

The complaint

Mr G complains that Financial Administration Services Limited, trading as Fidelity, won't act on his instructions to sell the funds held in his account and send him the proceeds, even though he's sent it the information it said it needed.

What happened

Mr G and his then wife opened a joint Fidelity investment account in 1994. Mr G says Fidelity had always acted on his sole instructions on the account. The last activity on the account was in 1999.

Fidelity said that it contacted Mr and Mrs G four times in 2015 and 2017 because it needed documents to satisfy new "know your customer" requirements. But it didn't receive a response.

In February 2021, Mr G phoned Fidelity to give instructions to close the account but, because he hadn't provided the required identification documents, Fidelity couldn't act on his instructions. Mr G sent Fidelity what it had asked for and this satisfied Fidelity's requirements for verifying Mr G's identity. But Fidelity said it also needed to verify the identity of the joint holder, Mrs G. Mr G explained he and Mrs G were divorced and he didn't have contact information for her. So Fidelity asked for a copy of the decree nisi and the legal documentation to show the split of assets.

This service investigated Mr G's complaint about Fidelity not acting on his instructions until it received the requested documentation. Whilst our investigator recommended the customer service aspects of that complaint were upheld, he thought Fidelity hadn't done anything wrong in not acting on Mr G's instructions until he provided the evidence it had requested. Fidelity had already paid Mr G £225 for the distress and inconvenience its poor service caused, which the investigator thought was fair.

Mr G then referred a related complaint to us. He said he'd provided the paperwork Fidelity said it needed – the decree nisi and the split of assets, but that Fidelity still didn't act on his instructions and is now asking for more documents which he doesn't have.

Fidelity said that it originally suggested the decree nisi would be all it needed. But that, after considering this document, it could only act on the joint instructions of the parties to the account. Or it needed an official document to show the divorce asset allocation so that it could check that Mr G was solely entitled to the account. It offered him £100 as a gesture of goodwill because of the time it took to consider the documents provided, and because it had wrongly told Mr G it would be able to act on his withdrawal instructions once the decree nisi was sent to it.

Our investigator thought it was reasonable for Fidelity to ask for the additional documents. But he didn't think Fidelity had explained things clearly enough and he recommended an increased compensation figure of £250.

Fidelity agreed. Mr G initially agreed as well. But when Fidelity contacted him to make arrangements to pay him the compensation, he realised that it still wouldn't act on his instructions, and he asked for an ombudsman to consider his complaint. He said, in summary, that:

- The account was only ever managed by him, and Fidelity had always accepted his sole instructions.
- He has forwarded the only court documents that he has, and these show the split of assets between him and his ex-wife which is what Fidelity said it needed to see.

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.

When the joint account was opened, Mr and Mrs G authorised Fidelity to act on either of their sole instructions. And this is how the account operated – Mr G was the party who gave all the instructions on the account.

But Fidelity has been made aware that Mr and Mrs G have divorced. Its terms and conditions say:

"Further, if any one of the joint holders tells us of a dispute between any of you, we may, though are not obliged to, treat this as notice of cancellation of the authority to act on the instructions of any one joint holder." (1.7 (b))

The terms say Fidelity *may* refuse to continue to act on the sole instructions of one party. I think in the circumstances here, where the parties are divorced, it was reasonable for it to require the joint authority of both parties before carrying out any instructions on the account or allowing any withdrawals. I say this because it's reasonable that Fidelity protects the interests of *both* joint parties to the account and it needs to satisfy itself that Mrs G either consents to the withdrawal, or that she isn't entitled to the money in the account.

To date, neither Mr G nor Fidelity have been able to make contact with the joint party to obtain her consent, and to obtain the documentation which is needed to verify her identity.

As an alternative, Fidelity said it would accept Mr G's decree nisi. Fidelity apologised that it should have made things clearer and that it shouldn't have said it would be able to act on Mr G's instructions once it had received the decree nisi. It also took too long to consider the document and let Mr G know the outcome. I agree with our investigator that Mr G should be compensated for the poor customer service and that £250 is fair and reasonable in the circumstances. (To be clear, this is in addition to the £225 already paid to him in response to his first complaint.)

I accept this doesn't resolve the matter for Mr G. Understandably, he feels he has provided all he can, but that Fidelity won't release his money.

Unfortunately the translation of the divorce documents provided is not particularly clear. But there's no specific mention of this account and no mention of one or other party being entitled to take ownership of any joint assets (except for specific, named properties). Based on what the documents say, this means both parties would appear to have equal claim on this joint account.

In the circumstances, I find it's reasonable for Fidelity to take steps to satisfy itself that the joint party does not have a valid claim on the account, or that she consents to Mr G's sale and withdrawal instructions.

For clarity I asked Fidelity to review the current situation and set out exactly what it requires. It said:

"Tracing information - At cost to Fidelity, we have instructed a tracing company to attempt trace Mr G's ex-wife to try and obtain her consent for any withdrawal.

In addition we would also like to request that Mr G contact his divorce attorney (or provide us with authority to do so) as they should be able to provide any further documentation issued regarding settlement, based on document retention legislation. This documentation would need to confirm that from a legal standpoint the Fidelity account solely belongs to Mr G and that there are no remaining liabilities towards his ex-wife. Our research indicates that if any such documents did exist they should still be retained based on data retention laws."

To be clear, if Fidelity's attempts to trace Mrs G fail, it will need to see evidence that she is not entitled to any share of the joint account before it can act on Mr G's sole instructions.

My final decision

My final decision is that Financial Administration Services Limited should pay Mr G £250 for failing to provide him with clear information.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 4 September 2023.

Elizabeth Dawes
Ombudsman