

## The complaint

Mr B complains about Financial Administration Services Limited (“Fidelity”) refusing to action his request for partial transfer of cash held in his Individual Savings Account (ISA) to another provider.

## What happened

In 2021 Mr B transferred several cash ISAs into a stocks and shares ISA he has with Fidelity. He contacted Fidelity on 23 January 2023 saying he intended to transfer the cash held in his ISA to another provider. Fidelity informed him on 10 February 2023 that it couldn’t action a partial transfer and this led him to complain. It didn’t uphold the complaint, so Mr B referred his complaint to our service.

One of our investigators considered the complaint but also didn’t think Fidelity had done anything wrong. She said that the terms and conditions Mr B had agreed to on opening his account made it clear that partial transfers weren’t permitted.

Mr B didn’t agree with the investigator’s opinion. In short he made the following points.

- No investor would know that cash and shares had to be transferred together before investing into a Fidelity ISA.
- It seems nonsense that cash can be transferred into the ISA but not out of it and Fidelity has provided no explanation as to why this is the case.
- Fidelity should point out clearly and unambiguously that partial transfers out of the ISA aren’t permitted before any transfer is made.
- No other provider he is aware of applies the same approach so how is this a legitimate exercise of its commercial judgment.
- Fidelity isn’t providing a fair rate for clients who keep their funds in cash.
- Fidelity hasn’t provided evidence that he agreed to its terms and conditions when he opened his account in 2006 or in 2021 but if he did agree to these they didn’t make clear what a partial transfer or full transfer is.

As Mr B didn’t agree with the investigator the complaint was referred to me for review and decision. I issued a provisional decision explaining why I thought the complaint should be upheld, the findings from which are set out below.

*“I acknowledge that Mr B is frustrated with Fidelity’s decision not to allow partial transfer out of the cash held in his ISA and hadn’t realised this was something it wouldn’t facilitate before it informed him in February 2023. However, I am not satisfied that Fidelity is required to agree to partial transfers of cash or that in not accommodating this it has done anything wrong. I also think that on balance it provided enough information to Mr B about this when he transferred his cash ISAs into his Fidelity ISA in 2021. However, I think this complaint*

*should be upheld because of other failings in the information provided by Fidelity.*

*I note Mr B has said that Fidelity hasn't provided evidence he agreed to its terms when he opened his account in 2006 or in 2021 when he transferred his cash ISAs. However, it is unlikely in my view that he would have been able to open his account in 2006 or transfer his cash ISAs in 2021 without first agreeing to its terms of business. In terms of his transfer in 2021 Fidelity requires clients to confirm various statements before they can proceed with transfer of an ISA to it. One of these relates to agreeing with its 'Doing business with Fidelity' document which incorporates its client terms has been. In the circumstances I think it is more likely than not he did agree to the terms.*

*However, whilst I am satisfied that Mr B agreed to the terms which applied to his ISA I am not satisfied that these provided clear, fair, and not misleading information when it came to moving the ISA from Fidelity to another provider. The movement of an ISA to another provider is commonly referred to as a transfer, whether in reference to moving investments in-specie held in a stocks and shares ISA or the cash in a cash ISA.*

*Clause 3.3 of Fidelity's terms, headed 'Moving Investments out' at paragraph (a) refers to transfer in relation to the movement of an ISA. It states.*

*"If you wish to Re-register your Investments with another provider (or, in the case of an ISA or Fidelity SIPP, Transfer them to another provider), we will do so if your new provider agrees. They may charge you for this."*

*The clause distinguishes ISA (and SIPP) accounts from other accounts by suggesting that moving investments is by way of transfer not by way of re-registration. As I have said, the use of the word transfer is common when referring to moving an ISA from one provider to another so the distinction wouldn't have mattered save that the terms then define 'transfer' as "when Investments are sold and the cash is transferred to another fund manager or investment service provider".*

*So, a client reading clause 3.3(a) could be misled into thinking that to move their ISA to another provider they would first have to sell their investments and then transfer the cash proceeds.*

