

## **The complaint**

Ms P complains about the time it has taken Embark Investment Services Limited (Embark) to transfer her stocks and shares ISA to a new provider.

She says Embark refused her initial request in December 2021 because it held incorrect information about her national insurance number.

Ms P also complains that she was unable to access details of her account following a migration from her old provider to Embark and it took too long for Embark to authorise her husband acting on her behalf, and to provide details.

She further states that Embark did not action a request to sell her ISA funds to protect from market movements whilst waiting for the transfer to take place.

## **What happened**

In September 2021 Ms P's former provider wrote to its customers to inform them that their investments were being migrated to Embark, and to give them 60 days-notice of the migration.

In December 2021 the former provider wrote again to remind customers that their investments were being migrated. Both letters explained that it was important for account holders to provide an email address so they could access their new accounts.

Information was also provided to customers about the cut-off dates for transfers and other account activities as a result of the migration.

On 24 December 2021 both Ms P and her husband made a request for their stocks and shares ISAs to be transferred to a new provider as cash.

On 4 January 2022 Ms P's transfer request was rejected as the national insurance number used in her transfer request didn't match the number held by her provider.

On around 11 January 2022 the transfer request was re-submitted with the new provider seeking information from the former provider at the first stage of the process. The transfer request was rejected as it was made during a transfer blackout period when Ms P's ISA was being migrated from her former provider to Embark.

On 12 January 2022 Ms P's husband sent a request by email to sell the investments held within her ISA to cash.

On 14 January 2022 her husband's transfer was completed.

On 23 January 2022 Embark issued a letter with new account details which was available from the platform. Ms P, at that time, was unable to access the platform.

On 26 January 2022 the new provider contacted Embark to explain it was expecting a

transfer of funds.

Shortly after, the new provider incorrectly attributed funds from an investment belonging to Ms P's husband to Ms P's new ISA account.

On 28 January 2022 Ms P's new provider issued a letter to Ms P which asked her to complete a paper transfer authority form.

On 7 February 2022 Ms P's husband emailed Embark and made a complaint about the rejected ISA transfer, as a result of the NI number held by the former provider, and the resulting delay in transferring Ms P's ISA.

Embark responded and indicated it was unable to record the complaint as Ms P's husband didn't have authorisation on his wife's account to act on her behalf. It also noted that Ms P could contact Embark and make a complaint.

On 8 February Ms P's husband supplied a letter of authorisation provided by Ms P.

On 11 February 2022 the new provider contacted Embark to find out the status of the transfer. It was informed that the previous two requests had been rejected and no further request had yet been received. The new provider was advised to call back in a week to check the most recent transfer request had been received.

On the same day the new provider contacted Ms P and informed her of the outcome of that conversation. It noted that her ISA was still with Embark and a new transfer request was required.

A further ISA transfer request was made which failed because Ms P's old account details were used rather than the Embark account details.

On 5 April 2022 Embark replied to the authorisation request from Ms P's husband and asked for some further information. It also apologised for the delay in responding to the request and cited the higher number of administrative tasks caused by the migration, as a reason for the time taken to respond.

On 20 April 2022 Ms P's husband was added as a third party who was authorised on the account. He was then able to access Ms P's Embark account details.

On 28 April 2022 the new provider requested information about the ISA account in preparation for a transfer.

On 29 April 2022 Embark provided that information.

On 4 May 2022 the new provider accepted the valuation and requested the transfer of the ISA. That request was actioned on 5 May 2022 with units then sold on 6 May 2022. The transfer of Ms P's ISA to the new provider was completed on 23 May 2022.

Embark didn't uphold Ms P's complaint. It said the first transfer request had been rejected because of a discrepancy with Ms P's national insurance number and it said that arose because that was the number used on her ISA declaration form.

Embark said the second request made in January 2022 was rejected because it was received during a blackout period, in place because of the pending migration to the Embark platform.

Embark said the first valid transfer instruction it received was on 4 May 2022 and it then subsequently transferred the funds from Ms P's ISA to her new provider on 23 May 2022. So, it didn't agree that it had caused any delay in transferring her ISA.

