

## The complaint

Mrs S brings a complaint on behalf of the estate of her late father, Mr M. She says that Financial Administration Services Limited (trading as Fidelity International, and hereafter referred to as '*Fidelity*') has acted unfairly in respect of the administration of Mr M's stocks and shares ISA, after he sadly passed away in early 2022.

Mrs S says Fidelity caused unnecessary administrative burdens when she asked it to transfer the funds within the ISA to Mr M's nominated beneficiary within his Will – something that did not happen with other financial businesses that held investments for the late Mr M. Mrs S believes Fidelity's actions caused a financial loss, as the ISA value reduced before settlement was made. She also considers that compensation for distress and inconvenience ought to be paid to her and her family due to Fidelity's actions.

## What happened

Mrs S first made her request to Fidelity to release the ISA funds on 3 May 2022. She is a named executor for the Will of the late Mr M, along with her mother and sister. She explained that Mr M's instructions were that the ISA funds should be transferred to her mother.

Accordingly, Fidelity sent Mrs S a guide for executors and administrators as well as a small estates form and an inherited ISA allowance form to complete and return.

On 1 June 2022, Mrs S complained to Fidelity during a telephone call. She said that Fidelity's requirement to have the documentation signed and witnessed by all three executrices was onerous – as her sister lived overseas and required a different form. She noted that other businesses where Mr M held investments had not made this request.

After a further call on 6 June, Fidelity issued a final response to her complaint on 7 June 2022. It apologised to Mrs S, noting her unhappiness with its processes. However, it explained that it was entitled to determine what information it required to release the funds from Mr M's account – and this was not affected by how other businesses may or may not operate. It therefore did not agree that the complaint should succeed.

On 5 September 2022, the required documentation was returned by Mrs S on behalf of herself, her mother and sister. However, the small estates form was not signed so Fidelity sent a further letter to Mrs S about this on 8 September 2022.

On 16 September 2022, Fidelity received the signed form back from Mrs S. It accordingly sold the holdings within the late Mr M's ISA and paid the proceeds by BACS to the requested account on 22 September 2022.

In October 2022, Mrs S brought the complaint to this service. One of our investigators reviewed the complaint, but he did not believe it should be upheld. He said that he felt Fidelity had acted fairly and it was able to determine its own processes for releasing the ISA funds to Mrs S's mother. Any movement of invested funds due to market volatility hadn't been the fault of Fidelity – and this had been explained to Mrs S at the time.

Mrs S disagreed, and made a number of further comments. She said:

- she does not agree with the outcome and wants the complaint to be passed to an ombudsman;
- she noted that Fidelity is bound by professional standards laid out by the Financial Conduct Authority ('FCA') in its principles on treating customers fairly ('TCF');
- Mrs S believed TCF Outcome 6 which says, "*Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint*" applied in her circumstances;
- the process Fidelity followed was neither fair nor reasonable because:
  - the consideration for low value estates was not sufficiently separate and it created a disproportionate process;
  - this is imposed on consumers dealing with estates at a time of great vulnerability;
  - the small estates paperwork says that identification *may* be required – but in fact, Fidelity insists upon it;
  - Fidelity was pedantic in returning the form in September 2022 which missed one signature, as the witnessing solicitor had signed the form elsewhere;
- the investment value given by Fidelity on 24 May 2022 of £19,522.77 should apply;
- there is no need to speculate on the impact of financial markets that caused a reduction from this figure – the reduction occurred due to the delay by Fidelity;
- she is disappointed by this service's approach to compensation for distress, which means bereaved individuals can be treated abysmally by financial institutions without any financial consequence.

Fidelity had no further comments to make.

### **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 thank the parties for their patience whilst this matter has awaited an ombudsman's decision. I'd also like to extend my condolences to Mrs S and her family. I can see from her correspondence how she feels strongly about this matter, which has been particularly upsetting during a time of bereavement. However, I am not able to uphold this complaint or make any award in these circumstances. I'll explain my reasons for that below.

When deciding complaints (in accordance with the rules of this service), I will determine the outcome by reference to what is, in my opinion, fair and reasonable in the circumstances of the complaint. In assessing what is fair and reasonable, I'll take into account relevant law, regulations, rules, guidance, and standards. So I am mindful of the points Mrs S has made about the requirements placed upon Fidelity to treat its customers fairly.