*And from what Mr B has said I am of the view he was misled into thinking that was the case. I have come to this conclusion for a couple of reasons. Firstly, the obvious solution to him not being able to get the interest rate he wanted for the cash element of his ISA was to transfer the whole ISA to another provider that allowed partial transfers, with the investments being transferred in-specie. He could then have transferred the cash element to a cash ISA. The fact that he didn't take this step I think indicates that he wasn't aware he could do this.*

*Moreover, he stated in the complaint form on referral to our service that he wanted Fidelity to allow him to transfer the cash in his ISA without having to cash in his investments. I think this clearly shows that he believed that he couldn't transfer his investments in-specie. And in response to the investigator's opinion he stated that what wasn't made clear when he transferred his cash ISAs into his Fidelity ISA was that to move cash out of the ISA all investments would need to be converted into cash. Furthermore I also queried this with him and he stated that "Fidelity will only do a "full transfer", a full transfer being all of the money that I have invested with Fidelity in my ISA account being converted to cash." He also stated that if he could have moved his investments and cash together he would have done so.*

*Contrary to the indication given in clause 3.3(a) and Mr B's understanding which arises from the wording of that clause and the definition of 'transfer' in the terms there was no reason he couldn't re-register his investments with another provider. He didn't need to sell his*

*investments first as I think the terms suggested was the case.*

*Fidelity argues that clause 3.3(a) of the terms isn't misleading as its aim is to explain that the client has the option to re-register their investments - referring to general investment accounts - but that with ISAs and SIPP's they also have the option of transferring them by selling to cash first before moving to a new provider and retaining the wrapper.*

*Fidelity further argues that its approach is sufficiently clarified by clause 3.3(e), which states:*

*"After you instruct a Partial Re-registration, if we receive an income payment, a dividend or other cash amount (including Regular Savings Plan payments) relating to your Investment(s), it will be retained in your account and we will follow your most recent investment instructions relating to that income payment, dividend or other cash amount. Partial Re-Registration is not available within the Fidelity SIPP and Investment ISA."*

*And also by clause 14.2(a), which states:*

*"If you ask us to Re-register or Transfer your ISA to another ISA manager we will do this in line with clause 3.3. We can only Reregister or Transfer your whole ISA (covering all the Years for which you hold ISA Investments) or in the case of a Junior ISA, the whole account in accordance with the ISA Regulations relating to transfers."*

*It argues that when the terms are read as a whole the position is clear, but I don't agree. As I have said, the use of the word 'transfer' is in common usage generally, including, in government guidance on ISAs, and is generally understood to refer to moving an ISA from one provider to another whether that is investments in specie or cash. Given this I think it is more likely than not that Mr B will have been of the view that moving his ISA to another provider would be by way of transfer and clause 3.3(a) will have reinforced that view as it specifically refers to moving investments from an ISA or SIPP by way of transfer rather than by re-registration.*

*Clause 3.3(e) doesn't in my view make the position clear given that clause 3.3(a) gives the impression that moving investments in an ISA isn't by way of re-registration in the first place. In other words, stating that partial re-registration isn't possible for an ISA doesn't of itself tell a client that full re-registration is a possibility. I accept that it may lead some clients to question this and the meaning of clause 3.3(a) but that isn't the same as saying that this made the position clear to all clients or to Mr B specifically.*

*As for clause 14.2 (a), I acknowledge this refers to re-registering or transferring an ISA but it states that Fidelity will do this in accordance with clause 3.3, so takes you back to the clause that distinguishes ISAs by indicating moving them is by way of transfer not re-registration. I am not satisfied in the circumstances that this is enough to make things clear so far as it being possible to re-register investments with a new provider.*

*Turning to the issue that led Mr B to complain, namely the fact that that he was unaware that he couldn't move part of his ISA to another provider, I think the above clause does make clear that it was only possible to transfer the whole ISA. In addition Fidelity provides information about transfers through its online 'Frequently Asked Questions' (FAQs) which states that when requesting transfers out this must be 100% of the account. So, I think Fidelity probably did provide enough information about partial transfers not being possible.*