Ms P disagreed with Embark's conclusions.

Our investigator upheld the complaint and said Embark should have checked the national insurance details provided with the 2011 ISA declaration before amending its records, because those details were different to those on the original application in 2007.

She noted that the first transfer request had been rejected because of the discrepancy in relation to the national insurance numbers. The investigator took into account that Ms P's husband's request, made at the same time, had been completed on 14 January 2022. So, she felt that was the relevant date for calculating compensation by comparing any difference in value. The investigator was also satisfied that Ms P had then bought units in funds within her new ISA and she said any difference in the unit price should also be taken into account. The investigator noted there been a blackout for a certain period in respect of account activities because of the migration of accounts to Embark.

The investigator didn't think that Embark was responsible for Ms P not being able to access her new account details because she was satisfied correspondence had been sent to account holders prior to the migration, asking them to provide an email address.

The investigator considered the delay in responding to the third-party authorisation request made by Ms P was significant and caused by Embark. She noted it had explained those types of requests were generally processed in one to three working days. So, she said Embark should pay Ms P £100 for the distress and inconvenience caused.

Embark disagreed and said that the problem with the national insurance number had been partly caused by incorrect information being provided by Ms P in 2011 in the ISA declaration. It reiterated that the second transfer request had been rejected because it had been made during the transfer blackout period during migration.

Embark also reiterated that the first valid transfer request it had received was on 4 May 2022. It said the new provider would have been informed of the rejected requests by the electronic transfer system. Embark also said it had informed the new provider it didn't have a new transfer request when the new provider had contacted it by telephone in February and March.

Ms P's husband disagreed with the investigator's conclusion about the amount Embark should pay for distress and inconvenience and said it was too low.

As no agreement could be reached Ms P's complaint was referred to me for review.

I issued a provisional decision where I concluded that Ms P's complaint should be upheld in part. I considered that Embark had caused some delay to the transfer and should pay compensation of half of any difference in value (where the earlier value was higher than the actual value received) if the transfer had occurred eight working days earlier.

I also concluded that Embark had caused Ms P distress and inconvenience and should pay £200 in compensation.

An extract from that provisional decision is set out below:

*“What I’ve provisionally 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.*

*To recap, in September 2021 Ms P’s former provider wrote to its customers to inform them it was migrating their accounts to Embark. Customers of the former provider were also informed, that as a result of the migration, various activities involving their accounts would have to occur before specified dates. So, there would be a “blackout” period where activities couldn’t take place, after which any instructions would need to go to Embark.*

*Ms P was looking to transfer her Stocks and Shares ISA to another provider. The relevant dates for transfers were explained in the information for account holders.*

*“New instructions to transfer an investment to a different provider will be accepted up until 17 December. Any investment transfer instruction received after 17 December should be made to Embark Platform after 24 January. If a transfer out instruction has been made before 17 December but not completed, that investment will not be transferred to Embark Platform and the transfer will be managed through to conclusion by the existing XX (former provider) process.”*

*ISA transfer requests are carried out by the new provider contacting the existing provider and asking for information about the investments held. The new provider will then ask the existing provider for their client’s investments to be transferred, or if the transfer is in cash- for their client’s investments to be sold and the cash to be transferred.*

*The existing provider has to be satisfied that the transfer request is correct and complete in order for it to transfer the investments, or alternatively, sell the investments and transfer the cash.*

*First transfer request*

*Ms P’s request was sent on 24 December 2021, at the same time as her husband’s request. Her husband’s request was actioned and completed on 14 January 2022. So, his request was accepted by their former provider despite it falling inside the relevant blackout deadline imposed due to the migration.*

*However, Ms P’s transfer request was rejected on 4 January 2022 because the National Insurance number on her request didn’t match the NI number held on her account file. I can see Ms P’s request used the correct number so Embark (or in reality the previous provider it took over from) didn’t hold her correct national insurance details. Having considered the application form that was submitted in 2007, it appears that it contained the correct number.*

*However, a subsequent form was provided in 2011, when a further ISA payment was made, with an incorrect NI number. That form was signed by Ms P.*

