

The complaint

Mr C complains that Embark Investment Services Limited ('Embark') provided incorrect fund details to his new individual savings account (ISA) provider. This meant one of his funds was converted to cash rather than being transferred in-specie to the new provider. Mr C says this caused significant delays and created a financial loss.

What happened

Mr C asked his new ISA provider to transfer his existing ISA holdings from Embark on 7 October 2020. Mr C intended to transfer in-specie but Embark provided an incorrect International Securities Identification Number (ISIN) for one of the funds. The new provider told Embark they couldn't complete an in-specie transfer for the fund and it must be transferred as cash. Embark converted the specific fund to cash on 18 November and sent it to the new provider on 30 March 2021. Mr C began to re-invest the funds on 1 April and continued to do so throughout April and May. The remaining in-specie transfer also completed in April.

Mr C complained to Embark they'd used the incorrect ISIN and this had caused him a financial loss because his fund was unnecessarily converted to cash and sent to the new provider. Mr C also complained the transfer process took much longer than it should have, and he missed out on a rising market. In their final response Embark agreed they'd made some mistakes and offered Mr C £3,825.07 to compensate him for not having access his cash and £200 for the upset caused. Mr C didn't accept this offer.

After Mr C brought his complaint to the Financial Ombudsman Service, Embark reviewed their position and offered Mr C £6,241.73, along with £200 for the upset, and a refund of platform fees totalling £137.91. Mr C declined this offer.

One of our Investigators looked into things for Mr C. The Investigator thought Embark should pay Mr C the sum of £6,241.73. And that interest at 8% per annum simple should be added to this amount from 5 March 2021 until the date of settlement as Mr C had been deprived of this amount. Our investigator thought Embark should calculate whether Mr C was in a worse position on each of the subsequent investments he'd made if they'd been made on 5 March 2021, when the funds should reasonably have been available. And if Mr C was in a worse position, Embark should pay him the difference plus 8% simple interest until the date of settlement.

Mr C accepted the thoughts of our Investigator but Embark didn't. The case was sent to me to decide, but as I reached a significantly different conclusion to the Investigator, I issued a provisional decision on 30 June 2022 asking both parties for their comments.

The comments Mr C provided lead me to reconsider part of the remedy within my first provisional decision. I therefore decided to issue a second provisional decision and ask for additional comments by 5 September 2022. In my second provisional decision dated 19 August 2022, I said I intended asking Embark to pay an amount for the delay in transferring the ISA funds, and to pay further redress because Mr C has been deprived of the opportunity

to invest this amount since 30 March 2021. The further redress to be linked to the performance of a similar fund to the ceding fund.

In his response to my second provisional decision Mr C said any redress for the lost opportunity should be based on the performance of the ceding fund. Mr C said he didn't reinvest in the ceding fund because Embark told him the fund in question wasn't supported by the new provider. I've carefully considered Mr C's comments, but he hasn't persuaded me to change my decision. In my provisional decisions I explained Mr C quickly re-invested the cash transferred by Embark on his new providers platform. I consider Mr C had the option to check whether the ceding fund was on the platform, but I can't say either way whether he did this or not. So, because Mr C opted to invest the transfer cash into a number of different funds shortly after the transfer took place, it wouldn't be fair and reasonable for me to speculate he would have invested the redress into the ceding fund. Instead, I took a balanced approach and used an index fund in which the mix and diversification provided is close enough to allow me to use it as a reasonable measure of comparison given Mr C's circumstances and risk attitude.

In their response to my second provisional decision, Embark accepted they should pay Mr C an amount for the delay in transferring the ISA. And they agreed to calculate the difference between the value in November 2020 and the value of this same fund on 30 March 2021. Embark say they shouldn't pay Mr C for the lost opportunity to invest. They say that if the original error hadn't occurred the ceding fund would never have been sold, and Mr C would have remained invested within the ceding fund. Embark add Mr C made an informed decision to purchase different funds between 1 April 2021 and 6 May 2021, and he would've needed to encash part or all this investment which may or may not have resulted in a loss or a gain.

