

The complaint

Mr P complains that Financial Administration Services Limited ('Fidelity') has taken charges from his investment when it shouldn't have done. He says these charges are optional and he hasn't ever agreed to them being taken from his investment.

What happened

In July 1999 Mr P started a stocks and shares Individual Savings Account ('ISA'). He did this via a broker I'll call Firm B. He says that he applied for the investment by post and he did not agree to any continuous monthly charges being paid to Firm B.

Mr P invested about £5,500 into the ISA and the application was sent to Fidelity by Firm B. Mr P says he has had no other contact with Firm B after this. Its only involvement was to send the application to Fidelity.

I've seen a copy of the application form and at the top it is marked '*nil commission*' and '*full discount*'. Firm B are noted as the Independent Financial Adviser in the '*commission instructions*' part of the application form. Mr P says that shows that he agreed with Firm B that no further commission would be taken.

However, 'trail commission' has been paid to Firm B from the start of the policy. Trail commission is a fee paid to a business, usually an adviser who sold or arranged an investment. It is usually a percentage, and it is taken from a 'bundle' of charges which were deducted from his investment. Sometimes the adviser would agree to provide ongoing or future services in return for this payment.

The industry regulator, the Financial Conduct Authority ('FCA') has reviewed how commission and charges are applied to products such as Mr P's ISA and this was known as the 'Retail Distribution Review' ('RDR'). This took place on 31 December 2012 and it said that trail commission should no longer be applied to new policies, existing policies were not required to be amended. Businesses didn't have to act on the findings in the RDR immediately, but they did need to implement the findings over time.

Fidelity wrote to Mr P in July 2015 and said it was 'un bundling' its charges and Mr P would be charged separately for its own fees and any fees paid to a third party such as Firm B. It started to do this shortly after this time.

Fidelity wrote to Mr P on 4 February 2016 saying that it had been notified by his adviser that a new ongoing fee arrangement had been set up to pay for the adviser's services.

In October 2021 Mr P requested information about the charges he was paying in a telephone call and he was informed that he was, and had been since the start of the policy, paying an 'adviser charge'. He asked that the adviser no longer received these charges and should be removed. He says that he hasn't been receiving any services. The charges were no longer taken from his account after this time.

He says he was informed over 1999 to 2016 by Fidelity that these charges would not have been detailed on his statements separately so he wouldn't have been aware of them. And after 2016 he assumed that the adviser charge information shown on the statements referred to fees Fidelity itself was receiving.

Mr P asked for information that showed he had agreed to paying adviser fees to Firm B both in 1999 and 2019. He says that he hasn't received this information. And he has made his complaint to Fidelity on this basis.

Fidelity went on to consider Mr P's complaint, but it didn't uphold it, it said that:

- Mr P had an agreement with Firm B since 1999 that it would be paid the trail commission.
- It sent a letter to Mr P on 4 February 2016 explaining that a new fee arrangement was put in place from this point onwards.
- It apologised for not responding to his initial complaint and said that it could have been clearer in the information it provided.

Mr P didn't accept Fidelity's initial view of his complaint and the correspondence between the two parties continued. Fidelity has explained that in 1999 there would be no written agreement between Mr P and Firm B. And between 1999 and 2016 the cost of the trail commission was built into the funds. And so, the cost to Mr P would have been the same regardless of whether the adviser received the trail commission or not.

And it went on to explain that from 2016 Firm B requested that Fidelity pay an adviser ongoing fee. Fidelity didn't require a copy of a signed agreement, or similar, from Firm B. Firm B should have ensured it was correct and this is standard practice as both firms have a responsibility to ensure these arrangements are right.

Mr P didn't accept this, and he said that he was sure that he hadn't agreed with his adviser that fees would be taken from his ISA. He said Fidelity agreed to send him evidence of the initial trail commission agreement, but it hadn't done this. Mr P brought his complaint to the Financial Ombudsman Service.

Fidelity initially said that the Financial Ombudsman Service shouldn't consider Mr P's complaint as it has been brought out of time. This is because Mr P has complained later than six years after the event he is complaining about - the start of the trail commission payments. And later than three years of when he ought reasonably to have been aware he could complain. That is when he was informed about the change in fee arrangements in 2016.

An ombudsman has considered whether Mr P's complaint has been brought in time and has issued a decision about this. He has decided that we can consider part of this complaint. He said we couldn't consider any complaint about the charges brought before October 2015.

This was because Mr P needed to have complained within six years of the event he is complaining about. Which is each charge. This service can consider Mr P's complaint points regarding the fees and charges he had paid from 4 October 2015 onwards only.

