

The complaint

Mr H complains that Embark Services Limited (Embark) provided a poor service for his Self-Invested Personal Pension (SIPP). He also considers that he's been charged fees for services he hasn't received.

What happened

Mr H has had a SIPP with Embark since 2009. He said he hasn't lived or worked in the UK since 2013. He said that several years ago, he withdrew the entire available balance in the SIPP he held with Embark. But left a distressed asset within it.

When the distressed asset received some value following a liquidation process, Mr H began to take a regular monthly income from his SIPP. He planned to withdraw the remaining funds from his SIPP in a tax-efficient way over several years. And then to close his SIPP.

Mr H said that his remaining SIPP funds were held as cash in a non-interest paying bank account provided by Embark. And that automated direct debit payments were made into another of his bank accounts. He said Embark provided no investment service provided at all. But that it still charged him £795 each year.

Mr H said he asked Embark to detail the service it was providing to him and explain why it was still charging him £795 each year. He said Embark didn't explain why the fees had remained at £795 each year, but did agree to reduce its fee to £250 annually.

Mr H said that he asked Embark to increase his monthly payment. And that it had asked him to complete the same seven-page document he'd already had to complete. He said this contained all the same information. Mr H did this. And started to receive payment for the higher amount.

Embark emailed Mr H on 15 July 2022 to tell him he didn't have enough cash left in his SIPP to pay his regular monthly income of £1,041.66. It asked him to send it the relevant instructions to take a lower amount of income, if needed. It said that any one-off payments would incur a £50 plus VAT fee.

Mr H replied to Embark the same day. He asked it to pay the remaining balance and close the account. But Embark said it couldn't action the request unless Mr H completed an Income Request form for the remaining balance of £817.50.

Mr H said he wouldn't complete another form for what he felt was no reason. He said the only change to his existing payment instruction was to reduce the last payment to the available balance.

On 20 July 2022, Embark told Mr H that his request was technically a new request. And that he would need to complete a new form due to it having regulatory requirements within it that he needed to be aware of.

Mr H felt that there were no regulatory requirements within the form specific to his request.

And asked Embark to state the specific regulatory requirement that applied to his situation if it disagreed. Embark said that Mr H's new request was a Full Fund Withdrawal request, which was different to the regular income that had been paid out for months. And that was why it needed a new form. It also said it needed signed agreements to close his SIPP.

Mr H still didn't agree that he should be required to complete a new form. He raised a complaint about what he felt were Embark's invalid business practices/procedures. He also provided the requested completed form to Embark.

Mr H added to his complaint on 21 July 2022. He made the following points:

- Embark had overcharged him for several years for services it hadn't provided. He'd been paying £795 each year for the last 4 years for what was effectively a cash account. And Embark had only reduced those fees when Mr H had pointed out how high they were.
- He'd been required to complete the same instruction form every time a minor change had been requested, despite most of the form being irrelevant to his request or his situation.
- Embark had still not given him any evidence of the regulatory requirements that needed to be met through the completion of multiple and identical forms.
- He felt that Embark's service was built around the collection of fees, rather than the well-being of its customers.

Mr H emailed Embark on 28 July 2022 to tell it that the final payment hadn't been made as expected on 25 July 2022, despite him having completed and returned the required form more than seven days earlier.

Embark replied the same day. It said it had actioned the Full Fund Withdrawal on the 25 July 2022. But as a fee had automatically debited the same day, the payment was stopped. It said it had raised a credit note for the fee to be refunded, and that it was waiting for that to go through before it could resume the process for the Full Fund Withdrawal. It also said that the payment would take five working days to reach Mr H. And that it had never said that the Full Fund Withdrawal would be with him on or before the 25 July 2022.

Mr H asked Embark further questions on 29 July 2022. He wanted to know why, as his monthly payments had been made on the 25th of each month for the last 3 years, the last one was any different. He also wanted to know which fee had been automatically debited, and what it was for.