I've thought about the comments from Embark, but unfortunately the error did occur. And I'm satisfied Mr C did lose the opportunity to invest the difference in the ISA transfer value between 5 March and 30 March 2021, and any further investment performance since 30 March 2021. It was their error that resulted in Mr C being deprived of the redress and the opportunity for this to be invested. And, although I can't be sure what specific funds Mr C would have invested in, I'm satisfied he would have invested it.

I've therefore decided to adopt my provisional decision dated 19 August 2022 as my final decision.

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.

The impact of the delay between 5 March and 30 March 2021

Embark accept they provided an incorrect ISIN to the new provider and that if they'd provided the correct ISIN the fund could've been transferred in-specie. Instead it was converted to cash on 18 November 2020. Embark held this until 30 March 2021 before sending it to the new provider when the other fund Mr C held was ready to transfer in-specie. It's reasonable for me to use 30 March 2021 as the date when Mr C's in-specie transfer should've completed if Embark had provided the correct ISIN.

I've reviewed the approach Embark took in their final response letter to Mr C. In this letter, Embark calculated the interest Mr C should receive on the cash value of the ceding fund from 18 November until 30 March 2021. I consider this supports Embark accept Mr C had been deprived of investing these funds. Had Embark not made the error, the transfer

would've completed in-specie on 30 March 2021. If this had been the case, Mr C would've participated in the performance of ceding fund until 30 March 2021.

Embark should calculate the value of the ceding fund on 30 March 2021 and pay the difference, if any, between the value of the fund on this date and the £135,285.95 they sent to the new provider. Embark should then pay this amount, which I will refer to as the '*the redress*' into Mr C's ISA account with the new provider. I consider this is a fair and reasonable remedy as it puts Mr C back in the position he would've been in if the in-specie transfer had completed on 30 March 2021.

The cash transfer calculation

Had Embark provided the correct ISIN the fund would've been transferred in-specie. Instead, Embark sold the units in the fund on 18 November 2020 and held the proceeds of £135,285.95 in cash until 30 March 2021 when they sent the funds to the new provider.

There's no dispute Mr C's initial intention was to retain the ceding fund in his ISA. However, when Embark sent the cash transfer to his new provider Mr C didn't re-invest into the ceding fund. Instead he invested in a number of other funds. I'm persuaded the investment decisions Mr C took after the funds arrived in his account on 30 March 2021 are supportive that he was willing to accept some investment risk with the cash transfer funds.

As I've decided Embark should pay the redress referred to above, I also have to consider if there is any further redress to be paid because Mr C has been deprived of the opportunity to invest the redress since 30 March 2021.

Fair compensation

In assessing what would be fair compensation, I consider my aim should be to put Mr C as close to the position he would likely now be in if the redress had been available for re-investment from 30 March 2021.

Mr C started to re-invest the cash transfer from 1 April 2021. It's not possible to say *precisely* what he would've done, but I'm satisfied what I've set out below is fair and reasonable given Mr C's circumstances and objectives when he invested. I acknowledge Mr C feels I should link the redress to the performance of the ceding fund, but I don't agree. Mr C could've re-invested back into the ceding fund. Instead he chose to invest in several other funds, without confirming with his new provider the ceding fund was available on their platform. I don't think it's fair and reasonable to link any further remedy to the ceding fund as I consider that's too speculative. So, I've decided to take a balanced approach to this part of the remedy and decided I should ask Embark to compare an index fund in which the mix and diversification provided is close enough to allow a reasonable measure of comparison given Mr C's circumstances and risk attitude.