*In making that finding I accept that despite the terms and FAQs Mr B wasn't aware he couldn't make partial transfers of cash out of his ISA and note his argument that this should have been made explicitly clear to clients. However, whilst I acknowledge Fidelity could have made the position clearer I am not satisfied that it was required to point this out specifically*

*or that in not doing so it didn't provide clear and fair information on that particular point.*

*Mr B also questions how Fidelity's decision not to allow partial transfers can be considered a legitimate exercise of its commercial judgment when other providers allow for partial transfers. However, just because other providers allow partial transfers doesn't mean that Fidelity has to permit this. There is nothing illegitimate or unreasonable in it deciding that it won't carry out partial transfers when other providers do allow this.*

*Mr B also argues that the interest rate Fidelity applies to the cash in his account isn't fair. It seems to me this hasn't been raised with Fidelity previously but in any event I cannot tell Fidelity what interest rate it should be applying.*

*In summary, my findings are as follows:*

- Fidelity wasn't required to permit partial transfer and was entitled in the reasonable exercise of its commercial judgment to allow only full transfer of an ISA.*
- Its terms and FAQs made reasonably clear that only full transfers would be permitted.*
- The terms didn't provide clear, fair, and not misleading information about being able to transfer investments to another provider in-specie by re-registration.*
- Mr B was misled by the terms into thinking that he couldn't transfer his ISA without first selling his investments."*

I awarded redress on the basis that if Fidelity hadn't got things wrong Mr B would have transferred his ISA to a provider that did allow for partial transfers and thereafter transferred the cash in his account to a cash ISA. I considered that looking at the sort of rate available for cash ISAs at the time redress should be based on a comparison between what Mr B earned in interest for the cash in his stocks and shares ISA with Fidelity and an interest rate of 4.3%. I also awarded £250 for the distress and inconvenience caused to Mr B.

Fidelity didn't agree with my provisional decision. In summary, it made the following key points:

- Its understanding is that Mr B hasn't to date made a specific allegation about Fidelity misleading him regarding being able to reregister his holdings with another provider or that he felt the terms were unclear.
- The ombudsman has concentrated on clause 3.3(a) of the terms which explains that for General Investment Accounts, the only option is to reregister the account and therefore the clause is stating that for ISA and SIPP customers there is, in addition, the option of transferring the assets as cash.
- Even if clause 3.3(a) is ambiguous, clauses 3.3(f), 3.3(g) and 14.2(a) clarify the position.
- When reading the terms and conditions in their entirety as it is reasonable to expect a customer to do, they clearly explain to customers that they have the option of re-registering an ISA.
- The decision in *Wood v Capita Insurance Services (2017) UKSC 24* makes clear that if a term is ambiguous it must be considered in the broader context of the contract in order to clarify its meaning. Therefore, whilst it doesn't agree the term is unclear,

even if it was, the additional contents of the terms it has referred to removes the ambiguity sufficiently to ensure the customer wasn't misinformed as to their options.

- Mr B was in any event aware of his option to reregister as it wrote to him on 9 June 2023 stating:

*"Within the HMRC ISA manager guidance notes it states that ISA managers can provide, as part of their ISA management service, the ability to offer whole transfers, partial transfers, or both. The*

*decision as to which type of transfer to offer is a commercial decision for an ISA manager to make at its absolute discretion and there is no obligation to offer partial transfers. The decision not to offer partial transfers has been made by the senior management at Fidelity and is reflected clearly in our terms. More information regarding this can be found in the 'Doing Business with Fidelity' document.*

*I acknowledge this limitation may restrict you from meeting your investment goals. Therefore, we'll ensure we fully cooperate should you wish to transfer your entire holdings to an ISA provider that offers this service, although we hope we can meet your expectations with our current services. I'd like to thank you for taking the time to highlight your concerns. I've passed your comments to the relevant team to be considered during our business review".*

- Since receiving that letter Mr B hasn't taken any steps to initiate moving his investments. They have remained with Fidelity and it isn't reasonable to suggest he would have acted differently in March 2023 if made aware of the option when he didn't take up that option when informed in June 2023.
- It doesn't agree with the timeframes when HMRC guidance allows 15 days for cash ISA transfers and up to 30 days for other types of transfer.
- Once the correct date of transfer is clarified it would require evidence of the rate which would have been available to Mr B at the time and it is unclear why I have taken account of current ISA rates.
- It disagrees that £250 for trouble and upset is warranted when Mr B didn't complain that the terms were misleading.