*I consider the former provider (whose account was taken over by Embark) should have questioned this “new” or different NI number rather than simply updating its records. I should explain here that Embark has stated that it has responsibility for complaints about acts/omissions that took place prior to the migration from the former provider. So, I consider it bears some responsibility for that error. However, I have to also consider the actions of the other parties involved and the reason the former provider had the incorrect NI number in the first place, is that it was supplied with this number by way of a form signed by Ms P. So, I’m*

*not persuaded on balance that Embark bears all of the responsibility for this.*

*I also take into account that the first transfer request was rejected on 4 January 2022, and I am satisfied on balance that the new provider was made aware of the rejection shortly after. I note there was an electronic system in place (Altrus) which would notify the new provider of the rejection. In addition, in Ms P's timeline of events, it is clear that the new provider was aware that the transfer had not been successful by 11 January 2022.*

*There also appears to have been some confusion as to whether the transfer had gone through, because Ms P's new provider received some funds in her account which had been misapplied from another account. So, it emailed Embark on 26 January 2022 to inform Embark that it had been expecting to receive a larger sum from Ms P's stocks & shares ISA.*

#### *Second request to transfer ISA*

*I note that customers had been forewarned about the blackout period and how transfers would be processed after the migration. So, I don't think the former provider (now Embark) acted incorrectly in refusing the transfer request on 12 January 2022. That request would need to have waited until 25 January 2022, and it would need to have been directed to Embark.*

#### *Request to sell ISA funds to cash*

*I can see that Ms P's husband emailed the former provider on 12 January 2022 and asked for Ms P's funds to be sold to cash while they were waiting for the ISA to be transferred. He was informed his request would be passed to the servicing department, but it wasn't actioned.*

*I consider on balance there were two reasons why this request wasn't acted upon. Firstly, this was very close to a trading blackout that had been imposed as a result of the accounts being migrated from the former provider to the Embark platform. The trading blackout meant that transactions were suspended between 14 and 24 January. This being the case, I consider it more likely than not that by the time the request was received and seen by the correct department, the blackout would have been in place. And secondly, Ms P's husband didn't have authority to act on his wife's account at that time. The provider wouldn't be able to act without the account holder's authority and if the old provider had carried out instructions without that authority, it would leave itself open to a complaint and/or claim from the account holder.*

#### *Third request – to transfer the ISA*

*Ms P's new provider wrote to her on 28 January 2022 asking her to sign a transfer instruction form. That form contained her ISA account number from her former provider and was addressed to her former provider, rather than to Embark. So, I consider that is the reason the request was unsuccessful.*

*By this time, Embark had sent Ms P a new account number which was accessible via the platform. However, Ms P had been unable to log in to obtain these details and I think the reason for this was because she hadn't provided an email address.*

*I can see that both letters sent to customers prior to the migration made it clear that it was important for account holders to supply an email address so that they could access their new account details. Ms P's husband has explained, in effect, that the reason an email address had not been provided was because this type of communication wasn't something Ms P routinely used. He has also said that the process for accessing the new account wasn't simple and all the relevant information wasn't provided. However, I consider on balance that*

*matters would have been simpler if the email address had been provided as requested.*

*Having said that, I appreciate that some consumers may not have, or want to use an email address and that of course is their choice. However, I am satisfied on balance that Ms P was made aware that her account was migrating to a new provider and of the ISA transfer arrangements post the blackout period. So, if she was unable or unwilling to provide an email address, I think it would be reasonable to expect her to contact Embark and ask how she could otherwise access her new account details. And I think if these enquiries had been made early on, then some of the delays could've been avoided.*

*I note that Ms P's husband has made the point that Embark could've made more effort to tie up the details from her account with the old provider. However, I take into account that Embark would've been dealing with numerous requests at one time and some of the system it used would be electronic and automated.*

*It appears that both Ms P's husband, and her new provider, were aware by around 11 February 2022, that the transfer hadn't gone through because the details of the former provider and the old account number had been used. Or in any event, the new provider had been informed by Embark that it didn't have a new live transfer request and it was advised that it should check back later to confirm it had been received.*