Embark replied the same day. It said that the Full Fund Withdrawal request was different from the previous regular monthly payments. And said that the fee that had been taken was the Annual Drawdown Fee of £252, which was charged annually, but which would be credited back to Mr H's account.

Embark confirmed on 3 August 2022 that it'd processed the Full Fund Withdrawal, and that £607.50 would be paid into Mr H's bank account on 10 August 2022. Mr H had been expecting a payment of £817.50 so he asked why the final payment had been reduced.

Embark replied on 4 August 2022. It said it'd charged an Ad Hoc Income payment of £50 plus VAT, as it'd said it would in its email of 15 July 2022. It also said it'd charged £125 plus VAT fee – which it said was outlined in its fee schedule - to close the scheme down, due to the additional work involved.

Embark issued its final response to the complaint on 17 August 2022. It said it didn't uphold it, for the reasons it'd previously outlined in its email exchange with Mr H. Embark acknowledged that it could've acted sooner in charging a single SIPP fee. But said that it'd refunded the annual administration fees and the difference between the former scheme fees and the new single SIPP fees for the current scheme year, as a gesture of goodwill.

Mr H was unhappy with this response. So he brought his complaint to this service. He raised the following points:

- Was it reasonable to pay either £795 or £250 each year plus VAT for the management of a cash bank account?
- Was it reasonable to ask a customer to complete the same form three times? And to state that the reason for the request was a UK tax requirement, when it wasn't?
- Was it reasonable for Embark to have charged an Ad hoc fee for the final payment, when it could've been planned to avoid this?
- Was it reasonable to generate an extra work fee of £125 plus VAT, and then refuse to detail this work when asked? It wasn't clear whether this work had actually been completed or not, as Embark had said that Mr H's account would remain dormant with no fees applied.
- Mr H also said that Embark had promised in writing to make the final payment from his SIPP within five working days. But he said it hadn't.

Mr H also told this service that he'd recently received a letter about new fees from Embark, despite no longer having an account with it.

Our investigator asked Embark for further information. He said he'd not been able to tally the charges applied with information on the Embark website. So he asked Embark to provide the following:

- The fee schedule applicable to the SIPP held.
- The last five years of annual SIPP statements showing the charges applied and holdings.
- An explanation of the £795 annual charge and how it was applied.
- The amount and date of the final withdrawal.

Our investigator also noted that Embark had said that the SIPP wasn't converted to a Single SIPP fee until Mr H gave instructions to do so, and that would normally constitute as financial advice. He asked Embark to confirm which section of the terms and conditions it'd provided confirmed that instructions could only be provided by a financial advisor. And to confirm if a financial advisor was currently attached to the plan. If not, he asked it to state when the financial adviser was removed. He also asked Embark to confirm the refund amount.

Embark provided most of the requested information, but it didn't provide the requested fee schedule. And the table of the fees it had charged Mr H had been cut off so that the fee column wasn't fully visible.

Embark said that Mr H's fee tariff was set to its annual management fee (traditional

investments), for a single SIPP. It said that due to Mr H's holdings, the fees ordinarily applicable to his SIPP were the annual management fee, the annual drawdown fee, and the bank disbursement. It said that the SIPP was essentially dormant, but that it needed to remain open until such time that the assets could formally be removed.

Embark said that it couldn't evidence that a £795 annual charge had been applicable to Mr H's SIPP. It also confirmed that the final gross income payment of £607.50 had been processed on 10 August 2022.

Embark said that section 7.2 of its terms and conditions confirmed that instructions relating to the SIPP must be given in writing and signed by the client or, if it agrees, their Financial Adviser. But said that although the terms and conditions indicated that instructions should come through a financial adviser if one is appointed, it would, and did, accept instructions from a client directly.

Embark also said that it didn't automatically adjust its fee tariffs dependent on the assets held with a SIPP as it wasn't aware of a client's investment direction within the SIPP. It felt if it did, it could constitute financial advice, which it wasn't authorised to provide. So it only processed such amendments following such an instruction or request. Embark also said that there was currently no financial adviser attached to Mr H's SIPP. And that his previous adviser had been removed from the SIPP on 24 July 2017 at their request.