Mr P doesn't agree. He said that the charges were bundled and so he couldn't have complained within six years as he wasn't aware of the adviser fees. The ISA application form said that he would pay nil commission so he didn't agree that he should have paid any adviser fees at all.

One of our Investigators has considered the complaint. She said that:

- Fidelity has confirmed that whilst the documentation says 'nil commission full discount', trail commission was automatically provided to any advising business. These were built into the cost of funds held by customers until 2016.
- Firm B remained attached and receiving trail commission up till 2016. Mr P couldn't have opted out of the trail commission.
- The letters sent to Mr P in 2016 did explain that a new fee agreement was set up with Firm B. Fidelity had an obligation following RDR to let Mr P know about the ongoing charges. It did this, and so he could have decided to cancel the fees at this time.
- She agreed that Fidelity should have communicated in a clearer way and responded to Mr P's queries in a timelier manner. She thought £250 was reasonable compensation for not doing this.

Mr P doesn't agree, he said that the contract, as evidenced by the application form, specified no commission. And this should have included trail commission. He says he invested after seeing a newspaper advert and Firm B was only an intermediary. This is why he enjoyed a full discount and a reduction in initial fees from Fidelity. His contract was different from the usual investor/advisor contracts and so had no legitimacy and basis in UK law. He thinks that the 'nil commission' should be applied to his contract and other people's 'usual' should not be applied to him. He never had a meeting with Firm B or Fidelity.

Mr P also said that he didn't receive the letters of 2015 and 2016 that outlined the new charge arrangements, and they are not legal contracts as they are between Firm B and Fidelity and not him. He did not agree an ongoing fee agreement with Firm B in 2016. He was not informed by Firm B that this would be in place.

Fidelity also doesn't entirely agree with our Investigators findings. It said that after Mr P's initial contact in October 2021 it had:

- Handled his complaints fairly and correctly and provided the requested responses to Mr P. It did not fail to provide Mr P with clear and not misleading information.
- Complaint handling is not a regulated activity and is not within the Financial Ombudsman's jurisdiction.
- And so, the trouble and upset payment of £250 is not reasonable in this instance.

As no agreement has been reached the complaint has been passed to me to consider.

Our jurisdiction

I won't revisit in detail the decision that an Ombudsman had made about which parts of this complaint are within our jurisdiction. An Ombudsman has explained that the Financial Ombudsman can consider complaints that are brought within six years of the event complained about, or three years of when a consumer ought reasonably to have known they had cause to complain. If a consumer isn't aware they have a reason to complain, then the three year limb can extend the six year limb.

Our Ombudsman said that each charge taken from the policy was an individual event and so the six years from the event complained about starts each time a fee or charge was paid. Mr P complained in October 2021, so any commission paid within the six years of this are within the jurisdiction of the Financial Ombudsman. And this is from October 2015.

The ombudsman said it was likely that Mr P did receive the letters in 2015 and 2016 that informed him about the change in adviser charges, and he didn't complain within three years of receiving these. So, the three year part of the time limits didn't extend the six year time limits.

Our ombudsman decided we can only consider Mr P's complaint about the fees and charges that have been applied to his policy from 4 October 2015 onwards. And I agree this is the case.

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.

It's worth being clear here that this complaint has been made against Fidelity. But there is another business involved, Firm B. I can only consider Fidelity's part in this. And I'm essentially considering if it was right for it to act on the information that Firm B, and or Mr P, has provided to it about who it should pay commissions to. And if it was reasonable for it to pay these commissions.

The trail commissions paid from October 2015 onwards

When Mr P started his investment with Fidelity he agreed to the charging structure that the investment itself had. Fees and charges were deducted from his investment. Part of these fees could be paid to a third-party intermediary or adviser, such as Firm B. But the fees and charges that Mr P would pay wouldn't change whether this happened or not.

As Mr P has been informed, this was a common way for advisers, or intermediaries, that sold or advised on investments to be paid. And the trail commission would form part of a 'bundle' of charges which were deducted from any investments sold.

I have to consider complaints, as far as possible, on the basis of what was considered acceptable and reasonable practice at the time. And this fee and charging structure was usual and acceptable at the time. I don't think the agreement Mr P had with Fidelity was unusual or out of the ordinary.

Firm B has been paid this 'trail commission' due to an agreement between Fidelity and Firm B. It's clear on the application form that Mr P as he says is paying a reduced or 'nil' commission. But Firm B is noted as the advisor or intermediary on the application form and this would be the reason why it has received the trail commission part of the 'bundled' charges taken from Mr P's investment.