Embark don't feel Mr C has been deprived of the funds, and interest on the shortfall shouldn't be payable as Mr C wouldn't have earned interest on this amount. I've already accepted it's unlikely Mr C would've left his funds in cash. But had Embark provided the correct ISIN, I think it's more likely than not Mr C would've invested in the same or similar funds to the ceding fund. In this case Mr C chose to invest in similar funds and, in my opinion, Mr C has been deprived of investing the redress amount in similar funds for some time. To rectify this Embark should pay additional redress based on Mr C's exposure to similar funds, rather than a simple interest remedy, or indeed any link to the ceding fund because he wasn't invested in this fund after 30 March 2021. I satisfied this is a fairer way of calculating the likely cost of Mr C being deprived of this amount.

What should Embark do?

To compensate Mr C fairly, Embark must:

- Pay the difference between the redress and the *fair value* of the investment into the new ISA Mr C holds.
- Embark should also pay interest as set out below.

*Income tax may be payable on any interest awarded.

Investment name	Benchmark	From ("start date")	To ("end date")	Additional interest
'the redress'	FTSE UK Private Investors Income Total Return Index	30 March 2021	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance) *

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr C wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it's called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr C's circumstances and risk attitude.
- It takes into account Mr C has been deprived of the redress for a time and, based on what Mr C did with his existing funds over the same period, it's a fair redress.

Tax considerations

Although it's my intention to ask Embark to pay the above redress into Mr C's new ISA, if this isn't possible it's important for me to consider Mr C lost the amount of the

redress from his ISA allowance. If the redress cannot be paid into Mr C's new ISA I've considered whether he will incur any additional tax burden. We generally think it's fair to assume that:

- Any charges on holding the investment outside the ISA will not be significantly different from those that would have applied if it had been held within an ISA as intended.
- Mr C is a higher rate taxpayer.
- Mr C's tax position will remain unchanged for as long as he holds the investment.
- The tax position of the investment will remain unchanged while Mr C holds it.
- If the investment pays dividend distributions, it will return 7.5% each year (made up of 5% growth and 2.5% dividend).
- If the investment pays interest distributions, it will return 6% each year (made up of 1% growth and 5% interest).
- If the investment doesn't pay either interest or dividends (e.g. growth stocks), it will grow at 7.5% each year.

Mr C says he's invested into ISA's for a number of years. He says he intends to do so for a further 10 years, and that he has the resources to do so. I've seen Mr C used his 2021/22 ISA allowance and that he has built up a sizable ISA portfolio. Taking this into account Embark should assume the investment be held for 10 years before it's sold if they can't pay the remedy into Mr C's existing ISA portfolio.

There's more information about how to resolve ISA complaints on our website here

- <https://www.financial-ombudsman.org.uk/businesses/complaints-deal/investments/isa>

Embark should work out what tax losses Mr C would suffer as a result of the delays using the above assumptions. This loss should then be paid to him.

Finally, the delays in this case have gone on for many months, and Mr C has experienced substantial inconvenience due to the delays. Mr C also paid platform and adviser fees to Embark. I think the offer from Embark to refund £137.91 in platform fees and to pay Mr C £300 to make up for the general delays he experienced in transferring his ISA is a fair and reasonable one.

My final decision

I've decided that Embark Investment Services Limited should:

- Calculate the value of the ceding fund on 30 March 2021 and pay the difference, if any, between the value of the fund on this date and the £135,285.95 they sent to the new provider. This amount, which I referred to as the '*the redress*', should be paid into Mr C's ISA account with the new provider.
- Pay the difference between the redress and the fair value of the investment into the new ISA Mr C holds, as detailed in the table above. This amount should be paid into

Mr C's ISA account with the new provider.

- If the above amounts cannot be paid into Mr C's ISA account, calculate what tax losses Mr C would suffer as a result of the delays using the above assumptions. This loss should then be paid to Mr C.
- Pay Mr C a refund of fees of £137.91 and £300 for the general delays he experienced..

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 October 2022.

Paul Lawton
Ombudsman