*However, the request for information in respect of the ISA, in preparation for the transfer request, wasn't made to Embark until 28 April 2022.*

*I appreciate that Ms P's husband had by then sought authority to act on her behalf, which unfortunately took a long time to achieve due to the delayed response from Embark. But I consider it would have made more sense for Ms P to contact Embark herself and I think it more likely than not that it could have verified her identity and provided her account details.*

*I also note that Ms P's husband has referred to a further transfer application in March 2022 but Embark has no records of this request and no clear evidence of this request, such as transfer form or electronic records, has been provided. In addition, if such a request had been made to Embark, I would have expected the new provider to check with Embark that it had been received given the background of difficulties with this transfer.*

#### *Delay to ISA transfer*

*I am satisfied that Embark made a significant contribution to the initial delay when the first transfer request was made. I consider the relevant period was from 24 December 2021 to 11 January 2022. Although I note there was a holiday period here, with four non-working days over the Christmas period. So, I consider eight working days were lost.*

*I also have to consider the actions of the other parties involved so I don't think it would be fair and reasonable to compare the amount received in May 2022, with what would have been received on 14 January 2022.*

*I consider Ms P and the new provider acting on her behalf, should've tried to mitigate that delay by sending a correctly completed transfer form to the correct entity, Embark, as soon as possible after the blackout, for the reasons I have already outlined.*

*I appreciate that Ms P had difficulties with logging in to her new Embark account, but I am satisfied on balance that she was informed in advance of what was required from account holders as a result of the migration.*

*I also consider that Embark didn't respond quickly enough to Ms P's request for her husband to act on her behalf. The authorisation form was provided on 8 February and not responded to until 5 April 2022, with it being authorised on 20 April 2022. Embark has explained it would normally take one to three working days. Although I note this was an intensive period because of the migration of accounts, I don't think this length of delay can be justified in the circumstances. I will address the distress and inconvenience caused to Ms P by this delay later on in this decision.*

*However, I'm not persuaded that the delay in authorising Ms P's husband to act on her behalf caused a delay to the ISA transfer itself. As I don't think a representative was required in order to obtain the correct account details and instruct the new provider. As I have said, Ms P could've contacted Embark after the blackout period.*

*I am also satisfied on balance that once Embark received the information request and the acceptance of the transfer it acted promptly to action it. So, I think the relevant amount of delay to be taken into account is eight working days.*

#### Compensation for any financial loss caused by delay

*Embark should compare the value of Ms P's ISA at the date of transfer, with the value of that ISA if the transfer had occurred eight working days before. If the value is higher, then the difference should be divided by two, to reflect the fact that incorrect information was supplied in a form signed by Ms P, with a declaration that the information within was correct to the best of her knowledge and belief. And that amount should be paid to Ms P (A).*

*I accept that Ms P then went on to buy units in funds from her new provider in June 2022, which were invested in her new ISA, and I note documentation has been provided to support this. So, the unit price paid by Ms P should be compared to an earlier purchase eight working days before. If the unit price was lower at the earlier date, then Embark should pay Ms P half of the difference in the increased cost of buying the number of units that were actually purchased (B). The compensation due to Ms P would be A plus B (on the basis that both A and B showed Ms P to have suffered a financial loss).*

#### Compensation for the distress and inconvenience caused to Ms P

*I am satisfied that Ms P was caused distress and inconvenience by the initial rejection of her transfer request - which I have provisionally determined was caused in part by Embark (as it has taken responsibility for the actions of the old provider in respect of the migrated accounts).*

*I also consider that Ms P was caused distress and inconvenience by the significant delay in responding to the third-party authorisation request. I accept that Ms P was becoming increasingly concerned about the transfer of her ISA, and while I don't consider Embark is responsible for some of the issues impacting this - such as the incorrect application of funds - I think this delay compounded her concern. So, overall, I consider £200 is a fair and reasonable amount for the delay caused in both areas.*

