

The complaint

Mr B's representative has complained, on his behalf, that due to errors made by Novia Financial Plc, 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) within an account operated by Stocktrade (Embark), and, following a request from his independent financial adviser (IFA) – also his representative in this matter - to Novia on 27 April 2020, Novia informed the IFA that Mr B would need to complete an Embark account registration form so that the investment in that specific asset could complete.

The account was opened on 6 May 2020 and a welcome pack was issued to Novia and the trustees by Embark. 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, Novia 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.

Novia 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 the SMT remained in cash. This was corrected on 7 September 2020.

Mr B's IFA complained to Novia, through this service, in November 2020, and in February 2021 Novia responded, saying that it was declining to uphold the complaint. In summary, it said that after it was involved in the setting up of Mr B's Embark account, it was the responsibility of the party with the dealing rights (in this instance the IFA) to deal directly with Embark and make the investment.

It noted that, once it had received the completed Embark registration form on 1 May 2020, it then requested the International Securities Identification Number (ISIN) to check whether it held the proposed asset on the platform. Novia said that it then informed the IFA on 7 May 2020 that the trade would need to be placed directly with Embark by the person with the dealing rights once the Embark account had been established.

Mr B was dissatisfied with this, however, and so one of our investigators looked at the complaint. He didn't think it should be upheld, saying in summary that, although an investment enquiry was emailed to Novia on 1 May 2020, the follow up emails from Novia, in particular those of 4 May 2020 and 7 May 2020, made it clear that any trades in the Embark account would need to be placed by the person with the dealing rights.

He noted that the email from Novia of 4 May 2020 said that "*whomever has the dealing rights will need to check the fund with Stocktrade directly*", but the available evidence didn't

support the position that the IFA had done this.

Further, the email of 7 May 2020 said that *“Once the Stocktrade Account has been set up, the person with the dealing rights will be provided with an online log in. This will allow them to access Stocktrade and place the trades directly with them”*.

Given what he considered to be the clarity of the above directions, the investigator didn't think that Novia could be held responsible for the delay in investing Mr B's funds. Nor did he think the initial email from the IFA concerning the investment could be interpreted as an instruction to place the investment. The email read as follows:

“The client is looking to invest £29,500 into the [STM], how do we go about this?”

This was, in the investigator's view, more of an enquiry as to how to go about placing the investment, rather than an instruction. And clear responses had been provided to this in the emails of 4 and 7 May 2020.

The investigator further 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, it should have been assumed by the IFA 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.

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.

As such, the investigator concluded that Novia had made it clear that any trades in the Embark account would need to be placed directly with Embark and that, having identified the issue following the contact in July 2020, it took reasonable steps to inform the IFA that Mr B's funds were still held in cash. Moreover, as Novia didn't hold the dealing rights for the account, it couldn't itself have placed the requested investment.

Mr B's representative disagreed, however, saying that it hadn't received the emails from Novia dated 4 and 7 May 2020. There had been no mention of these emails, the representative said, during any further correspondence it had with Novia, and these weren't referenced by Novia when it first responded to the complaint.

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

It reminded firmly of the view that, had the welcome pack been received, then 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 Novia and the 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 Novia 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 Novia 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 further said that it had no idea that it needed to set up an online account to trade, despite several conversations with Novia 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 don't think there's much I can meaningfully add to the assessment already undertaken by the investigator. I think the crux of the matter relating to Novia is whether the initial email from Mr B's IFA amounted to a clear instruction to place the investment, and if it did, whether Novia then adhered to that instruction – or even if it didn't amount to an instruction, whether Novia then made it clear as to what would need to happen for the trade to be placed.

Addressing the first of these issues, I'm inclined to agree with the investigator that the initial email from the IFA would reasonably have been understood to be an enquiry as to how to place the investment. I don't think the wording of that email constituted an unequivocal instruction.

But nevertheless, clearly an intent to invest was contained in the email, and so Novia needed to inform the IFA as to the next steps. And it did so in the email of 4 May 2020, but perhaps most emphatically in the email of 7 May 2020. I don't think either of those emails could be taken to mean that the trade would be placed by Novia – rather, that the entity with dealing rights would need to place the trade directly in the Embark account.

I appreciate the IFA's comment that it didn't receive those emails, but this doesn't detract from the position that Novia has a record of them being sent – and to the address which was being used for email correspondence purposes. I think those emails made it sufficiently clear that the trade hadn't been placed. And on the basis of the information which Novia had provided, I don't think it needed to take any further action.

I note that it did then contact the IFA in July 2020 to comment that there were still funds sitting in cash, at which point, with further liaison with Embark, it became clear what had happened.

But overall, taking account of the circumstances of this case, I can't fairly or reasonably hold Novia responsible for Mr B's funds remaining in cash within the Embark account.

My final decision

For the reasons given, my final 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