

## **The complaint**

Miss D says Embark Investment Services Limited, trading as Embark Platform, (“Embark”) delayed, and misled her about, the transfer to Embark of her investment portfolio.

Miss D says the portfolio had a fund (“the Fund”) that was amongst assets Embark told her it could accept but it later found it couldn’t accept. Miss D says Embark’s errors and delay meant she couldn’t access her portfolio for months and caused her financial loss as well as distress and inconvenience.

The transfer was arranged by Miss D’s financial adviser who also brought her complaint. For simplicity in this decision I refer to Miss D when referring to things said or done by her or by her adviser on her behalf.

## **What happened**

Our investigator considered the complaint and thought £220 Embark had already paid Miss D plus an offer it had made to cover the tax arising from her sale of the Fund, was fair redress for the trouble and upset she had suffered. Miss D didn’t agree and referred us to other cases where the amounts and the length of delays were less than they are here but up to £750 had been awarded for inconvenience or distress. She suggested an overall award of £1000 because the Fund’s value had also fallen by about £300 during the delay.

I issued a provisional decision on this complaint. What I said there included, in summary:

Embark wasn’t right to say on 25 February 2021 that it could accept a transfer of the Fund. It didn’t know enough at the time to give that assurance. It needed to ask the existing holder of the portfolio for more information on what all the portfolio holdings were.

If it had done this and the existing provider had responded after a week, Embark could’ve had this information on 8 March 2021. This would’ve shown the Fund was of a share class Embark couldn’t hold at the time. If Embark had then asked the existing provider to convert the Fund into a class it could hold, it might have got an answer by 22 March. This wouldn’t have left much time before the end of that tax year for Embark to get a reply from the Fund’s manager on its proposal for holding the Fund. Even if some of the steps above had taken less time, it isn’t apparent that the need to sell the Fund would’ve been established in time for Miss D to arrange to mitigate the tax on that sale. With all this in mind, Embark isn’t to blame for that tax liability.

Also if she had known sooner that Embark wasn’t able to accept the Fund, I’m not persuaded it would’ve changed Miss D’s decision to use Embark. The Fund was a small part of the transfer, she had a larger holding already with Embark and she had made other arrangements for other assets Embark couldn’t readily deal with, which hadn’t stopped her using Embark.

So Embark’s error, in telling Miss D it could accept the Fund, didn’t change her position overall. But it did cause extra disappointment or frustration when she found in July 2021 that Embark couldn’t confirm that it could take the Fund after all – and that looking into

this meant more delay. For this disappointment or frustration arising from Embark's initial error, £150 would be fair compensation.

This wasn't the only error Embark made. It also delayed the resolution of this Fund issue after that time. I say this because after Miss D complained in August 2021, it wasn't until late October that Embark contacted her again about the issue. Also, whether related to the Fund issue or not, Embark also delayed the transfer overall. After asking it to proceed with the transfer of the other assets in early September – and with Embark having had the valuation since the start of July - Miss D was still chasing this up in December.

Embark is responsible for the delays I've referred to above. Embark points out that Miss D requested a transfer from Embark a month and a half after Embark had said it could accept the assets – and didn't send the signed forms for two more months. But there was no reason for Miss D to send the forms in sooner if she didn't wish to do so. This wouldn't justify Embark delaying the transfer once it was requested in June 2021. Also, having requested the transfer in June, Miss D acted with urgency from July onwards.

Embark's delay meant Miss D didn't gain control of the assets on Embark's platform as soon as she should have done. But I've not seen evidence showing there were particular plans Miss D had for the portfolio that she couldn't carry out due to the delay, causing loss. She didn't raise the prospect of such losses with Embark in the way she raised the tax issue.

It is apparent Miss D was able to arrange to sell the Fund after finding it couldn't be transferred. It seems she could've arranged to sell or modify portfolio assets during the delay if she had needed to do so.

Also Miss D continued to participate in the performance of the portfolio assets during the delay - the situation wasn't like those she has pointed to in which money wasn't invested and so missed out on a return.

Overall, Embark's delays in the transfer of the portfolio didn't cause Miss D loss. But they caused her inconvenience.

An agent was arranging the transfer for her, but this doesn't mean the delays didn't cause Miss D inconvenience (or that its earlier error didn't cause her frustration). Her agent wouldn't have been chasing Embark if the time matters were taking hadn't been of concern to Miss D. The portfolio value was high, and the delay was over a number of months - even after Embark had promised that the transfer would be made a priority. With this and all I've said above in mind, Embark should pay Miss D £350 for inconvenience the delays to the portfolio transfer caused her.

So my provisional decision was that £500 (£150 for frustration caused by the initial error and £350 for inconvenience caused by delays) was fair compensation for inconvenience and frustration Embark had caused Miss D, rather than the £220 it had already paid Miss D and its offer to cover her tax bill. Also I didn't think Embark needed to cover Miss D's tax bill.

Embark replied and didn't disagree with my provisional findings.

Miss D replied with further points. In brief summary:

- It wasn't correct to say that Miss D had access to the funds during the delay. The assets were held in a trust and would only be owned by Miss D once the transfer was complete. So she did not have any authority to request from the existing provider a withdrawal or instruct portfolio changes or the sale of assets. The existing provider would only accept instructions from the lead trustee.
- The sale of the Fund was arranged only when Miss D approached the lead trustee - an elderly relative - 'cap in hand' in desperation. The lead trustee was very stressed about the administrative burden involved anyway and having to approach a relative in this way was far from an ideal scenario for Miss D.
- The above essential point has been completely overlooked when seeking to understand why Miss D was so distressed by Embark's delay. The delay directly prevented her from being able to access the monies and reorganise the portfolio in a more appropriate manner within an appropriate timescale. She did not have unfettered access to the portfolio during the delay.

### **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've arrived at the same conclusions as my provisional decision and for the same reasons. I'm grateful to Miss D for her further points, and I've discussed these below.

I accept Miss D didn't have control of the assets until they had been transferred to Embark. But I remain of the view that Miss D had access to the assets, but through the trustee. It is due to this view - and the absence of evidence of specific changes Miss D tried to make and was prevented from making - that I conclude Miss D did not suffer financial loss as a result of a lack of access to the portfolio assets during the delays.

The fact Miss D was able to sell the Fund supports my view that she was able to make changes to the assets before the transfer was complete. Also I noted that she had made other arrangements for other assets Embark couldn't readily deal with.

I accept that these arrangements had to be made through the trustee and that doing so was more difficult and less convenient than being able to give instructions directly. In my view this lack of unfettered access is part of the inconvenience arising from the delay of the transfer, which I considered and covered in my provisional decision. I remain of the view that the delay did cause Miss D frustration and inconvenience, as outlined in my provisional decision.

So, having taken everything into account, I've decided to uphold Miss D's complaint for the reasons I've given and summarised above. So I think £500 is fair compensation for the inconvenience and frustration Embark's failings caused her, rather than the £220 it has paid her so far. I make no award in relation to any tax liability arising from the sale of the Fund.

### **Putting things right**

Embark Investment Services Limited, trading as Embark Platform, should put things right by paying Miss D £500 for inconvenience and frustration caused to her by its failings that I've identified above. It may deduct from this the amounts it has already paid to Miss D for this.

**My final decision**

I uphold Miss D's complaint and order Embark Investment Services Limited, trading as Embark Platform, to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 15 November 2023.

Richard Sheridan  
**Ombudsman**