DRN-4335682

The complaint

Mr F complains that Embark Services Limited (Embark) caused unnecessary delays to the transfer of his pension from Embark to Hargreaves Lansdown (HL).

Mr F has stated that investment market movements during the delay period have caused financial loss. In addition, Mr F has said that the delay was a source of worry and stress.

What happened

On 13 May 2022 Mr F instructed HL to transfer his Standard Life pension to them.

Mr F queried the progress of the transfer with HL on 21 July 2022 and confirmed that whilst the pension was held within a Standard Life wrap, the funds were held / managed by Embark, and the cash element of the pension held with Hornbuckle Mitchell.

On 28 July 2022 HL replied and provided forms for Mr F to complete. These included confirmation on what funds had previously been crystallised. Having assessed the forms submitted by Mr F, HL contacted him on 5 August 2022 stating that the forms had been completed incorrectly.

Corrected forms were confirmed as being received by HL on 24 August 2022. HL also confirmed that they would request the transfer and implement any investment instructions that had been given by Mr F once the funds had been received.

Embark contacted Mr F on 26 August 2022 to state that the paperwork that had been submitted was incomplete and requested the relevant sections be completed and returned.

On 8 September 2022 HL contacted Mr F to note that Embark had returned part of the transfer forms as they had not been completed correctly. 'Section 3' of the forms had been left blank and as such needed to be completed with an Investment Withdrawal Form also needed to be returned to Embark before the transfer could be processed.

Mr F contacted Embark the same day and submitted the relevant paperwork.

Given the time taken, and with the transfer still not completed, Mr F registered a complaint with Embark, this was subsequently referred to this service for consideration.

Embark confirmed the investment funds were received from Standard Life on 10 October 2022 with these subsequently being received into the HL plan on 12 October 2022.

On 8 November 2022 Embark issued their response to the complaint. They noted they had received the request to transfer on 25 August 2022 and had emailed Mr F the following day to request additional paperwork. Mr F had called on 8 September 2022 to chase progress with this call resulting in Mr F providing all the paperwork required.

Unfortunately, subsequent paperwork had been sent to Standard Life by Embark with electronic signatures rather than the wet signatures required. Embark did not provide correct paperwork to Standard Life until 21 September 2022. Embark accepted responsibility for this and stated that without this delay (and allowing for weekends) Standard Life should have been sent the relevant paperwork by 12 September 2022 with the investment instruction being received by 13 September 2022. As such the complaint was upheld with Embark confirming they would ask Standard Life to value the investments assuming the sale instruction had been received on 13 September 2022 to see if a loss had occurred.

Whilst Mr F had queried why a cash balance of around £15,000 had also been delayed Embark explained that their process was to send all cash in one payment once all investment sales had been completed, as such this element of Mr F's complaint had not been upheld.

Mr F did not accept this response and asked this service to continue to investigate his complaint.

Our investigator looked into things and concluded that whilst there had been a delay, Embark's assessment of this delay was reasonable. The investigator noted that the initial delays to the transfer could not reasonably be attributed to Embark, as they were entitled to ensure all the relevant paperwork had been completed correctly before the transfer was initiated.

As such the investigator agreed with the seven working day delay period which had been identified by Embark.

Whilst Mr F had also queried why the element of his cash pension had not been transferred sooner, the investigator explained that the process followed by Embark in sending one payment of all pension monies only after all investment sales had been completed was not uncommon. As such this element of the complaint was not upheld.

The investigator also did not agree that the fees levied by Embark during this period should be returned but did go on to make redress recommendations to both Mr F and Embark.

Whilst Mr F accepted the outcome, Embark have yet to respond to the findings issued.

As such, and to limit any further delays to this complaint, the case has been passed to me.

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.

As per the investigator's findings I have concluded that Embark's assessment of the delays they are responsible for is reasonable.

The timeline of events above shows Mr F commenced the process of transferring his Embark pension in May 2022. However, it also shows that it was not until September 2022 that Embark themselves were provided with the relevant paperwork which would allow them to commence the transfer process.

