

The complaint

Mr O complains that Embark Investment Services Limited (“Embark”) failed to transfer his pension and ISA savings to another provider in a timely manner.

What happened

I issued a provisional decision on this complaint in September 2022. In that decision I explained why I thought the complaint should be upheld and what Embark needed to do in order to put things right. Both parties have received a copy of my 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 O held pension savings in a self-invested pension plan (“SIPP”) and further savings in an ISA. The administration of the SIPP and ISA was migrated to Embark in January 2021, but Embark is responsible for the matters that form this complaint. For ease I will simply refer to Embark as the SIPP and ISA administrator throughout this decision.

Mr O asked Embark to transfer his SIPP to a new provider in December 2020. And he made a similar request in relation to his ISA in January 2021. Mr O wanted, as far as possible, for his pension and ISA investments to be transferred in-specie. But he also held some cash balances as part of each portfolio.

Embark says it took a month before it sent a valuation of Mr O’s SIPP investments to the new provider. The transfer was accepted by the new provider around a week later. But a further month elapsed before most of Mr O’s SIPP investments were transferred. However one transfer remained outstanding until May 2021. So the final part of the transfer – the transfer of the cash balance – didn’t complete until June 2021.

The transfer of Mr O’s ISA was initially delayed since Embark had failed to upload details of the amounts Mr O had contributed to his ISA on tax year 2020/2021. It took around a month for that information to be updated. There were then further delays between Embark and the new provider in agreeing the investments to be transferred. Ultimately the cash balance of Mr O’s ISA wasn’t transferred until August 2021.

When Embark first looked at Mr O’s complaint it accepted that both transfers had taken too long. It offered Mr O £500 for the inconvenience he’d been caused and refunded the fees that had been applied to the SIPP and ISA between 24 December 2020 and 2 June 2021. And Embark said that it would be willing to consider a claim for any missed investment opportunities if Mr O provided some evidence. Mr O didn’t accept that offer and asked us to continue looking at his complaint.

There were two regulated firms involved in Mr O’s transfers – Embark and the new provider. Based on the evidence I have seen I don’t think it would be unreasonable to conclude that both firms have contributed, admittedly to different extents, to the

delays Mr O suffered. 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 O's transfers took too long, and offered 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 O 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 transfers 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 O.

Mr O's transfers weren't the most straightforward that Embark might be asked to complete – that would have involved a transfer of just cash. But, in simple terms, to complete this transfer, Embark only needed to request the re-registration of the investment holdings, and transfer the cash balances Mr O held.

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

In this decision I need to consider whether any delays caused a direct financial loss to Mr O. Like our investigator, I have noted that whilst the in-specie transfers were taking place Mr O's pension and ISA 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 O was effectively prevented from selling those assets, and purchasing new investments, but for the reasons I will now go on to explain, I cannot easily determine whether any financial loss might have been caused.

I think the aspect that should give me most concern is the period of time that Mr O held relatively large cash balances in his SIPP and, to a much lesser extent, in his ISA. The transfer requests were made in December 2020 and January 2021 respectively, but the cash balances didn't reach the new provider until June and August 2021. I accept that some of those delays weren't due to Embark. And that it is generally accepted practice to transfer the in-specie investments before any cash balances. But even so, I think the transfers were completed far later than they should have been.

I've thought about what might have been a reasonable timescale for each transfer. And I support the findings that were set out by our investigator, and for the same reasons. In reaching these conclusions I have only looked at the delays caused by Embark, and stripped them from the overall timeline.

I think that it would have been reasonable to expect the transfer of the cash balance in the SIPP to have concluded some seven weeks after the request was received (allowing within that a short delay to reflect the Christmas and New Year period). And I think that a total delay of 13 weeks was caused to the ISA transfer, comprising the additional time caused by needing to recheck Mr O's ISA contributions and some errors in identifying one of the assets he held.

So for those lengths of time Mr O held cash in his SIPP and ISA accounts that he might have invested had it been transferred in a timelier manner.

