DRN-3706235

The complaint

Mr S complains that Embark Investment Services Limited ("Embark") failed to transfer his self-invested personal pension ("SIPP") to another provider in a timely manner.

What happened

I issued a provisional decision on this complaint in August 2022. In that decision I explained why I didn't think the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

> *Mr S held pension savings in a SIPP. In 2020 Mr S was informed that the provider of his SIPP would be changing to Embark. But, as part of that change, he was told that if he was unhappy with Embark as his new SIPP provider he could move his pension savings to an alternative provider without charge. Mr S says that his research suggested that the SIPP offered by Embark was intended for consumers that were in receipt of ongoing financial advice. So, since Mr S managed his own pension investments, he decided to move his SIPP to another provider.*
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> *Mr S gave his instruction for the transfer of his SIPP in early December 2020. His SIPP was to be moved "in-specie". That meant that his investment holdings would be re-registered with the new provider, and any cash he held would be transferred separately. The benefit of that approach was that he wouldn't be "out of the market" whilst the transfer took place. But Mr S says he was aware that transfers of this nature do generally take longer to complete than a simple movement of cash.*
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> *I can see that Mr S, and the administrators of his new SIPP, had regular communication with Embark in the first months of 2021 in an attempt to progress the transfer. But Embark has explained that it was facing a large volume of work at that time and so it wasn't able to complete the transfer as quickly as it would have expected.*
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> *The new provider confirmed it could accept all the assets held in Mr S's SIPP on 20 January. But Embark didn't arrange the transfers until 22 February, and these settled on 3 March. And a further four weeks elapsed before the cash balance of Mr S's SIPP was transferred. But the new provider also needed a written confirmation of the transfer from Embark. Despite Mr S's chasing this wasn't provided until 9 June. It was at that point that the new provider considered the transfer to be complete, and Mr S was allowed to drawdown on his pension savings.*
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> *When Mr S first complained to Embark it accepted that his transfer had taken too long to complete. So it paid him £250 for the inconvenience he'd been caused. Mr S didn't think that compensation was enough and brought his complaint to us.*
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> *Embark has already accepted that Mr S's transfer took too long. And neither Embark nor Mr S appear to be placing any blame for those delays on the new SIPP provider. From the evidence I have seen, the new provider appears to have acted properly and*

promptly in dealing with the transfer request. 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 S 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, and in particular its proximity to the end of the UK tax year, does have an influence on the impact on Mr S.

Mr S's transfer wasn't the simplest that Embark might be asked to complete – as I said earlier that would have involved a simple transfer of cash. But neither was it the most complex – Mr S's pension investments were UK based and, from the limited evidence I have seen, don't appear to have suffered from any liquidity problems. So it does seem that Embark needed to simply request the re-registration of the investment holdings, and transfer the cash balance Mr S 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. There was a period of more than a month before Embark placed the re-registration instructions. And a similar period of time after that had been completed before Embark transferred the cash balance to the new provider. Whilst I accept that Embark has agreed its service fell short of its normal standards due to high volumes of work, I don't think the time taken to complete the transfer was acceptable.

Mr S was accessing his pension savings by taking uncrystallised funds pension lump sum ("UFPLS") withdrawals. That effectively meant that part of each withdrawal he made was free of income tax, with the remainder being taxed as income. Mr S says his intention was to utilise his entire basic rate allowance in the tax year ending April 2021. He had already taken a UFPLS of £36,000 and Mr S says he planned to take a further UFPLS of £30,000 before the end of the tax year. He says that he expected his transfer to complete well in advance of that date, allowing him to request his payment from the new SIPP provider.

As I said earlier, in-specie transfers can take longer than cash transfers. And there isn't any set time of how long in-specie transfers should take. But Mr S has provided us with some examples from other providers suggesting that transfers of this nature might take between six and eight weeks to complete.

Mr S provided his transfer instruction to Embark in early December 2020. So there was a period of at least four months before the end of the tax year. I don't think it was unreasonable for Mr S to consider that it would be likely that his transfer would have completed in time for him to take a UFPLS from the new provider. So I don't place any blame on Mr S for not taking an income payment before the transfer – and consumers are generally advised to not make any changes to their SIPP holdings whilst a transfer process is underway.

Mr S wasn't able to take his next UFPLS from the new provider until June 2021. There is some dispute from Embark about whether the new provider might have allowed Mr S to access his pension savings a little earlier. But I don't think I need to explore that argument in any detail. The key date here is the end of the tax year in April 2021. Since the transfer hadn't been completed by that time, Mr S was unable to take the second UFPLS and make use of his remaining basic rate allowance. That unused allowance has effectively been lost forever.

