

The complaint

The estate of Mr H complained about Financial Administration Services Limited (Fidelity). The late Mr H's son, Mr H1 said Fidelity did not inform him that it held investments in his father's name. He said it kept this from him and his brother, Mr H2, as executors of their father's estate, for over 11 years.

Mr H1 said Fidelity should compensate him and his brother as, by not being aware of the investment held by it, they have been denied use of the money. He said they have been significantly inconvenienced and should be compensated for this.

The estate of Mr H has been administered by his sons, who are both executors. They have brought this complaint to our service, in their capacity as executors of their father's estate. They all have the same surname, so I have referred to the father as Mr H, the son who has brought and led the complaint as Mr H1 and his brother as Mr H2.

What happened

Mr H was a customer of Fidelity and held investments within an individual savings account (ISA) and two general investment accounts (GIA) with it. He passed in 2011 and his sons, Mr H1 and Mr H2 became executors of his estate.

Mr H1 said it was only in 2023 that he was aware his father held an investment with Fidelity. He said Fidelity kept this from him and his brother for over 11 years. He said he was of the understanding that the solicitor informed Fidelity of his father's passing at the time, but Fidelity did not inform the estate of this investment.

Instead, Mr H1 said, Fidelity held onto the investment even after it received mail returned to it. He said Fidelity didn't follow this up. He said Fidelity has denied him and his brother use of the money over the past 11 years including for key life events such as obtaining a mortgage, completing property purchases, and sending his daughter to university. He said Fidelity could have done a lot more, a lot sooner. He said it should pay compensation for the delay it has caused. He complained to Fidelity about this.

Fidelity said in response that it hadn't found any evidence to show it was notified of Mr H's passing prior to December 2022. It said its system doesn't show any documentation being received from the estate's solicitor at around that time, or at all.

Fidelity said it received returned mail in July 2012, so it applied lost contact markers. It said in more recent times it appointed a third party to help trace clients it had lost contact with, in an ad hoc exercise. It said through this, it became aware of Mr H's passing in December 2022. It said it was at this stage from March / April 2023 that it acted to contact Mr H1 and Mr H2, as the executors.

Fidelity agreed that when the executors in recent times tried to withdraw the funds, it had delayed this request and so it agreed to pay interest to the estate of Mr H for this. It also offered initially £100 each to the executors for what it said was the trouble and upset caused to them, in how it had dealt with their complaint. It said it hadn't made any errors in how it

administered Mr H's account and its offer of compensation was limited to how it handled the executor's complaint.

Mr H1 was not happy with Fidelity's response and referred his complaint to our service. He said he couldn't believe Fidelity were the only company not to have been notified at the time about Mr H's passing. He said it was more likely that Fidelity received the notification and lost it or didn't act on it. He made the point that although Mr H's investments had made a profit since, and more than our 8% award of interest, he could have made more from use of the money in property.

Fidelity sent our service the documentation it held in relation to the estate of Mr H's complaint. In doing so, it said to us that in law, the executors of Mr H's estate have responsibility for it, including identifying all assets and liabilities. It said the solicitors acting on behalf of the estate had therefore failed in this duty, on their behalf. It said it had no responsibility here. It said that it had no evidence on its system about any contact from the solicitor. It added that if the solicitor did make contact, then it would have expected it to chase things up, and it didn't.

Fidelity provided paperwork about Mr H's investments and said they had gone up by a lot more than if it were to pay interest of 8% simple to the estate, because it had been denied the use over this time. It said the estate of Mr H was better off financially because of the investments performance over this time.

Fidelity said to our service that it could have provided a better service though in relation to the estate of Mr H's complaint. It said it could have tried to use a tracing service sooner than it did. It said it would offer £400 each to the executors for the trouble and upset it has caused along with the payment regarding loss of interest for the 7 days delay it caused in the withdrawal payment it made. It said it felt this offer was fair.

Both parties continued to disagree with each other, so an investigator looked into the estate of Mr H's complaint. He said due to the length of time since Mr H's passing, it was difficult for either party to provide conclusive evidence to support what they had said.

The investigator concluded that on balance, the solicitor didn't include Fidelity on the probate form because it was not aware of the investments held with it. He then pointed to guidance provided by the Financial Conduct Authority in May 2024 about gone away accounts. He said he finds some fault with Fidelity, and that it did not do enough to identify why it had received the gone away notices. But, he said, also it was the responsibility of the executors and solicitors to identify all of Mr H's assets.

The investigator then made some points about who he felt the eligible complainant was and what he felt he could and couldn't do in terms of making an award, in any case. He said there had not, in his opinion been any investment loss incurred by the estate of Mr H here as the investments held had made more money in the time in question, than any interest award that he could make. He said he didn't accept the argument about property outperforming the investments.