But it is difficult for me to say, with any certainty, whether, or how, Mr O would have invested those cash balances. Mr O has provided us with copies of what appear to be emails providing some investment tips that he received, and says he would have relied on, during the periods of the delay. But those emails only provide suggestions of assets that could be held, sold, or purchased. They don't provide any indications of the proportionate holdings of each of the assets. And a further complication is that the statements Mr O has provided for his SIPP post the transfer show that he held variable, and often large, cash balances as part of his investment holdings. So I must have some concerns about whether I can be satisfied that Mr O would have invested all the transferred cash immediately it had been received.

I'm not persuaded that I should ask Embark to compensate Mr O for any investment losses on the basis of the information he has sent to us. But that doesn't mean I would think it fair that Embark should provide no compensation at all.

I appreciate that both Embark and Mr O are unlikely to find that my compensation proposals match what they think is fair and reasonable. But I think they offer a pragmatic solution to ensure that both some compensation is paid to reflect the possible investment losses, whilst also ensuring that the compensation doesn't benefit from hypothetical investments that might be constructed with a degree of hindsight. And that the proposals take into account what I think is a very real possibility that Mr O might not have invested all of the cash balances immediately on transfer.

So I currently intend to direct Embark to provide compensation to Mr O based on half the value of the cash balances that were transferred. And given the lack of objective evidence to show how Mr O would have invested the cash balances I think the use of a benchmark is appropriate. The use of a benchmark will reflect general market conditions at that time, whilst removing the likelihood of hindsight being used to generate artificial returns.

Embark has already accepted our investigator's assessment that a payment of £750 would be reasonable for the inconvenience the delays caused to Mr O. I think a payment of that amount would be fair and reasonable in the circumstances of this complaint.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Despite our investigator extending the deadline for responses Mr O hasn't provided us with anything further. Embark has said that it accepts my provisional findings and has provided details of the compensation it has calculated is due to Mr O.

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.

Given that Embark has accepted my provisional findings, and Mr O hasn't provided me with any additional comments, I see no reason to alter the conclusions that I reached in my earlier provisional decision.

So I uphold Mr O's complaint and direct Embark to put things right as set out in my provisional decision, and repeated below for clarity.

Putting things right

My aim is that Mr O should be put as closely as possible into the position he would probably now be in if his cash balances had been transferred sooner. As I've set out in my provisional decision I consider reasonable dates for the transfers to be completed to be 26 January 2021 for the SIPP and 18 May 2021 for the ISA.

As I've explained, it's not possible to say precisely what Mr O would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr O's circumstances and objectives at that time.

What must Embark do?

To compensate Mr O fairly, I direct Embark to:

- Assess what would have been the investment returns on half of Mr O's transferred cash balances using the benchmark shown below.
- Embark should add interest if necessary as set out below.
- Embark should pay the investment return calculated into Mr O's pension plan and ISA to increase their value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan or ISA if it would conflict with any existing protection or allowance.
- If Embark is unable to pay the compensation into Mr O's pension plan or ISA, it should pay that amount direct to him. But, in relation to the SIPP only, had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr O won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr O's expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr O is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr O would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr O £750 for the inconvenience the delays caused to him.

Income tax may be payable on any interest paid. If Embark deducts income tax from the interest, it should tell Mr O how much has been taken off. Embark should give Mr O a tax deduction certificate in respect of interest if Mr O asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

| Portfolio name | Status | Benchmark | From ("start date") | To ("end date") | Additional interest |
|----------------|--------|-----------|---------------------|-----------------|---------------------|
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|-----------------------|-------------------------|---|-------------------------------------|---------------------------------------|---|
| Half transferred cash | Still exists and liquid | FTSE UK Private Investors Income Total Return Index | Expected transfer dates shown above | Date of actual completion of transfer | 8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance) |
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Why is this remedy suitable?

I've chosen this benchmark because:

- Mr O wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is 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 what I know of Mr O's circumstances and risk attitude.

My final decision

My final decision is that I uphold Mr O'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 O to accept or reject my decision before 9 December 2022.

Paul Reilly
Ombudsman