

## **complaint**

Mr M complains that Financial Administration Services Limited (trading as Fidelity) blocked his share dealing account and prevented him trading without warning.

## **background**

Mr M, a citizen of the USA, initially invested with Fidelity in 1997. In 2011 new regulations came into force which required Fidelity to identify customers with US nationality and restrict or control investments made by them. In short, Fidelity wasn't permitted to allow investment from US persons into funds which weren't or couldn't be distributed or sold in the USA. As this accounted for the majority of the investments it had on its platform, Fidelity has said this essentially meant it didn't offer its services to US persons.

Fidelity didn't initially identify that Mr M was a US citizen, and so for a number of years he was permitted use of the platform when he otherwise wouldn't have been.

In January 2019 Mr M called Fidelity to complain that he had been unable to execute a particular trade. It was at this point that Fidelity identified Mr M as a US person and that's why his trading was blocked. When he raised the issue he was told that his nationality meant that Fidelity was no longer able to offer certain services to him – including trading. Mr M complained.

Fidelity looked into Mr M's complaint. It acknowledged that there had been a number of opportunities between 2011 and 2019 when it ought to have picked up on the fact that as a result of being a US person it could not allow him to trade on its platform. It acknowledged that it facilitated Mr M's transfer of investments from a different provider in November 2018 which it otherwise wouldn't have allowed. However, it did say that its terms were clear and that by accepting the terms of service, Mr M was essentially warranting that he was not a US person. Fidelity offered Mr M compensation. In short, this included paying 8% interest on the cash which had been transferred from the other provider (not all the investments were able to be transferred in specie), a free transfer of his investments to another provider and £400 compensation for the trouble and upset caused to him. As an alternative to 8%, it otherwise offered to backdate any investments sold in November 2018 after the transfer, so that Mr M wasn't disadvantaged by any movements in the market since then.

Mr M didn't agree and referred his complaint to this service. One of our investigators looked into his complaint. Broadly, she agreed that Fidelity had made mistakes and ought to put things right. But she considered that its offer to Mr M was fair and reasonable and would put him in the position he would've been in but for Fidelity's error.

Mr M didn't agree with the investigator and asked for an ombudsman's decision. He said:

- The investigator had noted that Mr M had use of the account for a number of years when he otherwise wouldn't have. He said he acknowledged that this was true, but equally said that as a 'commercial organisation' Fidelity also collected substantial fees during the same period and therefore also benefited.
- Fidelity encouraged Mr M to transfer the shares he held in an ISA with a different provider – including by offering to pay the cost of the in specie transfers. He said it wasn't possible to transfer a number of shares as they were not on Fidelity's platform

and so these had to be sold as cash. Mr M said that the account manager at the other firm 'went to extraordinary measures' to retain him as a client and his relationship was 'badly damaged' when this transfer went through. So Mr M said he would feel 'very uneasy' about going back to the previous firm and reopening a new account. He therefore concluded this option wasn't realistic given the circumstances.

- He didn't consider the offer to pay 8% interest from November 2018 to March 2019 was fair. He said that he had in effect 'frozen' his account until this service had considered the complaint – and he had explained this to Fidelity. He said that Fidelity continued to charge him fees on the full balance of his funds with it, even though he couldn't buy or swap them. He said that as a result, he thought Fidelity had likely made more in fees than the interest it offered – so he considered that Fidelity ought to pay 8% interest and refund the fees he paid until this service finished its consideration of his complaint.
- The overall compensation of £400 was insufficient and Mr M considered this valued his time 'as being worthless'.
- Mr M didn't recall an ISA contribution in March 2015 – in any event he confirmed the first time he found out that Fidelity wouldn't allow a US person to hold or operate an account with it was in January 2019.
- He didn't agree with the way the investigator had made assumptions about his trading activity. He said that prior to November 2018 he had been fighting a serious medical condition which had occupied his time and he didn't retire until 2018. So he didn't think it was reasonable to assume that after November 2018 his trading activity would've been the same.

Fidelity provided a response to Mr M's points above. In short:

- In 1997 there was no requirement on Fidelity to register a customer's nationality – so it didn't do anything wrong at the time.
- Fidelity didn't specifically encourage Mr M to transfer his holdings to it in November 2018 – it simply had an offer available which included covering exit fees from other firms where the customer wanted to transfer to its platform.
- Fidelity didn't agree it should refund any fees to Mr M.
- It confirmed Mr M did make a lump sum contribution to his ISA in March 2015.
- It was Mr M's decision to wait for this service to conclude its consideration of his complaint – during a time when he already knew that there were restrictions on the account. So it wouldn't be fair to expect Fidelity to compensate him for this during this period.

As agreement couldn't be reached, the case was passed to me to decide.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr M has made some detailed submissions and I have given them very careful consideration. But for the reasons I give below, I don't think what he has suggested as compensation would be fair.

