of this evidence that indicates a specific intention on her part to invest in Tesla, or any other particular stock.

In one of the emails from Fidelity that Mrs D has provided, dated 18 February 2021, she was asked by Fidelity to provide "some detail" around the losses she had made general

reference to when chasing the transfer. But this requested detail doesn't appear to have been provided, despite by this point the Tesla investment opportunity having been and gone.

Mrs D has said that she didn't provide the detail because by that time she'd lost faith in Fidelity and had already referred the matter to this service. But I can't see why that would've prevented her from mentioning a loss relating to Tesla, which would've been apparent by this point. Or indeed, why she didn't chase the transfer during the period between September 2020 and November 2020, the time during which she says she would've been wanting to make the very large investment in Tesla.

I note also what Mrs D has said about purchasing similar technology stock in her Fidelity account during October 2020 and how this shows that she was seeking greater exposure to this type of investment, of which Tesla would've been an example. But, as I noted in my provisional decision, I don't think these examples of smaller investments made by her into similar areas support a view that she would, more likely than not, have committed all her money into a single direct investment in one stock if the transfer had completed sooner.

Similarly, the fact that once the transfer completed she then invested £40,000 in one day, doesn't to my mind suggest a desire to accept the level of risk associated with investing *everything* into Tesla. The £40,000 investment to which she's referred was made around six weeks after the transfer completed and involved three different stocks. As such, I don't feel that it was comparable to the type of investment she's suggesting she would've made.

In conclusion, I understand Mrs D feels that it's unfair that I've not made a determination about how she might otherwise have invested. But in looking at the matter impartially, I must be fair to *both* parties. And based on the evidence I've seen, I don't think it would be fair and reasonable for me to conclude that, but for the transfer delay, she would've invested all her money into Tesla. And further, more generally, I don't think there's sufficient evidence to determine another particular alternative – the sort of compromise that she's suggested.

Putting things right

I'm satisfied the offer made by Fidelity to pay interest at 8% simple on the amount of £58,275.53, for the period that it could not be traded, between 26 November 2020 and when the transfer completed, along with £500 to recognise the distress and inconvenience caused by the delay, is fair and reasonable in all the circumstances.

My final decision

For the reasons given, my final decision is that Financial Administration Services Limited should make payment to Mrs D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 16 May 2023.

James Harris
Ombudsman