The investigator didn't uphold the estate of Mr H's complaint. He concluded Fidelity acted fairly. He said it calculated that the executors had not lost out. He said he agreed with Fidelity's offer to pay the executors £400 each for distress and inconvenience.

Mr H1 was not in agreement with the investigator's view. He said Fidelity hadn't made any payment for distress and inconvenience. He said the investigator mentioned Fidelity paying them £800. He said does that mean they are now entitled to £1600. He said the investigator had not explained this properly.

Mr H1 said much of the investigator's response centred around the difference between being an executor and beneficiary. He said these are one and the same and should be treated as such.

Mr H1 said he did not think the investigator gave sufficient weight to the loss of choices they could have made, especially as Fidelity had admitted it should have done more.

Mr H1 said if Fidelity had acted responsibly with due diligence and not with negligence, it is more likely than not to assume this terrible situation would have been avoided, instead of dragging on for years. He said £400 each executor for 13 years of extended misery and upset doesn't seem fair.

The investigator responded and clarified that Fidelity's offer was for £400 each for the executors. Mr H1 said they have not accepted any offer and payment has not been made by Fidelity.

The parties are not in agreement and Mr H1 has asked for the complaint to be reviewed. So, as this is the case, the estate of Mr H's complaint has been passed to me, an ombudsman, to look into.

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.

Mr H1 said it felt it was more likely than not, that the solicitor they used to administer his father's estate, contacted Fidelity in 2011 and notified it of his father's passing. He said, it is unlikely that Fidelity was the only company not to have been notified by the solicitors at this time and instead he said Fidelity most likely lost the notification or didn't act on it.

Fidelity on the other hand, said it didn't receive notification from the estate of Mr H, this being from the executors or the solicitors that they had instructed, about Mr H's passing. It said it checked its records and although it had contact from Mr H in 2007 on its system, it wasn't until it received returned mail, that it again updated its system to put a notice on the accounts that the customer had gone away. It said, it had no record of receiving any notification of Mr H's passing.

I acknowledge what has been said here by both parties. It has been a difficult issue for me to consider as the parties are talking about something that did or didn't happen many years ago, and neither has conclusive proof to support what they think happened. I understand the logic that Mr H1 has put forward, that Fidelity seems to be only company that there has been an issue with, in terms of the probate. But I don't think that would automatically mean that it did receive notification for this reason. I haven't seen enough, for me to conclude that it did. Or that Fidelity somehow lost or didn't act on notification.

I would expect Fidelity to have kept a record of receiving notification, in the same way it has recorded contact with Mr H in 2007 and then with Mr H1 and Mr H2 on every occasion that they have made contact since. I would have also expected the executors and the solicitor to chase up Fidelity after it had sent notification (if this is what happened), if they were aware in anyway at that time that they held an asset in Mr H's name.

I think instead, it is more likely that the estate and the solicitors that it used, were simply unaware that Mr H held investments with Fidelity, and this rings true with what then happened and the executor's reaction to finding out that there were investments held with

Fidelity all along. In return, Fidelity was on balance, not notified Mr H had passed and so was none the wiser about what had happened and continued administering his accounts, up to the point it first received returned mail in July 2012.

So, I have needed to consider what Fidelity ought to have done here, once it received post back, undelivered. Fidelity has told our service that when it received the returned post, it marked Mr H's accounts up as 'gone away'. This is a term used by businesses essentially to say the contact details it holds for that person can't be relied upon.

When Fidelity flagged up Mr H's accounts as 'gone away' in 2012, it was effectively suspending access to them, by anyone until contact details had been validated and restored or further information about Mr H was received. It continued to administer the investments as normal, but access was restricted so the asset was protected.

This is the sort of action that I would expect Fidelity to take in these circumstances and I don't find fault with it. The only issue that remains here, is if it ought to have been more proactive in trying to resolve the 'gone away' status on the accounts, rather than passively administering the investments and waiting to be contacted.

The reason this remains in dispute, is because Mr H1 has argued that Fidelity ought to have carried out an exercise to find out what had happened with Mr H and contact the estate a lot sooner than it did.

I understand what Mr H1 is saying and what his complaint is regarding here. That being said, I don't think I need to make a finding on if or specifically when Fidelity ought to have pro-actively sought out Mr H1 and Mr H2 sooner or not. This is because I don't think the estate of Mr H, this being the eligible complainant, has lost out regardless of if or when I think Fidelity ought to have pro-actively traced the executors.