And, it's very likely that the payments of commission were disclosed on the illustration provided at the start when Mr P was sent his policy details. This was standard and automatic practice across the industry. So, I think it likely Fidelity did tell Mr P about this in that way.

And I'd stress that up to the changes made in 2016 the charges deduced from the investment would not be different whether or not a business such as Firm B was paid. The fees and charges would be the same, and Mr P had agreed to them when he started the investment. So, I don't think he has suffered financially over this period due to the trail commission being paid to Firm B.

So, I'm not upholding Mr P's complaint about the 'trail commission' that was paid between October 2021 and February prior to 2016.

The new charging structure from 2016 onwards

As all the parties to the complaint are aware this charging structure was changed in 2016. Fidelity sent Mr P a number of letters detailing this and it's worth reproducing parts of these. I also think it's likely, on balance, that Mr P received these letters.

Fidelity sent Mr P a letter in July 2015 which explained the following:

'the way investment platforms have traditionally been paid for their services is that fund managers have given us a proportion of their annual charge. This is known as 'bundled' charging. The FCA has now said we must take our own charge separately from a fund manager's charges.

This letter went on to clarify what 'bundled' and 'clean' share classes were:

Bundled - a bundled share class is one where the majority of charges are included in a single ongoing charge figure (OCF). From this OCF, payments are made to [Fidelity], your adviser or intermediary and the fund manager.

[...]

Clean - a clean (or 'unbundled') share class has a lower OCF as it only includes the fund Manager's charge. Your adviser or intermediary and [Fidelity] have to charge you separately.'

The letter also told Mr P that he would need to speak to his adviser about their future charges:

'In the past your adviser or intermediary probably received part of a fund's ongoing charge figure (OCF - in other words, the fund's total charges) as commission. This will not happen in the future, and you will need to speak to them so that they can explain their services and fee structure, which you would need to agree to before any fee is charged. Once your adviser or intermediary tells us the fee you have agreed, we will write to you confirming how much it is.'

Firm B notified Fidelity that it had a new fee agreement with Mr P. I understand this was done electronically and I've not seen a copy of the request Firm B supplied to Fidelity. Fidelity has explained that it hasn't seen anything unusual in this arrangement, especially as Mr P already had a relationship with Firm B. And it would have expected Firm B to also be making its own checks.

Added to this Fidelity wrote to Mr P on 4 February 2016 to confirm his new ongoing fee arrangement with Firm B. The letter also included the name of his adviser. This letter explained:

'We have been notified by your Adviser that you have set up a new Ongoing Fee agreement to pay for their services.

If you have agreed to pay a fee, this will be collected on a monthly basis and the enclosed statement outlines the new arrangement. This letter is for information only - all you need to do is check that the details are correct.

[...]

If you have any questions about the fee you have agreed with your adviser please contact them directly.'

So the situation here is that Fidelity has been informed by Firm B that Firm B has an agreement with Mr P to receive an ongoing adviser or intermediary fee. Fidelity has notified Mr P of this, and that it will pay it going forward, and told Mr P to contact Firm B if this isn't right.

And the statements I've seen show that Fidelity is paying a fee to a third party. They don't say that Fidelity it is taking the fee itself.

I think this was a reasonable way to deal with this situation. It is usual that businesses notify each other of commission payments in this way. And Mr P has been informed of this and so he could change this if needed, as he did.

Overall, I don't think Fidelity did anything wrong when it started paying a fee from Mr P's investment, I'm not upholding Mr P's complaint about any fees and charges he has paid after February 2016.

Our Investigator thought that Mr P should receive £250 compensation for the distress and inconvenience this issue had caused him, including Fidelity's failure to provide him with clear and not misleading information and the poor handling of the complaint.

The Financial Ombudsman Service cannot consider complaints about complaint handling – because complaint handling itself isn't a financial service. But Mr P's concerns in my view are about the financial service Fidelity provided him, and the information it gave him about the fees he was paying and the time it took to do so - including during the time it was investigating his complaint.

And I agree that Fidelity could have done better here, as it acknowledges itself, I think it should have taken the time to understand exactly what Mr P was concerned about at the start and provided the appropriate information to him. I don't think it did this. He was left under the impression for a considerable amount of time that documents would be provided to him (the 'contracts') when this wouldn't be the case. Those failings arose from and were part and parcel of the financial service Fidelity was providing to Mr P. And this clearly caused him some frustration over a lengthy period. So, I agree that £250 compensation is reasonable for this.

Putting things right

Fidelity should pay Mr P £250.

My final decision

For the reasons I've explained, I partly uphold Mr P's complaint.

Financial Administration Services Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 April 2024.

Andy Burlinson
Ombudsman