

The complaint

Mr H complains that Embark Investment Services Limited trading as Stocktrade (“Embark”) failed to transfer his pension savings to another provider in a timely manner.

What happened

Mr H held pension savings in a self-invested pension plan (“SIPP”). The administration of the SIPP was migrated to Embark in January 2021, but Embark is responsible for all the matters that form part of this complaint. For ease I will simply refer to Embark as the SIPP administrator throughout this decision.

The SIPP itself was provided by another firm that I will call C. In November 2020 Mr H asked for his pension savings to be transferred to another provider. That instruction was passed to Embark by C in December 2020. Mr H wanted, as far as possible, for his pension investments to be transferred in-specie. But the new provider didn’t hold a number of his investments on its platform, so in December he gave instructions for the sale of some of his pension investments leaving a large cash balance in his SIPP.

In January 2021 Embark started the transfer process, and begun communicating with the new provider to agree trade and settlement dates. Embark agreed with C that it would first complete all the in-specie transfers, before remitting the remaining cash balance. C asked that balance to be paid to its account so it could deduct any final charges before sending the monies onto the new provider. But, as the transfer was getting underway in January, the new provider needed additional information or was slow to respond, so some initial proposed trade dates were missed. And that then meant that the transfer activity had to be suspended whilst the SIPP was being migrated to Embark’s processing platform. That migration took place over the weekend of 23 January.

On 18 January, concerned about the time the transfer was taking, Mr H had requested that Embark send the cash balance to the new provider immediately. And I can see that C confirmed that request to Embark a few days later. But it again asked that the cash balance be first sent to its account, and it would then forward it to the new provider.

Embark says that it wasn’t able to implement that instruction immediately whilst the account migration was taking place. And it then says that further delays were experienced whilst it confirmed the banking details of C, and where the funds should be sent. Embark told Mr H that his cash balance had been sent to the new provider on 4 March and should be received by the end of that day. But Mr H contacted Embark a few days later to say that the funds hadn’t been received by the new provider. Almost two weeks elapsed before Embark explained that the cash balance had actually been sent to C.

Mr H’s in-specie transfers completed between February and May 2021. Again these experienced some delays whilst discussions took place between Embark and the new provider about which depository should be used to hold and transfer some of the investments.

Mr H complained to Embark about the way his transfer had been handled. In particular he cited the upset and worry he'd been caused during the time his cash balance appeared to have gone missing after it had been transferred by Embark. And he said that he might have missed out on investment growth due to the time a large portion of his SIPP monies were held in cash. Embark accepted that the transfer had taken too long and paid Mr H £250 for the inconvenience he'd been caused.

Mr H's complaint has been assessed by one of our investigators. He noted that whilst the in-specie transfers had taken some time, Mr H had not lost out as he remained invested at all times. But he thought that the time taken to transfer the cash balance had been too long and might have meant that Mr H had lost out. Our investigator wasn't however able to determine how Mr H might have invested his pension savings if they had been transferred sooner. He noted that some of the monies still remained in cash. And there didn't seem to be any structured investment plan for the pension savings. So he thought the loss Mr H had suffered could best be compensated by a further payment to reflect the distress and inconvenience that had been caused. So he asked Embark to pay a further £500 to Mr H.

Mr H discussed the outcome with our investigator and said that he thought the redress proposal was fair. But Embark didn't agree. It said the proposed compensation was out of line with how this Service had dealt with complaints of a similar nature. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr H accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr H and by Embark. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

There have been three different regulated firms involved in Mr H's transfer. Embark that is the subject of this complaint, C the provider of Mr H's original SIPP, and the firm to which the pension monies were transferred. I think it would be fair to conclude that the actions of each of these firms contributed to the delays and upset experienced by Mr H. But this complaint is only in relation to the actions of Embark. So I will limit my findings solely to the part played by that firm.

Embark has accepted that Mr H's transfer took too long, and paid him some compensation. So the matter that falls to me in this decision is to decide what would be reasonable to ask Embark to do, in order to compensate Mr H for any losses he's incurred, and the inconvenience he's been caused.

But in saying that I think it is important that I reflect on the overall time the transfer took, and compare that with what I think might be generally reasonable for transfers of this nature. As the length of that delay does have an influence on the impact on Mr H.

Mr H's transfer wasn't the simplest that Embark might be asked to complete –that would have involved a simple transfer of cash. And I accept that some of Mr H's pension investments were not UK based and, one asset appears to have suffered from some liquidity problems. But, in simple terms, Embark needed to request the re-registration of the investment holdings, and transfer the cash balance Mr H held.

I set out some of the timeline of the transfer earlier on in this decision. There were some lengthy delays whilst the process was awaiting action by Embark, particularly in relation to the cash transfer after the systems migration had taken place. Whilst I accept that Embark wasn't responsible for all of the delays, I don't think the overall time taken to complete the transfer was acceptable.

In this decision I need to consider whether any delays caused a direct financial loss to Mr H. Like our investigator, I have noted that whilst the in-specie transfer was taking place Mr H's pension savings in those assets remained invested. So there wasn't any time that he was out of the market. I have considered that during the time of the transfer Mr H was effectively prevented from selling those assets, and purchasing new investments, but for the reasons I will now go on to explain, I cannot reasonably conclude that led to a financial loss.

I think the aspect that should give me most concern is the period of time that Mr H held a large cash balance in his SIPP. That balance had arisen, in part, due to the need for Mr H to liquidate some investments that couldn't be transferred in-specie. Those sales took place in December 2020, and the cash balance didn't reach the new provider until 15 March. I accept that Embark completed its work on this part of the transfer on 4 March. And there was a period of time when the transfer of the cash couldn't be made due to the migration activities. But even so, I think the transfer was completed more than a month later than it should have been.

But it is difficult for me to reasonably conclude that Mr H has lost out on investment returns due to that delay. He has told us that he didn't have a clear investment strategy in place – instead it seems he based his decisions on those investment opportunities that appeared attractive at the time. So investments he made when the funds were transferred in March 2021, might not have been made if the transfer had happened sooner. I cannot therefore reasonably conclude that the same investments Mr H made would have been made earlier if the transfer hadn't been delayed, and use that as the basis for assessing reasonable compensation.

I am also mindful that a reasonable proportion of the transferred cash balance wasn't immediately invested. In the month following the transfer only around two thirds of the cash balance was invested. The cash that remained uninvested didn't attract any material interest payments. So I also think it would be unreasonable to consider that Mr H should be compensated by interest for the loss of use of his money in line with our normal approach.

As I said earlier, our investigator did discuss these two methods of compensation with Mr H and he also agreed that their use might unduly enrich him. Mr H was very clear that he didn't bring this complaint to seek compensation for any potential financial losses – but he does think compensation for his trouble and upset is warranted.

In my introduction I explained that there was a lengthy period of time during which Embark told Mr H it had paid his cash balance to the new provider, and the new provider said it hadn't received the funds. It was almost two weeks later that Embark clarified that the funds

had actually been paid to C. I think it entirely understandable that Mr H faced a great deal of worry during that time and he has explained that the worry and stress had an impact on his health at that time.

So it is right that Mr H should be compensated for the distress and inconvenience he has been caused. As I said earlier Embark has paid Mr H £250 in recognition of the inconvenience, but I don't think that amount is sufficient given what I've said above. Instead I think a total payment of £750 would be more appropriate. So Embark should pay an additional sum of £500 to Mr H.

My final decision

My final decision is that I uphold Mr H's complaint and direct Embark Investment Services Limited to pay additional compensation to Mr H of £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 October 2022.

Paul Reilly
Ombudsman