#### Charges

*Ms P's husband has also claimed for the charges incurred on her investments during the delay. I can see Ms P's intention was to transfer her ISA and then take out further investments within her ISA with her new provider, which she did. So, I consider on balance that those new investments would have more likely than not incurred charges. On that basis, while there may have been a slightly longer period paying charges to Embark, I consider that would have been offset by a slightly shorter period paying charges to the new provider.*

*Unless there was a significant difference between the charges, I am not inclined to ask Embark to do anything further in respect of this area of compensation, taking into account the length of the period of delay I have identified.*

*Taxation of any financial loss payment*

*Ms P's husband has pointed out that any compensation awarded for financial loss is money that would otherwise have been paid into Ms P's ISA in previous tax years. So, he says she shouldn't lose any of the current year's tax allowance.*

*Assuming there is a loss here (which depends on the respective fund values at the points identified), I think the key issue here is whether Ms P is more likely than not to use her entire ISA allowance for this/next tax year.*

*Given the time period I have identified and the extent of the annual ISA allowance, it appears unlikely on balance that any financial loss will be so significant to the extent it couldn't be paid in during this, or the next tax year.*

*However, if that isn't the case, then Ms P should provide supporting documentation showing that she has used her full allowance over the last few years and intends to do so in the next year. Account can then be taken of the additional tax she would pay if this money (representing the financial loss caused) was invested in stocks and shares outside of an ISA with the assumption that it would eventually be invested in an ISA in the future."*

Both parties were given an opportunity to respond to my provisional decision with any representations they wished to make. Embark accepted my provisional decision and made no further representations.

Ms P's husband responded on her behalf and enclosed supporting documentation including communications from her former provider, from Embark and the new provider.

In summary he said:

- He had authority to deal with Ms P's account on her behalf with their former provider. So, he questioned why Embark required a new authority. He also queried why Embark didn't advise them to provide a new authority when it received the first correspondence sent by him.
- He pointed out that he dealt with the account on Ms P's behalf without any issue up until 8th February when he attempted to make a complaint on her behalf.
- He said there was a disparity between some of the supporting documentation submitted by Embark and the documents Ms P actually received at the time.
- He enclosed further documentation in support of the points made on Ms P's behalf: letter of September 2021 informing Ms P that her account would be moving to the Embark Platform, reminder letter of December 2021 regarding the move (received 18 December 2021), January 2022 final statement from former provider and April 2022 statement.
- Ms P's husband said the second ISA transfer hadn't been rejected because of the blackout period. He said secure messages they had sent to Ms P's provider, showed the former provider had indicated that it had sent the discovery form to the new

provider on 12 January 2022. So, he said the former provider was actively attempting to progress the transfer application.

- He noted that the former provider had confirmed, in an email dated 11 January 2022, that it was awaiting confirmation from the new provider that it had accepted its valuation and that it needed this as soon as possible to proceed before the migration. Otherwise, the transfer would be paused and continue after the migration on 24 January 2022.
- Ms P's husband said the ISA transfer should have been paused and then resumed rather than requiring a new application.
- He said as some of the process was electronic and automated then the old and new account number should have been linked up.
- He pointed out what he said was a discrepancy between the transfer blackout dates with two sets of dates referred to in the decision. He also noted the September 2021 letter did not refer to a blackout period and the information provided on 18 December was provided too late.
- He said Ms P hadn't received correspondence from her new provider on 28 January 2022 asking her to provide a paper transfer authority form. However, she had been notified at that time that the transfer had taken place but with a significantly smaller amount paid into her new ISA account. He said neither Embark, nor the new provider could explain the reason for this.
- He said that Embark should have contacted Ms P after he raised the issue of a significantly smaller amount being transferred to her new provider. He explained at that time Ms P was very concerned that she had been the subject of a "scam."
- In the email of 1 February 2022, Ms P's husband informed Embark that he and Ms P couldn't locate the Embark account number.
- He said the next application had been refused because Embark were unable to locate Ms P's account number rather than because Ms P didn't use her new Embark account number.
- He said the third transfer application was submitted on around 16 February 2022 replicating the details used in the previous application using the account details for the account with the former provider.
- Ms P's husband said there had been a tripartite telephone conversation with Embark in around mid-February 2022 when they sought the account number and asked about the progress of his authority and the complaint process. And another similar telephone call took place in late April 2022.
- On 19 February 2022 Ms P's husband contacted Embark and asked for the Embark account number to be provided. He said if this had been provided, a new transfer application could have been made using the number.
- Ms P's husband said that Embark had admitted, in an email dated 5 April 2022, that it hadn't been able to find Ms P's account number.