I appreciate Mr M might not agree, but having looked at the terms I think they're clear. I've seen a copy of the Client Terms which, on page 1, specifically say:

'The products and services described in these Terms are available to UK residents only and are not being offered, in particular, to citizens or residents of the United States of America (US persons). By accepting these Terms, you warrant that you are resident in the UK and that you are not a US person and that you accept the terms of the relevant prospectus.'

Throughout the years there have been multiple times in which Mr M has made use of Fidelity's service, and it was his responsibility to ensure that at all times he was aware of the terms he was agreeing to. I note what he has said about the transaction in March 2015, but I'm persuaded by the evidence I've seen. In particular, I've seen a letter from Fidelity 'confirming' to Mr M his investment into an ISA of around £15,000. This letter attaches a key facts document and additional terms which also explain the restrictions around US persons.

So I'm satisfied that while Fidelity ought to have picked up on Mr M's situation much sooner, Mr M also had opportunities to identify the issue. And whilst I acknowledge what Mr M has said about Fidelity also making money from his custom during this period, I don't think this materially changes the situation. Mr M has had the benefit of investments, and a service, that he would never have been able to benefit from had Fidelity identified him as a US person sooner.

I'm also not persuaded Mr M should be compensated for any loss of opportunity more generally. Ultimately, Fidelity's mistake is not preventing him from trading much sooner – so I don't think it follows that it ought to compensate him for potential future trades, when it isn't clear how or with who he would've been able to place such trades.

What I do acknowledge is that the transfer from a different provider would never have happened had Fidelity correctly picked up on Mr M's nationality. So I agree in principle that Fidelity ought to consider how to put things right for Mr M, and I note it has made two alternative offers.

It has either agreed to pay 8% on the cash portion of the money transferred from November 2018 until March 2019, or to backdate any investments sold in November 2018 after the transfer so that he isn't disadvantaged and facilitate a transfer back to his previous provider.

Mr M has explained why he doesn't consider the second of these two alternatives to be right for him. I'm not going to comment on the reasons he has given for why he considers his relationship became badly damaged with his previous provider.

In terms of the first option however, I don't agree with Mr M's proposal for extending the 8% interest beyond March 2019, nor that Fidelity should be refunding fees and charges as well for this period.

Firstly I should say that whilst I can understand why Mr M might have thought that taking no action while this service looked into his complaint was the right thing to do, I don't agree Fidelity should compensate him for that. This was Mr M's choice – but in the meantime, Fidelity was still providing a service to him for which I think it's fair it should continue to be remunerated. So I don't agree that it should refund any of those fees or charges.

And it follows, therefore, that I don't consider it ought to pay 8% interest for the full period either. I'm satisfied that Fidelity's offer to pay 8% interest on the cash sum between November 2018 and March 2019 compensates Mr M for his inability to trade during this time – but from March 2019 Mr M made a conscious decision not to take any action.

It's a fundamental principle of investing that rewards ought to be commensurate with risk taken – risk which Mr M chose not to take by leaving the cash with Fidelity. So in these circumstances, I'm not persuaded it would be fair for Fidelity to compensate Mr M for this decision. I'm not satisfied the opportunity loss Mr M says he has suffered was caused by something Fidelity did or didn't do.

Finally, I've considered Mr M's objection to the £400 compensation offer. I can entirely understand why Mr M considers the time he has spent on the matter warrants far greater compensation. However, as I've explained above, I'm not persuaded all of this situation has been of Fidelity's making – because it's clear to me that Mr M had opportunities himself to identify, in the terms and conditions, the fact that as US person he was being offered services he shouldn't have had access to. I would also add that this compensation isn't designed to be equivalent to the time Mr M spent looking into a complaint. On the other hand, as I've also said, it was Fidelity's responsibility to ensure it only provided services to consumers who were entitled to them, and I'm persuaded its failure to do so caused Mr M trouble and upset. So I agree he should be paid compensation for that. Weighing everything I've said up, and given all the circumstances of this complaint, I'm satisfied Fidelity's offer of £400 is fair and reasonable compensation.

### **my final decision**

My final decision is that Financial Administration Services Limited's offer to Mr M is fair and reasonable – so that's what I award. Financial Administration Services Limited must:

- Either, pay 8% interest on the uninvested cash portion of the funds which were transferred from the other provider, or
- If Mr M decides he wants to transfer his investment to the previous provider, backdate any investments sold in November 2018 after the transfer, so that Mr M isn't disadvantaged by any movements in the market since then;

Fidelity must also:

- Offer Mr M a free transfer of his investments to another provider; and
- Pay Mr M £400 compensation for the trouble and upset caused to him if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 April 2020.

Alessandro Pulzone  
**ombudsman**