

## **The complaint**

Mrs E, as executor, complains on behalf of the estate of Mr M1 about Financial Administration Services Limited (referred to as 'Fidelity') in relation to its administration of Mr M1's assets.

She is being represented by Mr O, her IFA, who says that Fidelity caused unnecessary delays by asking for additional information in order to complete the sale of the investment holdings and pay an inheritance tax (IHT) bill to HMRC.

In other words, the estate provided the necessary information in line with Fidelity's requirement, however Fidelity asked for additional information that caused delay and led to financial loss.

## **What happened**

A brief chronology of events are as follows:

- In September 2022, the estate of Mr M1 sent his death certificate to Fidelity.
- In October 2022, a guide for executors and administrators was sent. And the fee and commission authority received by Fidelity.
- On 3 March 2023, the IFA, on behalf of the estate of Mr M1, enquired about trading – selling holdings to cash – and Fidelity paying the IHT bill directly to HMRC. The IFA is informed that all named executors will need to send identification. The IFA made no mention of deceased executor.
- On 7 March 2023, the IFA contacted Fidelity to ask further questions about the 'indemnity form'. Still no mention of the deceased executor.
- On 10 March 2023, Fidelity received the indemnity form and Will. Because the Will named two executors – one of which had passed away – Fidelity (in a letter dated 13 March 2023) asked for the death certificate for Mr M2 (referred to by the investigator as Mr D).
- On 22 March 2023, Fidelity received the death certificate for Mr M2.
- On 24 March 2023, Fidelity sold the holdings needed to raise the capital for the IHT bill. Payment was issued on 29 March 2023 and 30 March 2023.
- Unhappy that there was a delay in paying the IHT bill in a timely manner, the IFA complained on behalf of the estate of Mr M1.

Fidelity didn't uphold the complaint, in summary it said:

- Although all personal representatives named in the Will have authority to provide Fidelity with instructions to sell assets held in the account, it still needed confirmation that all executors – in this case including Mr M2 – were happy with completing the request.
- The indemnity form confirmed that Fidelity needs confirmation from 'all' of the executors.
- It listened to the material call recordings – namely the calls dated 3 March 2023 and

7 March 2023 – and found no evidence that there were any discussions regarding whose signature were needed on the indemnity form.

- Fidelity wasn't informed (on either call) that one of the named executors was deceased. If it had been, it would've advised that the estate needs to provide a death certificate for the deceased executor as part of its identification checks.

Unhappy with Fidelity's response, the IFA referred the complaint to our service for an independent review.

One of our investigators considered the complaint but didn't think the complaint should be upheld. In summary, said:

- He can't say that Fidelity acted unfairly.
- Requesting the identification verification of representatives is in line with its terms and conditions and part of the anti-money laundering regulations.
- The information on its website that explains the process when someone dies, under the heading – *"Show us you're authorised to deal with the estate"* – states:
  - *"You'll need to send us a sealed copy of the grant of representation signed by each of the executors. Because of the legal language used, this is the part many people find daunting."*
  - *"However, it's very important - without it, we cannot distribute any assets in line with the instructions in the Will."*
- Fidelity's website makes clear that it will need signatures from 'all executors', as such the information on its website is clear, fair, and not misleading.
- 'Section 3 Representatives' of the indemnity form states:
  - *"Any dealings on the deceased's account shall continue to be governed by the relevant Terms and Conditions which can be found at fidelity.co.uk/inheritance or obtained by calling 0800 41 41 16 and by signing this form you agree to be bound by these Terms and Conditions. If there are additional representatives, please continue on a separate sheet. In order to comply with Money Laundering Regulations, Fidelity must verify the identity of all personal representative(s) named. Fidelity may use the information provided in order to complete verification of identity via an online referencing agency or make a request for documentary evidence for each named personal representative(s) (requirements detailed on the Identification Guidelines form)."*
- The above information is clear, fair, and not misleading. It makes clear that Fidelity would need to carry out checks on all named executors until a request could be carried out.
- The indemnity form also makes clear that no withdrawal can be carried out until checked have been carried out. The form states:
  - *"Please note, there will be restrictions on the withdrawal of capital until the necessary evidence of identity is obtained for all personal representatives"*.
- In the circumstances, Fidelity did nothing wrong when it asked for Mr M2's death certificate in order to complete identification checks for all personal representatives.
- The relevant call recordings between Fidelity and the IFA, Mr M2 wasn't mentioned in any of the calls.
- In the call on 3 March 2023, Fidelity clearly stated the information that's needed to complete the IHT payment:
  - *"All we need is a declaration and indemnity from. We need original certified copy of the Will and some ID documents for all of the executors on the Will."*
- The information provided by the call handler was clear fair and not misleading. They also made clear that once the information had been received, and provided they were in good order, it could take up to 10 working days to action the request.

- Given the timeline of events – starting with when the indemnity form was first received on 10 March 2023 to when the request was carried out on 24 March 2023 – Fidelity was out by a day of its terms and conditions.