Our investigator repeated his request to Embark for the missing and unclear information to be provided. But Embark didn't respond further.

Based on the information available to him, our investigator felt that the complaint should be upheld. He felt that Embark may have incorrectly charged Mr H the £50 ad hoc fee. To put things right, he felt Embark should refund this along with interest at 8%, calculated from when the final payment was made on 10 August 2022. He also felt it should send Mr H £50 compensation for its error.

Mr H still felt that he'd been charged the £125 fee for "winding up" his account, despite the fact that it hadn't actually been closed. He said this was evidenced by the fact that he was still getting fee letters. He still didn't know what work Embark had done for the fee.

Our investigator told Mr H that Embark had confirmed that he was still getting fee letters as he still held a SIPP. So Embark was still required to issue the adjustment to their fee schedules notification. But it'd confirmed that it'd taken the decision to suspend the application of fees to Mr H's arrangement. He also confirmed that he felt the £125 fee had been correctly charged.

Mr H accepted our investigator's findings. Embark didn't respond to our investigator's view.

As agreement couldn't be reached, the complaint has come to me for a 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'm going to uphold it. I agree with our investigator, based on the information we've been provided with, that Embark appear to have charged Mr H an ad hoc fee of £50 plus VAT which isn't included in its fee schedule. I'll explain the reasons for my decision.

I first considered Embark's Withdrawal form requirements.

Withdrawal form requirements

Mr H has asked this service to consider whether it was reasonable to ask him to complete the same form three times. And to give an incorrect reason for requiring the form again.

Embark said that unless a form is completed to establish regular income on a regular basis, it needs a completed Income Instruction Form each time a customer requests income to be taken from his SIPP. It said it can't act off previously completed instructions where circumstances may've changed. And in this instance, it had to treat the request as a Full Fund Withdrawal, not a regular income payment. It said this required it to undertake additional steps to ensure that the scheme could be closed after the final payment had been made.

Embark also said that its role as scheme administrator is to ensure that the scheme runs in line with the HMRC Pension Scheme Tax Manual and to comply with the regulatory and legislative obligations owed to it. So, to ensure it complies with those obligations, it requires a written instruction to withdraw the funds and close a scheme.

I can understand why Mr H felt that it was unnecessary for him to complete further forms for what he felt was basically the same request. But, from what I've seen, Embark was acting correctly under UK financial regulation rules and regulation, specifically the FCA Conduct of Business Sourcebook (COBS) 19.7 – Retirement Risk Warnings.

As our investigator noted, when a consumer requests funds from their pension, these rules require pension administrators and providers to provide certain pension guidance, or encourage the consumer to take pension guidance and provide appropriate risk warnings when drawing down funds.

As Mr H's final income payment was different from his previous monthly payments, he had to complete a further withdrawal form. So I can't fairly say Embark did anything wrong here.

I next considered Mr H's point about his final payment not being made when it was promised.

Was the final payment late?

Mr H also said that Embark had promised in writing to make the final payment from his SIPP within five working days. But he said it hadn't. He also said he'd expected it, in line with his usual monthly payments, on 25 July 2022.

I understand that the final payment was paid on 10 August 2022. But Mr H felt that his monthly payments were usually received on the 25th of each month. He also noted that Embark had told him, in its 28 July 2022 email, that it would take five working days for the payment to reach him. This would've meant that the payment should've been made by 4 August 2022.

Embark said that the annual fee was automatically deducted from Mr H's SIPP. It said it identified that the fee was no longer applicable and immediately processed the internal documentation to credit the fee back to the scheme to correct the position. And that this transaction had taken a few working days.

From what I've seen, the final payment was made a few days late. But this was because the processing of that payment had to be paused because an automated management fee was

incorrectly taken from the existing SIPP balance. This meant that the fee needed to be reversed before the final payment could be made.