I have made that conclusion, because when I see the value of the estate of Mr H's investments at the time they were cashed in and then the proceeds withdrawn by the executors, I can see that this amount had a significantly higher value than when I think they may have been sold, if I were to conclude Fidelity ought to have contacted the estate of Mr H a lot sooner than it did. The performance of the investments in the ISA and two GIAs far outstrips any award of interest that I would have potentially considered, due to the estate of Mr H being denied the use of that money, over the years. So, because of this, I don't think I need to ask Fidelity to do anything further in this regard, because the estate of Mr H is better off, than it would have been if Fidelity had contacted the estate of Mr H a lot sooner than it did.

Mr H1 said that if he and Mr H2 had received the money sooner then they could have used the money and bought property. He said the property market has in general outperformed the investments that Mr H held with Fidelity in his accounts. Again, Mr H1 has been clear about what he is complaining about here, and I acknowledge the point he is making. But I need to consider the impact of any mistakes made by Fidelity in relation to the estate of Mr H. This is because the estate is the eligible complainant here, and not Mr H1 or Mr H2 in their capacity as either executors or beneficiaries. What I mean by that, is that it was Mr H who had a relationship with Fidelity. He requested services from it, and then after his passing, his estate became the eligible complainant for the same reason, and any proceeds, and then any complaint, or compensation flowing from this would form part of that.

The scenario described by Mr H1 is specifically about what he and his brother could have done, in their capacity as beneficiaries. It is not within my remit or jurisdiction to consider what they could have done with the proceeds of the estate of Mr H, in this regard.

I have needed instead to consider the loss to the estate of Mr H and as I have already concluded, I think the estate of Mr H is better off, then it would have been if Fidelity had contacted the estate of Mr H a lot sooner. Any interest award that I would have potentially made, if I had concluded Fidelity ought to have found the estate sooner, would have been less than what the investments made in the intervening period. So, because of this, I don't think Fidelity needs to do anything further. The estate hasn't lost out, because of any mistake that Fidelity may have made here.

Finally, Fidelity has offered Mr H1 and Mr H2 £400 each compensation for the distress and inconvenience it has caused. It said this is in relation to how it handled the estate of Mr H's complaint and also the distress it has caused by not using a tracing agent sooner.

Mr H1 said Fidelity should offer more compensation for the distress it has caused. He said Fidelity has caused him and his brother not to be able to use the money for life events such as taking out a mortgage or sending a daughter to university. He has also more recently said £400 each for them doesn't seem fair for 13 years of extended misery.

I would like to make the point here, that Fidelity was not responsible for causing distress and inconvenience here over 13 years. It wasn't until 2022 that the parties contacted each other about this. But Fidelity has taken responsibility and said it has caused Mr H1 and H1 distress and inconvenience, it has said, for the way it has handled the estate of Mr H's complaint and also that it should have been more proactive sooner.

I have no doubt that Mr H1 and Mr H1 have suffered distress and inconvenience as they have described to our service, and I do empathise with them both. I acknowledge the comments Mr H1 has made about having to revisit terrible memories of his father's passing and the shock they felt when they were contacted by Fidelity about all this.

That said, I need to consider whether I can make an award for distress and inconvenience in the first place, before I consider whether Fidelity's offer is fair and reasonable or not. And in consideration of this, I don't think I can. As executors their role throughout this complaint has been as representatives of their father's estate. The estate of Mr H is the eligible complainant here, and this is because it was Mr H who had the required relationship with Fidelity. This matters, because the rules that our service follows, in terms of our jurisdiction, states that I can only make an award to an eligible complainant.

So, with what I have said in mind, it follows that I can't compensate an executor for any impact incurred by them personally, in their role representing their father's estate. And this is what I think accurately reflects what their role has been and what has happened here.

So, as I don't think I can make an award to Mr H1 and Mr H2 personally regarding the distress and inconvenience they say they have suffered, it is left for me to say that they would need to contact Fidelity about its offer of £400 each for this, if they decide they want to accept this.

In conclusion, I think Fidelity were unaware of Mr H's passing until it carried out a trace and found out more. Likewise, I think Mr H1 and Mr H2 were similarly unaware of the investments existence until they were contacted by Fidelity. I don't think I need to make any findings about when Fidelity ought to have contacted the estate of Mr H, as any scenario I would have concluded, I don't think would have been to the estate's detriment. I also don't think I can make an award for distress and inconvenience to Mr H1 and Mr H2 and so I will leave it up to them to consider and contact Fidelity if they want to.

My final decision

My final decision is that I do not uphold the estate of Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 26 December 2024.

Mark Richardson
Ombudsman