The IFA disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he made the following key points:

- The investigation focused on Fidelity's requirement to allow it to pay either HMRC or the executors/beneficiaries of the Will, not what they actually raised a complaint about, as evidenced by his findings.
- Anti-money laundering regulations are only relevant for withdrawal of funds, not for the trading of assets.
- The online section referred to by the investigator refers to probate and what to do once it has been granted. This is irrelevant for undertaking trades and paying HMRC, neither of which require probate.
- The investigator has focused on Fidelity's requirements to make withdrawals not time sensitive trades, which is what the complaint is about.
- The point in relation to the call dated 3 March 2023 is another example the requirements were for Fidelity to pay out, not their actual complaint.
- The initial complaint is clear. For the avoidance of doubt, they requested Fidelity take instructions to sell the holdings of the estate – as the estate wished to take advantage of the buoyant market value.
- It confirmed over the phone that the trades would be undertaken immediately upon receipt of its form, as online instructions weren't available for deceased estate accounts.
- Upon receipt of the forms and documentation on 10 March Fidelity didn't undertake the trades as had been agreed. It also didn't communicate this to the estate or its representatives.
- A letter was written on 13 March 2023 – three days after the instructions were received – to say it needed more information before it could pay HMRC.
- No mention was made about the lack of trading, and the fact was unknown until actual receipt of the letter on 21 March 2023.
- On 20 March 2023, they'd already called to ascertain what was happening. Further delay was caused but no explanation given.
- On 13 June 2023, they'd been told Fidelity didn't have enough manpower.
- For the avoidance of doubt, they're not complaining about Fidelity's requirements before HMRC could be paid or the requirements before grant of probate could be paid. They *are* complaining that it didn't implement trades in a prompt manner, as they were assured would happen.
- The investigator has also referred to a 'Mr D' who isn't a part of this case, it's Mr M2 who was Mr M1's brother and executor.
- The investigator's account of what happened in the call is inaccurate. When the indemnity form was being discussed Fidelity stated that the trades would be undertaken immediately. They emphasized the need to carry out the trades promptly and he provided a cover note with the instructions.
- It's not right that the investigator dismisses the claim based on the call recordings without providing them with copies.
- In summary, Fidelity took instructions from the IFA Ms E (as an executor of the estate) right from the moment they first notified it of Mr M2's death. It was happy to link the case to a discretionary fund manager and to accept instruction to pay the IFA ongoing advice fees.
- Fidelity has an indemnity form which specifically states: *"Use this form where you are providing an instruction to sell assets to pay Inheritance Tax to pay funeral expenses or where you want the funds held as cash pending receipt of Grant of Probate"*.

- The form also said: *“All personal representatives named in the attachment will have authority to provide Fidelity with instructions to sell assts held in the account of the deceased person”*.
- They were told over the phone that the form would allow them to sell down assets to cash. The wording on the form confirms that this is what the form is for, and that Ms E has authority to make this instruction without involving any other executors.
- Fidelity didn't undertake the trades upon receipt of the form which led to significant financial loss.
- Despite Fidelity being in possession of all required documents to allow it to pay HMRC by 22 March 2023, it didn't act promptly. Consequently, the estate was charged interest for late payment.
- HMRC observed that Fidelity should be held accountable for the delay and interest payment.

Our investigator having considered the additional points wasn't persuaded to change his mind.

As no agreement has been reached, the matter has been passed to me for 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.

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what the IFA says I'm not persuaded that Fidelity behaved unreasonably in processing the request.

I don't uphold this complaint, in summary, for the following reasons:

- On the face of the evidence, and on balance, despite what the IFA says, I'm satisfied that the general material displayed on Fidelity's website – in respect of deceased customers and what to do – made reasonably clear the importance of authority from executors, such that it didn't need to (voluntarily) tell the IFA to provide information about any deceased executors at the outset.
- Importantly the 'indemnity form' made clear the information that was required in these sorts of circumstances. Despite what the IFA says, I think they ought reasonably to have known about the importance of clarifying the situation regarding any (absent/deceased) executors, but they didn't.
- In respect of the two phone calls between the IFA and Fidelity (in March 2023), I note the IFA made no mention of one of the two executors being deceased. It's arguable that this information would likely affect the information provided by Fidelity and therefore ought reasonably to have been disclosed. Having listened to the phone calls, it's unclear why it wasn't.
- On balance I think any undertaking by Fidelity was given on the basis of the information provided by the IFA and in good faith. I'm unable to say that the general information provided by Fidelity in respect of this issue was unfair, unclear, or misleading. Despite what the IFA says, I'm unable to say that Fidelity deliberately withheld information or behaved in a way that would cause upset.
- I'm satisfied that Fidelity is obliged to verify the identity of the representatives in line with its terms and conditions, and the wider money laundering regulations so I can't

say that it's done anything wrong by seeking the death certificate for Mr M2 when it did.