- He noted that Embark had used the old account number on statement correspondence sent in January 2022 (received 2 February) and in April 2022 (received 5 May).
- Ms P accepted that she could have called Embark but she had a medical condition which made telephone conversations more difficult.
- Ms P acknowledged that she could have submitted her email address but noted that given the number of sophisticated scams that occur, she preferred to rely on her husband to act on her behalf.
- Ms P acknowledged that early delays could be attributed to the incorrect NI number, which she acknowledged was partially her fault, and not providing an email address. However, she didn't agree that she or the new provider could have mitigated the delays by sending the correct account details. She questioned why Embark didn't provide her new account details on correspondence sent to her and the correspondence issued used her old account details instead.
- Ms P reiterated that the whole experience had been troublesome and time-consuming and reinforced her reluctance to deal with financial matters.

### **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 carefully considered the detailed representations and supporting documentation provided on Ms P's behalf. Having considered those representations, I have decided to increase the period of delay I consider was caused by Embark by a further five working days and increase the distress and inconvenience payment by a further £50 to £250.

However, otherwise I still remain of the same view as set out in my provisional decision, an extract of which is set out above.

I note in particular what has been said by Ms P's husband about the former provider indicating, in an email on 11 January 2022, that if the transfer request wasn't received in time, it would be paused and continued after 24 January 2022. I think the impact of that email was that Ms P and the new provider didn't chase up progress on that transfer, or make a new application, as early as they would have otherwise done, because they were incorrectly led to believe that the transfer would continue from that date.

I think that if they hadn't been informed that the transfer would continue after the migration then they would've been more proactive in chasing up the transfer and making a new application. I also note that there was the added complication of the new provider attributing monies to Ms P's ISA incorrectly, which confused matters further. So broadly, I consider that five working days were lost here, as I think there would have been a more active response within five working days of the 25 January. That was a key date as it was the day after the end of the transfer black out period and therefore the date when transfer applications could be made to Embark.

Turning to the other points raised by Ms P's husband on her behalf. I consider some of the issues raised have already been addressed in my provisional decision however I have summarised the main points below.

#### Dates of blackout period and where that information was available

I acknowledge the point raised by Ms P's husband that I have referred to two different blackout dates in relation to the migration to Embark. However, I don't think that demonstrates that the information provided by Embark was incorrect. I am satisfied that there were two slightly different periods here, one of those related to transfers, and the other related to trading - so transactions such as the selling or buying of units

The trading blackout meant that transactions were stopped between 14 January and 24 January. Whereas the transfer blackout meant that transfers had to be received by 17 December, so they were weren't accepted between 18 December and 24 January.

The letter sent in September 2021 directed account holders to where they could find further information about the migration and said:

*"What to do next*

*We have built a website where you will find everything you need to know about the move to the Embark Platform, including the features and benefits of your Embark Platform online account.*

*Please visit: [client.embarkplatform.co.uk/embark-welcome](https://client.embarkplatform.co.uk/embark-welcome)"*

I am satisfied on balance that information on the relevant blackout dates could be found on that website.

#### Why wasn't the second transfer application in January successful?

The relevant dates for transfers were explained in the information for account holders.

