

The complaint

Mr B's representative has complained, on his behalf, that due to errors made by Alliance Trust Savings Limited (ATS), there was a delay in investing cash held in Mr B's Self Invested Personal Pension (SIPP).

What happened

Mr B intended to invest some of his SIPP funds into the Scottish Mortgage Trust (SMT), and, following a request from his independent financial adviser (IFA) – also his representative in this matter - to the SIPP administrator on 27 April 2020, the administrator informed the IFA that Mr B would need to complete an Embark (a part of ATS) account registration form so that the investment into that particular asset could complete.

The account was opened on 6 May 2020 and Embark issued a welcome pack to the SIPP administrator and the trustees. However, no welcome pack was issued to the IFA. Around £29,000 was received into the Embark account on 11 May 2020 and was then held in cash.

On 20 July 2020, the SIPP administrator contacted the IFA to say that it had noticed that the funds held in the Embark account were still in cash, which led to the IFA emailing Embark to access the online login details for Mr B on 20 July 2020. Unfortunately, that email was quarantined and, due to an internal IT issue, Embark was unaware that it had received this.

The SIPP administrator then contacted Embark on 21 August 2020 requesting that the IFA be set up with online access, and this was completed on 28 August 2020. At this point, it was established that the funds which should have been invested in SMT remained in cash. This was corrected on 7 September 2020.

In the meantime, Mr B's IFA had complained to Embark on his behalf on 27 August 2020, and in responding to that complaint, Embark accepted that it was at fault both for not sending a welcome pack to the IFA in May 2020 and also for not picking up the email sent by the IFA in July 2020.

Embark undertook a loss calculation to determine whether Mr B had been financially disadvantaged by not having invested earlier, but it considered that the notional earlier investment date should have been 20 July 2020, the date of the IFA's email. This demonstrated no loss, however, and the outcome was communicated to Mr B.

Mr B was dissatisfied with this, however, and so referred his complaint to this service. Mr B (and his IFA) are of the view that the notional investment date should have been the date at which he or the IFA would have received the welcome pack. He also said that he'd been unaware that he or the IFA would need to contract Embark again after the initial investment instruction had been given in May 2020.

One of our investigators looked at the complaint, but didn't think it should be upheld. In summary, he said that, although an investment enquiry was emailed to the SIPP administrator on 1 May 2020, the evidence didn't support the position that an investment instruction had been submitted to Embark. It couldn't, therefore, reasonably have executed

the transaction.

He said that he would have expected Embark to issue the IFA with the welcome pack, but he didn't think that, in the absence of this, the IFA should have assumed that the transaction had occurred.

The investigator thought that it would have been a reasonable course of action for the IFA to have verified, after a period of two weeks, that the account had been established and that Mr B had been invested in the SMT as intended. But this contact didn't happen for over two months.

The investigator appreciated that neither the IFA nor Mr B had used Embark's services before, but he thought that this would have made it all the more important for it to be verified that the investment had occurred. He also noted that the application form completed on 24 April 2020 said that the dealing rights for the account would be held by the adviser. But no dealing instruction was submitted to Embark until contact was later made in July 2020.

Embark should have sent the welcome pack to the IFA, the investigator further said, but this wouldn't have contained any detail about whether the SMT investment had been made. And so he didn't think that this error had had a significant impact on the case.

As such, the investigator considered that the calculation undertaken by Embark, reflecting its failure to pick up the email sent in July 2020, was fair given the circumstances.

Mr B's representative disagreed, however, referring to its response on a linked complaint against the SIPP administrator. In that response, it said that it hadn't received emails from the SIPP administrator dated 4 and 7 May 2020. The significance of these, and the latter in particular, was that the administrator had informed the IFA that the requested trade would need to be placed directly with Embark by the owner of the dealing rights. Although not referred to by the investigator in the course of this complaint, it's nevertheless a relevant consideration for this complaint also, which I'll address further below.

There had been no mention of these emails, the representative said, during any further correspondence it had with the SIPP administrator, and these weren't referenced by the SIPP administrator when it first responded to the linked complaint.

Both Embark and the SIPP administrator had blamed each other for the error, and the latter had been adamant that the former had dealing rights for Mr B's account, the representative said.

It remained firmly of the view that, had the welcome pack been received, this would at the very least have prompted some questions. It had seen a copy of the pack and it contained information on how to make a trade, and it was confirmed to the SIPP administrator and trustees that the money had been received into the account. But it received no contract note to say that the funds were sitting in cash. As far as the representative was concerned, the money would be invested by the SIPP administrator in the same way as it had invested a further £90,000 sent to it by Mr B.

It further queried as to why it had been given the dealing rights for the account, as alluded to in the email from the SIPP administrator dated 7 May 2020, if it hadn't received the welcome pack containing the login details. There was a clear link between the failure to send the welcome pack to the IFA and the delays then incurred, it said.

The representative said that it had no idea that it needed to set up an online account to trade, despite several conversations with the SIPP administrator about the process.

As agreement hasn't been reached on the matter, it's been referred to me for review.

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.

Having done so, I've reached broadly the same conclusions as the investigator and for similar reasons. On the basis that Embark has accepted the error of not picking up the email in July 2020, I think the crux of the matter specifically concerning Embark is whether receipt of the welcome pack by the IFA in May 2020 would have made a difference to the outcome.

I've thought carefully about this, but the available evidence doesn't persuade me that it would necessarily have made a difference here. I do acknowledge the point made by the representative that the receipt of the welcome pack would have prompted questions, but I also need to think about what those questions might have been. For example, the IFA seemed to assume that, on the basis of its email to the SIPP administrator enquiring about the process for investing in the SMT, this was all that needed to happen.

If it held that view, and even disregarding the email from the SIPP administrator on 7 May 2020 which said that the account had been established and that the person with the dealing rights would not be able to place the trade – which I note the IFA has said it didn't receive, then it's unclear to me as to why the receipt of the welcome pack would have altered that position.

The welcome pack may have referred to making trades, but if the IFA assumed that the initial trade had already been made, I don't think this would have seemed out of the ordinary and might quite reasonably have been thought to refer to future trades.

The IFA has said that it's seen the welcome pack, but hasn't said that it indicated that the funds received into the account were sitting in cash. I've also looked at the pack, and can't see any details relating to how the funds were held. It's a straightforward introduction to the account, with details of how to log in to the account. Had it instead made it clear as to how the pension funds were invested, I think I might be more sympathetic to the position that the representative's put forward. But that isn't the position here.

I accept that it might also be arguable that being provided with the login details for the account might have prompted the IFA to log in and view the account. But I'm also mindful that this kind of check could have been undertaken at any point, by other means, between the beginning of May and the email of July 2020. And so, working on the IFA's own assumption that the investment had taken place, I don't think it's more likely than not that receipt of the welcome pack would have prompted it to have logged into the account to check before it made further enquiries in July 2020.

Overall, therefore, whilst I acknowledge (as does the business itself) that Embark made mistakes in not sending the IFA the welcome pack and not picking up the later email in July 2020, for the reasons given I don't think that sending the welcome pack would have changed the outcome, and I think the steps it's taken to rectify the problem with the email are fair and reasonable. As such, my position is that the complaint shouldn't be upheld.

My final decision

For the reasons given above, my decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 1 August 2022.

Philip Miller
Ombudsman