Whilst I fully appreciate the time between May and September 2022 would have been frustrating for Mr F, I do not consider it reasonable to hold Embark responsible for this time period. It was entirely appropriate for them to insist on fully completed transfer paperwork before they began working on the transfer. In this case the fully completed paperwork was available to Embark on 8 September 2022 and it is only from this point at which Embark could act on the transfer request.

Whilst Embark then had all they needed, the correct subsequent paperwork allowing Standard Life to sell the underlying investments was not issued 21 September 2022, with Embark initially providing documentation with electronic rather than wet signatures.

Embark have accepted responsibility for this error and provided an alternative timeline showing that upon receipt of the required paperwork from Mr F on 8 September 2022, they should then have sent the correct paperwork to Standard Life by 12 September 2022, allowing the sale of Mr F's investments the following day – 13 September 2022.

Given the correct paperwork was not in fact sent until 21 September 202, Embark stated that this equates to a delay of seven working days.

As per the investigators findings I have concluded the alternative timeline proposed by Embark is reasonable. From receipt of the correct transfer paperwork on 8 September 2022, this would allow two working days for Embark to process these and forward the relevant documentation to Standard Life.

As explained by our investigator there are no set rules which govern timescales in which pension providers must act in relation to a transfer such as this, however the Association of British Insurers did issue a consultation paper in 2016 which suggested a 48-hour standard for companies to carry out each step in the transfer process – a timeline which would support the outcome reached by Embark and endorsed by our investigator.

With regard to Mr F's other complaint points, I also agree with the outcomes reached by the investigator.

It is common practice for pension providers to transfer all funds from a pension once all investment sales are made, with a separate transfer for any cash held only completed if a specific request for this is made by the policyholder. There is no evidence of any such request being made by Mr F or HL and as such I do not believe Embark acted inappropriately in waiting until the investments within the pension had been sold before transferring the total sum to HL in one go.

Whilst I have concluded that Embark did delay the transfer, I believe the charging of the transfer out fee by Embark is reasonable. This fee is noted within the policy documentation issued to Mr F and work had to be done to process the transfer. Whilst there was a delay attributable to Embark this is relatively limited when compared to the overall time taken as detailed above.

As such I have gone on to give redress instructions below.

Putting things right

My aim is that Mr F should be put as closely as possible into the position he would probably now be in if he had the delays not occurred.

I take the view that Mr F would have sold the Standard Life investments seven working days earlier and consequently invested into the HL pension seven working days earlier. As such I'm satisfied that what I've set out below is fair and reasonable given Mr F's circumstances and objectives when he invested.

What must Embark do?

To compensate Mr F fairly, Embark must:

- Calculate the encashment value of the Standard Life investments had they been sold seven working days earlier.

- I note here that within their submissions to this service Embark have stated they have encountered difficulty in getting the relevant information from Standard Life that would enable such calculation to be performed. I have not been provided any evidence to show how many attempts have been made to gather the information required, however I have concluded Embark should continue to request such information. If required, a letter of authority should be sought from Mr F providing his permission for Embark to access his transaction history within Standard Life.

- Obtain a notional value for the HL pension had this earlier encashment value been invested into the HL pension seven working days earlier, using the actual investments made by Mr F within the HL pension.

- If the notional value of the HL pension using the earlier encashment / re-investment values is higher than the current value of the HL pension, then a loss has occurred, and redress is payable to Mr F.

- Embark should pay into Mr F's pension plan to increase its value by the total 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 if it would conflict with any existing protection or allowance.

- If Embark is unable to pay the total amount into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount 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 F won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr F 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 to Mr F £250 for the distress and inconvenience the delayed transfer caused to his retirement planning.

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

Actual value

This means the actual value of the HL pension.

Fair value

This is what the HL pension would be worth had the Standard Life investments been sold seven working days earlier and this sum re-invested into the HL investments seven working days earlier.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the HL pension should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Embark totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr F's transfer from Embark to HL was delayed. This delay impacted both the sale value of the Standard Life investments and the purchase price of the HL investments. The redress instructions above look to address both issues to ensure Mr F is put as closely as possible to the position he would most likely now be in.

My final decision

I uphold the complaint. My decision is that Embark Services Limited should pay the amount calculated as set out above.

Embark Services Limited should provide details of its calculation to Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 24 October 2023.

John Rogowski
Ombudsman