Having considered Fidelity's response I contacted both parties to clarify a couple of points. I explained the reasons why I had used the date of 1 April 2023 for when Mr B would have moved his ISA but for the misleading information provided in the terms. I also stated that the average rate of 4.3% that I had said Mr B would have got for the cash in his ISA was too high and that a rate of 3.85% should be used instead.

Mr B responded and said he didn't understand why the timescale I had selected was from 1 April 2023 rather than 23 January 2023 and also said he thought interest rate I had now suggested was too low.

Fidelity responded and said it now agreed with my finding that Mr B would have moved his ISA on 1 April 2023. It pointed out that I had referred to a rate of 3.95% in my provisional decision and asked why I was now using 3.85%. I confirmed to it that this should have been 3.95% as it had pointed out. It continued to argue that the terms weren't misleading and that Mr B hadn't been misled. It said that if I was asserting that the terms were misleading then they were misleading for all customers when they consider they are clear and will not be updating them.

Fidelity also pointed out that if it did pay Mr B the interest this should be into his ISA if possible.

### **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 have considered everything that Fidelity has said in response to my provisional decision but I am not persuaded I should change the findings set out in my provisional decision which, for the avoidance of doubt, form part of my findings in this final decision unless I state to the contrary.

Fidelity has argued that Mr B didn't complain he had been misled by the terms but I have an inquisitorial remit that where appropriate allows me to look beyond the specific matters raised by a complainant when they refer a complaint and to determine the specific nature of the complaint. I made clear in my provisional decision that I was of the view that Mr B thought that to move his ISA he first had to sell his investments and because he didn't want to sell them at that time he thought he couldn't move to another provider. He informed me that:

*"Fidelity will only do a "full transfer", a full transfer being all of the money that I have invested with Fidelity in my ISA account being converted to cash. The upshot of this being, that if I wish to transfer unit trusts and cash held in my ISA account with Fidelity, I need to sell all the unit trusts to convert them into cash."*

In my view this makes it clear that Mr B believed that to move his investments out of his Fidelity ISA he needed to sell these and move everything as cash. It should have been apparent to Fidelity that part of the reason Mr B was unhappy that it wouldn't do partial transfers and thought this was unreasonable was because he thought he was then stuck with all his investments and cash with Fidelity unless and until he wanted to sell his investments.

I am also satisfied that the only reason that Mr B could have wrongly concluded he needed to sell his investments was because he was misled by Fidelity's terms and the reason he hasn't complained about this is because he was unaware that he had been misled. I am satisfied that it is within my inquisitorial remit to consider him having been misled by the terms as I think it is part and parcel of why he is unhappy with Fidelity about its refusal to carry out partial transfers.

Turning to the issue of whether the terms were actually unclear, unfair, or misleading I note what Fidelity has said about needing to consider the overall agreement between it and Mr B. I don't dispute this and whilst I identified that clause 3.3(a) of the terms was misleading, I didn't limit my consideration of the terms to that one clause and did consider the overall terms when making the findings in my provisional decision.

For example, I explained why I didn't consider clause 3.3(e) or clause 14.2(a) – the terms that Fidelity originally argued clarified any ambiguity arising from the wording of clause 3.3(a) – didn't provide the clarification it suggested. Fidelity now refers to other terms that it says cleared up any ambiguity arising from the wording of that clause. However, I don't agree the terms it has referred to, or any other terms, make the position clear that when it comes to moving investments out of the Fidelity ISA there was no requirement to liquidate investments into cash before any transfer.

I also made the point in my provisional decision that the word 'transfer' is what movement of

assets held in an ISA from one provider to another is generally called, regardless of whether this is movement of cash or stocks. Its use is apparent both in government publications in relation to ISAs, such as those from HMRC which Fidelity has referenced in support of its argument about timescales, and in information from providers themselves.