- Furthermore, I'm unable say that Fidelity has done anything wrong by wanting to make sure that all executors were aware of the proposed course of action by one of them, because it didn't know the other had passed away. I'm satisfied this is why it sought the death certificate for Mr M2 when it was notified that he was deceased, so it could officially verify his status. Arguably Fidelity would've done so sooner if it had been notified of this position sooner.
- If Fidelity failed to confirm the correct position with regards to the deceased executor and obtain the death certificate, and instead carried out the instructions as they were, I don't think it would've been acting reasonably.
- There's nothing that Fidelity could do in terms of its terms and conditions that required this information in order to comply with anti-money laundering regulations.
- I note the IFA has interpreted the phrase – "*All personal representatives named in the attachment will have authority to provide Fidelity with instructions to sell assets held in the account of the deceased person*" – to mean that representatives, acting together or alone, have the authority. But that's not what the statement says, especially in relation to there being more than one representative (in this case two executors). This is an interpretation that the IFA has reached on its own accord and not as a result of anything said or done by Fidelity.
- So, whilst it's correct that all the named representatives have authority to provide instructions, at no point did Fidelity say that this authority can be exercised unilaterally, even if others disagreed, or that it won't seek the views of others. Its arguable that because in this instance all executors have the authority, they must all be consulted and/or provide consent before instructions are executed.
- In other words, despite what the IFA says I'm not persuaded that this is the same as the indemnity form stating that it can act unilaterally – on the basis of instructions from only one executor. In other words, the form didn't say that it could act on the instructions of Ms E alone.
- Despite what the IFA says, I think it's reasonable that Fidelity would want to make sure that the wishes of one executor wasn't contrary to the wishes of another, thereby avoiding any future issues.
- So, Fidelity by not immediately undertaking the trades hasn't done anything wrong, because it wasn't able to, until the outstanding issue regarding Mr M2 was satisfied. In other words, and on balance, it couldn't just sell the stocks and then seek to clarify whether or not it had authority.
- Whether (or not) there was financial loss, I'm not persuaded that this was as a result of anything said or done by Fidelity. Therefore, I can't ask it to pay any compensation to the estate.
- I note the IFA says that Fidelity confirmed over the phone that the trades would be undertaken immediately upon receipt of its form, as online instructions weren't available for deceased estate accounts. I don't think this statement is inaccurate, because Fidelity would have carried out the instructions if it had all the information that it needed - which it didn't have.
- I note the IFA says that upon receipt of the forms and documentation on 10 March 2023, Fidelity didn't undertake the trades as had been agreed. But for the reasons I've explained I can't blame Fidelity for not doing so, because it couldn't without all the information that it needed. And I'm satisfied that undertaking was contingent upon it having all the information. I note the death of Mr M2 wasn't even mentioned, so Fidelity wouldn't have known to advise the IFA to provide the death certificate.
- I note Fidelity wrote a letter dated 13 March 2023, effectively notifying the estate that it needed more information before it could pay HMRC the money. I note the IFA says that it didn't mention that the trades hadn't been done, but I don't think it had to, as it would've done so once it had sorted out the authority point and was ready to pay

HMRC.

- The suggestion that it would carry out the trades (without authority) and then seek to obtain authority retrospectively before paying the IHT bill to HMRC, isn't reasonable. In other words, it seems Fidelity didn't trade because it didn't have the necessary authority to do so.
- In a letter dated 13 June 2023, Fidelity confirmed that despite reviewing the calls from 3 March 2023 and 7 March 2023, it found no evidence that either of the call associates confirmed that it could accept the declaration and indemnity form with just one of the executor's signatures, as suggested by the IFA was the case.
- It's likely that the IFA's recollection of the events might not be accurate. Furthermore, where Fidelity only received one signature it was obliged to seek confirmation of what had happened to the other executor, hence requiring the death certificate for Mr M2. I note Fidelity confirmed that the reason why it needs two signatures is to make sure both executors have signed off on any transactions before they're completed.
- What's unfortunate is that Fidelity could've proceeded with one signature (from Mrs E) but it wasn't told that Mr M2 was deceased which is why it didn't.
- Whilst other businesses might have their own processes – where they might allow one executor to take the lead (thereby not requiring all signatures), Fidelity is entitled to have its own processes and procedures as long as they're fair and reasonable, which I believe they are.
- I'm mindful Fidelity says that unlike other businesses, its process for a deceased account closure requires all executors to sign the form and that it has always been that way.
- The point about the interest charged on the late payment is something that the IFA may wish to raise with Fidelity direct as it wasn't part of the original complaint point.

In conclusion, I'm satisfied that any undertakings given by Fidelity would have been done so in good faith and in light of the information provided by the IFA. If the indemnity form had been filled out and all the necessary information (relating to Mr M2) provided, the process is likely to have been completed sooner.

I realise my decision isn't what Mrs E wants to hear. Whilst I appreciate her frustration, I'm not persuaded that Fidelity are required to do anything in this case.

In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give Mrs E, on behalf of the estate of Mr M1, what she wants.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M1 to accept or reject my decision before 30 October 2024.

Dara Islam  
**Ombudsman**