*"New instructions to transfer an investment to a different provider will be accepted up until 17 December. Any investment transfer instruction received after 17 December should be made to Embark Platform after 24 January. If a transfer out instruction has been made before 17 December but not completed, that investment will not be transferred to Embark Platform and the transfer will be managed through to conclusion by the existing XX (former provider) process."*

And the December 2021 letter informed account holders about the trading blackout. It said:

*"It is important to be aware that, for a short time before the move takes place, there will be a trading blackout on your account – meaning you cannot buy or sell funds in this time. This will be between Friday 14 January 2022 and Monday 24 January 2022."*

The transfer process firstly requires the new provider to ask the old provider for a valuation of the investment. That isn't the request to transfer out the investment but a first step in the process. Once that information is received and accepted by the new provider, then the new provider sends the acceptance which triggers the transfer out to take place.

I can see from the secure messages from the new provider that it indicated that if the transfer request wasn't able to be processed in time, it would be delayed until after the black out. So, I think there was an awareness between the parties involved that there was a

close-approaching deadline. And it appears that the parties were working towards the trading blackout deadline, as the transfer deadline of 17 December had already passed. It seems that the former provider was still trying to process transfer requests beyond that date if it was able to do so.

On 12<sup>th</sup> January 2022 the new provider still hadn't received the valuation from the former provider. Once it received this, it would then need to send its acceptance to the former provider. There is no definitive evidence on when this acceptance was sent.

However, Ms P's husband sent an email to Ms P's former provider on 17 January 2022, enclosing a secure message indicating the acceptance had been sent by the new provider. His email said that the acceptance had been sent on Friday 14 January. However, I think it likely on balance that there would have been a small delay in that acceptance being received and recorded by the former provider. So, taking into account there were two non-working days after 14 January, I think it more likely than not that the acceptance wasn't received, in the sense of being picked up in the system and recorded, until a few days after 14 January 2022. This meant that it was received during the trading blackout (which commenced on 14 January) and in any event, well within the transfer blackout that had started on 18 December 2021.

So, I still think it more likely than not that was the reason the second transfer application was unsuccessful.

#### Use of former account details on correspondence

Ms P's husband has said the correspondence received by Ms P contained her old account number which was confusing and unhelpful as they needed the new account number for the transfer.

Turning to the correspondence, I don't think that it is surprising that the former provider used Ms P's old account number on its final statement in January 2022. That letter was headed Embark but was issued by the former provider. In that letter it said:

*"Your Account has now moved to Embark Platform, here is your final statement for your Account with (former provider)"*

There was then a subsequent letter issued in April 2022 and received by Ms P in May 2022.

That letter originated from their former provider's centre and said:

*"Here is the final statement giving details of the closed account for the period up to 5 April 2022.*

*Please note this account was transferred to Embark Platform in January 2022 and you will receive a valuation from them in the near future."*

So, I don't consider the use of Ms P's old account number on correspondence sent by her former provider indicated that Embark wasn't able to locate Ms P's account number. While I appreciate that it would have been useful to have been provided with the new account number, I consider there was a separate process for this, as I have outlined in my provisional decision which started with the account holder, Ms P, providing an email address. I acknowledge Ms P has explained that she was concerned this could be a scam, but I think by not acting early on in the process, which started with the letter sent to her in September 2021, this led to difficulties with accessing her details which she needed for the transfer to take place.

I note Ms P's husband has said that Embark accepted it was unable to locate Ms P's account details in an email on 5 April 2022. I think the relevant part of that email was referring to an earlier email sent by Embark in response to an urgent query from Ms P's husband made at the end of January 2022. His query related to an incorrect amount of money that was believed (at that time) to have been transferred to Ms P's new ISA.

I note the sender of the April email said, *"my colleague initially was unable to find the account as at the time hence asked for an account number in order to locate the account."* And I consider that initial difficulty in locating Ms P's account details referred to by Embark's representative, was really about the fact that the query made by Ms P's husband did not contain any Embark account details. Although, I do appreciate that was because Ms P didn't know her new account details at that time.

So, I don't think that meant that Embark had somehow lost Ms P's account number as it was provided to Ms P via the platform on 23 January 2022.

#### Authority under account and why no new authority was requested by Embark until 8 February 2022

Ms P's husband has explained that he had authority to act on Ms P's behalf with the former provider and so he doesn't understand why a new authority had to be provided. He also points out that Embark was communicating with him up until he tried to make a complaint on Ms P's behalf.