From what I've seen, Embark didn't explain what had happened until Mr H had chased it for the final payment. Despite this, I'm satisfied that in refunding the incorrectly charged fee as quickly as possible, Embark took reasonable steps to put Mr H back to the position he should've been in. Therefore I don't require Embark to take any further action for this part of the complaint.

I next considered the charges levied on Mr H.

Charges

Embark said that Mr H agreed to the payment of fees when he signed his original application form in September 2009. It also said it had written to him to provide notice each time it changed its Fee Schedule. And that it was entitled to charge fees for the administration of Mr H's SIPP in line with the published fee schedule as detailed in its terms and conditions.

Embark said that it didn't automatically adjust its fee tariffs based on the assets in a SIPP. This was because it can't know what a client's investment direction within the SIPP would be. It also said that it couldn't convert Mr H's scheme to a single SIPP fee until he'd asked it too. This was because it felt this change of scheme fees would ordinarily constitute as financial advice, which it wasn't regulated to provide. But said that it'd refunded the annual administration fees and the difference between the former scheme fees and the new single SIPP fees for the current scheme year, as a gesture of goodwill.

Mr H didn't think it was reasonable that he'd paid £795 each year plus VAT, before then paying £250 each year plus VAT, for what was essentially the management of a cash bank account.

As noted above, despite our requests, Embark hasn't provided the fee schedule or an unabridged version of the fees it charged Mr H. As it's not clear which type of SIPP Mr H held, and which terms and fee schedule applied, I've had to base my decision on the information I do have.

From what I've seen, there's no evidence that Mr H was charged an annual fee of £795. And, based on the information I've seen, it appears that Mr H was charged the correct annual fee throughout.

I acknowledge that Mr H considers that his annual charge was too high before Embark reduced it to £250 each year. But I don't agree that this charge was unfair. I say this because I consider that Embark's position – that it can't know a client's investment direction within the SIPP – is a reasonable one.

I next considered Mr H's other complaints about the fees he was charged – the £50 plus VAT ad hoc fee and the £125 plus VAT scheme closure fee.

Embark said that following completion of the Full Fund Withdrawal request by Mr H, the scheme wind-up fee was triggered, and ad-hoc pension income instruction processing fees were raised, as it wasn't a standard income payment. It said the charges, for £125 and £50 respectively, plus VAT, debited the SIPP on 28 July 2022 and 4 August 2022. And that the charges had been applied as they would for any other client taking a Full Fund Withdrawal being processed outside of the monthly payroll run.

Our investigator noted that although we've not been provided with the specific fee schedule

applicable to Mr H's SIPP, he was able to find Embark fee schedules online. These appear to show that the £125 scheme wind-up fee has been charged correctly.

However, the same fee schedules don't appear to reference a £50 ad hoc fee. While I acknowledge that Embark did state, in its 15 July 2022 email, that: "*any one-off payments would incur a £50 plus VAT fee*". I've not seen any evidence that this charge is supported in the fee schedules.

So, while I agree with Embark that it was entitled to charge fees for the administration of Mr H's SIPP in line with the published fee schedule, I can't fairly say that the £50 ad hoc fee was included in the fee schedule, so I don't think Embark has acted fairly in charging this fee. And I uphold this complaint.

I agree with our investigator that Embark should refund the £50 fee and apply 8% interest from when the final payment was made on 10 August 2022 to the date of settlement. This is to compensate Mr H for the time he's been deprived of this money. I also consider that as Embark made a mistake, it should pay compensation of £50 for the administrative error it made. I say this because the error has caused Mr H frustration and inconvenience.

Putting things right

Embark Services Limited must refund the £50 fee and apply 8% interest from when the final payment was made on 10 August 2022 to the date of settlement. It must also pay Mr H £50 compensation for the impact of its error.

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

My final decision

For the reasons I've given above, I uphold this complaint. Embark Services Limited must take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 April 2023.

Jo Occleshaw
Ombudsman