In this regard I note that in response to my provisional decision Fidelity has quoted from a letter it sent to Mr B dated 9 June 2023 in support of its argument that Mr B was aware that he could reregister his investments. However, the excerpt it relies on refers only to transfer and makes no reference to reregistering. In the circumstances I think Fidelity's own arguments emphasise the issue with its use of the word 'transfer' within its terms when it uses this word differently in the terms to how it is commonly used when referring to moving assets in an ISA to another provider.

In the letter Fidelity uses the word transfer as it is normally used, to include both the movement of investments in-specie or in cash. It doesn't highlight the fact that it uses 'transfer' in its terms and conditions to mean something more specific that doesn't include an in-specie transfer of investments. In my view it cannot reasonably have expected someone who had read the terms and seen how transfer is defined within them to have necessarily understood from the letter that it was possible to move investments in-specie by reregistering them given the letter makes no mention of reregistering.

In finding that the terms weren't clear I have taken account of the fact that terms other than clause 3.3(a) do talk about reregistration when making reference to ISAs. For example, although clause 3.3(g) specifies how long reregistration of ISAs is expected to take, it isn't enough in my view to overcome the ambiguity in clause 3.3(a) as to whether reregistration of an ISA is possible in the first place. Indeed, there is no indication that any of the other terms and conditions prevails over clause 3.3(a) in order to clarify definitively whether the words in brackets in that clause "*(or, in the case of an ISA or Fidelity SIPP, Transfer them to another provider)*" create an optional or mandatory alternative to reregistration in the case of ISAs. So, even taking into account other terms and conditions, I'm not satisfied that the ambiguity about reregistration was cured as Fidelity has contended. Overall, I am not persuaded that this or any other terms and conditions cleared up the confusion arising from the wording in clause 3.3(a).

### **Putting things right**

If Mr B had been provided with fair, clear, and not misleading information he would have moved his stocks and shares ISA to another provider and thereafter moved his cash into a cash ISA so he could get a better interest rate for his cash. In a March 2023 telephone call there was reference to him moving his ISA to Lloyds and I think it is fair and reasonable to use rates available in its cash ISAs when calculating redress.

The rate that should be used for calculating the redress is 3.95%. This is the highest fixed rate cash ISA available from Lloyds in April 2023 according to 'Moneyfacts' for April 2023 and whilst I note that Mr B thinks this is too low I think it is fair and reasonable to use this rate in the circumstances.

The redress should be calculated from 1 April 2023. Mr B says he doesn't understand why I haven't used 23 January 2023, as he says this is when the mischief began. However, that is the date he first contacted Fidelity about moving his ISA and this isn't when any loss he has suffered would have started. Any loss needs to be calculated from when he would have moved his ISA if he hadn't been misled. It isn't possible to know exactly when this would have happened but allowing for the expected timescales for moving ISAs and his initial queries about partial transfer I am satisfied it fair and reasonable to use 1 April 2023.

The period of time over which redress should be calculated is from 1 April 2023 to date of settlement, unless Mr B has already moved his ISA from Fidelity, in which case it should be calculated to that date.

So, in summary Fidelity should calculate the interest Mr B received on the cash in his ISA held with it between 1 April 2023 and date of settlement (or date he moved his ISA from Fidelity if earlier) and compare this with what he would have received if a rate of 3.95% had been used and pay the difference.

Fidelity has pointed out that the interest payable would have been paid within an ISA and in the circumstances it should pay the amount it calculates is due into his ISA if this is possible.

I also think that Mr B has been caused some distress and inconvenience because Fidelity didn't provide clear information about transfer of the ISA. Fidelity has argued that this shouldn't be awarded on the basis that Mr B didn't complain about being misled. However, I am satisfied he was caused distress and inconvenience as a result of his cash remaining in the Fidelity ISA when he wanted to move it to achieve a better rate and this was due to it not providing fair, clear, and not misleading information. In the circumstances I am satisfied that an award of £250 for this is appropriate.

### **My final decision**

I uphold this complaint for the reasons I have set out above. Financial Administration Services Limited must pay Mr B the amount it calculates is due in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 August 2024.

Philip Gibbons  
**Ombudsman**