I don't think it is unreasonable that Embark, as the business taking on the ISA accounts after the migration, would require its own authorisation forms to be completed to satisfy its security requirements.

I also think that the reason it was communicating with Ms P's husband prior to the authorisation, was because he was reporting a potential issue with the transfer and the possibility of some of the monies from the investment going missing, as at that stage it was believed that a smaller amount of money had been transferred. So, I consider that Embark was able to communicate with Ms P's husband in order to investigate this, without giving him any information about Ms P's investment. And it would've been important for Embark to look into this promptly given the concerns expressed. I think that is distinct from providing information to Ms P's husband or taking instructions from him.

#### Difficulty in mitigating delay

Ms P has explained that it was difficult for her to contact Embark by telephone because of a medical condition which was why she relied upon her husband to represent her. Ms P's husband has also said that there was a tripart telephone conversation between himself, Ms P and Embark in mid-February 2022.

I do appreciate what Ms P has said about contacting Embark by phone and I recognise and acknowledge the difficulty she has described. However, as I have said, I think that it is more likely than not that the early provision of an email address or early contact from Ms P to Embark, perhaps with her husband assisting, would have resulted in matters being progressed more quickly and Ms P being able to access her new account details earlier.

As I have said, the two letters sent before the migration both emphasised the importance of providing an email address.

I note that Ms P's husband has referred to a telephone conversation where Ms P was present. We have asked Embark whether it has any details of this - either a recording or note. Embark has said it has searched its records and hasn't been able to locate a record of this call. It has also explained that a call made by a non-authorised party would probably not be attributed to the account holder's file. Ms P's husband had said that he doesn't have a note of that call. So, unfortunately, I am not able to say exactly what was discussed.

However, in any event, I think that in addition to being present on the call, Ms P would've had to provide answers to security questions to access information about her account. And I don't think it is likely that happened here, because I think if she had done so, then Embark would have provided Ms P with her new account details. In addition, I note that mid-February was still quite late into this process.

Overall, I don't think this factor impacts my decision as outlined in my provisional decision and amended in part above.

#### Correspondence from new provider on 28 January 2022

Ms P's husband has explained they didn't see this correspondence at the time and that it wasn't highlighted to them on the new provider's system as something Ms P needed to action.

I note his comments on this, but I don't think it has any real impact on the outcome of this decision because on 11 February 2022 the new provider contacted Embark to find out the position on the transfer request. So, the new provider believed there was a transfer in process at that time - it wasn't awaiting action from Ms P. In that call Embark confirmed that the previous two transfer requests had been rejected and that it hadn't yet received any further request.

#### **Putting things right**

I have concluded that Embark should be responsible for half of any loss for eight working days of delay and the full amount of any loss for five working days of delay.

So, for ease of calculation I think it is fair and reasonable for Embark to pay 0.69 (or 69%, that being 9/13<sup>th</sup>) of any difference in value if the transfer had taken place 13 working days earlier.

So, Embark should compare the value of Ms P's ISA at the date of transfer, with the value of that ISA if the transfer had occurred 13 working days before. If the value is higher, then the difference should be multiplied by 0.69 (to reflect the fact that incorrect information was supplied in a form signed by Ms P, with a declaration that the information within was correct to the best of her knowledge and belief, which is applicable to eight of the working days of delay). And that amount should be paid to Ms P (A).

I accept that Ms P then went on to buy units in funds from her new provider in June 2022, which were invested in her new ISA, and I note documentation has been provided to support this. So, the unit price paid by Ms P should be compared to an earlier purchase 13 working days before. If the unit price was lower at the earlier date, then Embark should pay Ms P 0.69 of the difference in the increased cost of buying the number of units that were actually purchased (B). The compensation due to Ms P would be A plus B (on the basis that both A and B showed Ms P to have suffered a financial loss).

Embark should also pay Ms P £250 for the distress and inconvenience caused.

**My final decision**

My final decision is that Ms P's complaint against Embark Investment Services Limited is upheld in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 30 June 2023.

Julia Chittenden  
**Ombudsman**