But I think the nature of the way Mr S chooses to access his pension savings means the loss of that remaining allowance, rather than causing a financial loss at the time, means that Mr S will need to reschedule the income payments he takes in the future. And he says it is that rescheduling that has caused him to lose out in the tax year following the transfer of his pension savings. Mr S has provided us with evidence of the two situations that he says have been affected.

Mr S says that he intended to use part of his second UFPLS payment to pay for the refurbishment of his bathroom. He has provided us with photographs showing the work that needed to be undertaken. But, due to the delay in accessing his pension savings caused by the lengthy transfer period, Mr S says that his plumber estimates that the cost of the refurbishment had risen by several hundred pounds.

Mr S has also shown us that he has agreed to purchase a new car. He said the car was originally expected to be delivered in November 2021, but that date had slipped when the order was actually placed to January 2022. But Mr S says that the money he needed for the balance payment on delivery wasn't able to be taken from his pension savings (without incurring higher rate taxation) until April 2022 and the start of the new tax year. He has said that as a result he needed to take a short-term bridging loan.

I think the two examples that Mr S has provided illustrate the disruption that the delayed transfer has caused to his retirement planning. But I'm not persuaded that it would be reasonable for me to expect Embark to pay compensation for any direct financial losses such as the increased cost of the bathroom renovations, or the cost of any bridging finance.

Mr S has said that, until he received his UFPLS payment he couldn't ask the plumber to take any measurements for his bathroom, or quote for the work that was needed. So I think there is some difference between my being able to conclude that the work was delayed, or the costs increased, solely because of the delayed transfer. I think a more persuasive argument in this regard would have been Mr S already holding a quotation, or a start date needing to be rescheduled. It doesn't seem to me that there were any firm plans in place, with agreed dates and quotations, that needed to be changed by the delays to the transfer.

Mr S entered into his agreement to purchase his new car in September 2021. By that time he was well aware of the delayed transfer, and the subsequent impact on his income tax situation. So whilst I accept the purchase at that time might have formed part of a longer- term plan I think he entered into the car purchase well aware that he wouldn't have access to the necessary funds until later in 2022.

I think both the examples above show that the disruption caused to Mr S could be seen to continue indefinitely. The income he takes from his pension will always be shifted in time due to his understandable desire to remain within the basic rate tax banding. But I think, over time, that disruption will become absorbed into Mr S's normal financial planning and its impacts felt less acutely.

There is no doubt however that the shifting of that income has caused disruption to Mr S's financial arrangements. So it is right that he should be compensated for the inconvenience he has been caused. As I said earlier Embark has paid Mr S £250 in recognition of the inconvenience, but I don't think that amount is sufficient. Instead I currently think a total payment of £750 would be more appropriate. So, unless any responses to this decision change my mind, I intend to direct Embark to pay an additional sum of £500 to Mr S.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr S has said that he accepts my provisional decision. Embark has said that it accepts my provisional findings, but wishes to query the amount of compensation that I have said should be paid.

Embark has noted that, in my provisional decision, I concluded that the overall financial impact on Mr S would be absorbed into his regular financial planning and so any impact would be felt less over time. It has reviewed the guidance shown on our website for compensation of this nature and thinks that compensation of less than £750 would be appropriate.

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.

I have thought carefully about what Embark has said in response to my provisional decision. But those additional comments haven't caused me to change my mind about what Embark should do to put things right. I would, however, like to comment further on the points that Embark has raised.

It is disappointing that Embark has only referred to part of my decision on the impacts on Mr S of the delays that it caused. Whilst I acknowledged that any impacts might reduce over time, I also found that there had been disruption caused to Mr S's retirement planning and that it could be argued that disruption would continue indefinitely. Mr S had lost the opportunity to use some of his personal income tax allowance, and that loss could never be fully recovered.

The guidance we provide on our website in relation to compensation for non-financial loss does not bind me to any set amounts or ranges. I look at each complaint on its own individual merits and decide what I think is fair in the circumstances. Here there was a significant short-term disruption to Mr S's finances – he wasn't able to take a UFPLS until a number of months later. And there was a longer-term impact too since he would be unable to benefit from the income tax allowance that had remained unused. So I still think a compensation payment of £750 would be reasonable, and that it is consistent with awards that I have made in similar circumstances.

Putting things right

I note that Embark has already paid £250 to Mr S in respect of the inconvenience he has been caused. Embark should pay a further sum of £500, making a total payment of £750, to Mr S to reflect the inconvenience caused by the delay it was responsible for.

My final decision

My final decision is that I uphold Mr S's complaint and direct Embark Investment Services Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 November 2022.

Paul Reilly
Ombudsman