However, we are not the regulator; that role falls to the FCA. So, I won't be making findings on how I believe Fidelity ought to have approached the settlement process. Having looked carefully at the timeline of events, I believe Fidelity did make clear what was required of Mrs S and her family as executors of Mr M's estate in respect of accessing the funds within his ISA.

It replied promptly to Mrs S's notification in May 2022. Within the correspondence, it sent guidance on the required steps it had in place as a business in order to release the funds to an estate. I believe the information was clear, and reasonable. And I cannot agree that the

requirements in respect of small estates was disproportionate to that of larger estates.

In my view, Fidelity has supplied timely replies with sufficient information and explanations to Mrs S at the relevant times. It also included information sent to Mrs S in May 2022 regarding the value of the investment, which said:

*“What happens to the investments while we’re waiting for probate?”*

*Although the assets can't usually be touched, they will continue to be invested - which means the value could go down as well as up. If you're worried about a possible loss in value, investments that were held in an ISA or an Investment Account (but not pensions) can be switched to cash. As for any US shares held by the deceased, these will automatically be sold once we've been notified of their passing away. This will result in a standard share dealing fee as well as an FX charge. The proceeds from the sale of the shares will then be held in their account.”*

I believe this was sufficiently clear to place Mrs S and her family on notice of the potential for continued fluctuations in the investment value whilst the administration was completed before Fidelity could release the funds – unless the investment was switched to cash. I also do not find Fidelity caused any delay, such that it should otherwise be accountable for any loss between May and September 2022.

As I've said previously, I am not going to make findings that relate to the remit of the FCA. I have otherwise considered whether the administration of this matter was reasonable on Fidelity's part, and I believe it was. For example, I have considered Fidelity's actions carefully in ensuring it has promptly and fairly updated Mrs S about the steps required to release the ISA funds – to determine if I think any compensation is due for distress or upset as well as whether I believe it was liable for any financial loss (which I do not find it was).

However, even if I were able to award compensation, I cannot do so to the representative of an estate; our rules do not permit it. We are bound by the Dispute Resolution ('DISP') rules which apply to this service as set out in the FCA Handbook. An ombudsman is not able to avoid the rules or apply discretion to certain rules. Complaints made to this service must be pursued by an 'eligible complainant' (for example, a consumer or a micro-enterprise) and those complaints must be about acts or omissions by businesses when carrying out certain 'regulated activities' – in this case, Fidelity processing the release of the funds for the late Mr M's investment ISA.

DISP rule 2.7.2 R allows a third party to bring a complaint on behalf of an eligible complainant (such as an investor) to this service, for example from a representative or an executor of an estate for an eligible complainant that has since passed away. But that doesn't mean the representative is an eligible complainant in their own right. Mrs S is a representative and not a complainant in her own right – she is not party to the investment relationship Mr M held with Fidelity; instead she is one of the executrices for Mr M's estate.

Though this service can make further awards for the distress a business has caused in relation to a complaint (DISP 3.7.2 R), and whilst a complaint can be made to this service by a representative on behalf of an eligible complainant - or the estate of a complainant that has passed away - that doesn't confer the right to receive a money award to the representative.

That means I even if I were minded to do so, I cannot make an award for upset, distress or anguish caused to Mrs S, her mother or her sister in respect of their view on the perceived administrative burdens caused by Fidelity in these circumstances. I know Mrs S feels that this is unreasonable – but our rules do not allow me to consider it. If Mrs S requires, our investigator can send her the link to access the relevant part of the FCA Handbook online.

In any event, I would not otherwise deem that any compensation is due in these circumstances, either for financial loss or any upset caused. That is since I don't find Fidelity to have acted unfairly or unreasonably in setting out its settlement process or applying that process to Mrs S for withdrawal of ISA holdings on behalf of deceased customers.

### **My final decision**

Despite my sympathy for Mrs S and her family, I am not able to uphold her complaint on behalf of the estate of the late Mr M. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S, on behalf of the estate of the late Mr M, to accept or reject my decision before 13 November 2023.

Jo Storey  
**Ombudsman**