

The complaint

Mr and Mrs A complain about Sterling ISA Managers Limited trading as Advance by Embark, referred to as “*Embark*”, or “*the transferor*”.

In summary, they’re unhappy about the delay in transferring their holdings from Embark to a third-party provider referred to as “*the transferee*”.

To put things right, they’d like Embark to transfer the remaining funds to the transferee, pay the difference in performance lost because of the delays, and pay an additional sum for distress and inconvenience caused.

Mr and Mrs A are being assisted by their Independent Financial Adviser (‘*IFA*’).

What happened

In early June 2021, Mr and Mrs A initiated an in-specie transfer from Embark to the transferee. They say that this was so that their adviser could then sell the assets on the transferee platform and reinvest in their Coper Parry Growth 70 Model portfolio (referred to as the “Growth 70 portfolio”), with less time out of the market – particularly in light of recent market volatility, rather than have their investments sitting in cash.

Mr and Mrs A held various funds in their General Investment Accounts (GIAs), some of which required a share class conversion before the transfer to the transferee, which they say should’ve been a simple request. But despite the transferee and Mr and Mrs A’s adviser chasing Embark – about the status of the transfer – multiple times over the last 11 months, Embark was unable to provide a realistic timeframe by which it would? complete the transfer.

In mid-December 2023, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

“...subject to any further submissions, provisionally I’m going to uphold this complaint.

On the face of the evidence, and on balance, despite what Embark says, I’m satisfied that it behaved unreasonably. In other words, and on balance, I’m satisfied that it’s responsible for some of the delays – by not responding to requests from the transferee in a timely fashion, not making clear its reason for rejecting a request, and failing to do so in a timely fashion – therefore, it should pay Mr and Mrs A compensation as set out by the investigator subject to the date of 23 September 2021 as the date of completion overall – on the basis that the transfer probably would’ve happened on or around 16 September 2021, and it would’ve taken Mr and Mrs A a few days to sell and reinvest.

Before I explain further why this is the case, I think it’s important for me to note I very much recognise Mr and Mrs A’s strength of feeling about this matter. They’ve provided submissions to support the complaint, which I’ve read and considered carefully. However, I hope they won’t take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised by the parties under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr and Mrs A, and Embark, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. I don't need any further evidence to make my decision.

I uphold this complaint, in summary, for the following reasons:

- *On the face of the evidence, and on balance, despite what Embark says, I'm satisfied that it's responsible for some of the delays given its part in the transfer process.*
- *Whilst it's difficult to know, precisely, the amount of delay caused, in the circumstances, and on balance, I think the redress recommended by the investigator – except for the date which I believe should be 23 September 2021 – as the date by which Mr and Mrs A would've reinvested following transfer (on 16 September 2021 so far as Embark is concerned) is broadly fair reasonable.*
- *In other words, I think it's more likely than not that the transfer and reinvestment would've completed by 23 September 2021 so far as Embark is concerned – and 19 October 2021 if the transferee's actions are also included. But for simplicity, in this case I'm only considering the actions of Embark and what redress it should pay.*
 - *I appreciate Mr and Mrs A think the overall transfer should've completed by August 2021, but I think that, on balance, this was probably unrealistic given all the issues faced by it and the transferee.*
- *I note that upon successful transfer of other funds, Mr and Mrs A re-invested in the Growth 70 portfolio, which on balance I think is what they would've done with the remainder of the funds upon successful transfer.*
- *That said, realistically I don't think Mr and Mrs A would have reinvested on the actual date of transfer. I think this was likely to have been done a few days later, therefore I think 23 September 2021 should be the date used.*
- *I note the investigator in order to explain why Embark was responsible for a three-month delay uses the example of the transferee trying to obtain a valuation from Embark from 19 June 2021 to 22 July 2021, and the numerous requests that were made between June, August, and September 2021, that weren't responded to in a timely manner.*
- *I'm mindful Embark says that it replied on numerous occasions, rejecting the request – on the Origo Options electronic platform – as it was obliged to decline all share class conversion requests for non-UK assets.*
 - *It is arguable that not doing a share class transfer for non-UK funds is surprising. The obligation to carry out unit class conversions – set out in COBS 6.1H.4R (2) specifically isn't dependent on the fund being a UK one.*
- *Anyhow, even if matters couldn't be progressed, I think the business ought reasonably to have better managed the transfer, better managed Mr and Mrs A's expectations and kept them up to date and informed in a timely manner, which on balance I think it failed to do.*
- *I note that despite the many transfer requests – mentioned above – it wasn't until September and October 2021 that Embark confirmed it couldn't proceed with the transfer. On balance, I think it could've done this much sooner, so that the issues could've been addressed, and the process moved along.*
- *I note that Mr and Mrs A's IFA says that they were aware that (three) funds couldn't be transferred in specie – because the transferee couldn't hold the particular asset class – so they asked Embark to switch the funds to a new asset class prior to transfer, so that it could (eventually) be transferred with everything else.*
 - *For example, it was only after months of chasing that Embark finally confirmed that the PIMCO fund was not a UK fund, and that it had no legal*

obligation to change the asset class. So, the IFA had to get Mr and Mrs A to sell the fund and transfer the cash. Had Embark been more forthcoming in its responses and dealings with Mr and Mrs A and/or their IFA, I'm persuaded that it probably could've done things sooner.

- *I note what Embark says about the transferee contacting it about not being able to request the reregistration via Origo due to there not being an option to exclude or convert the PIMCO fund. But I note, based on the above, this was after much time had passed.*
 - *I'm mindful that there is a separate complaint against the transferee that I'm not holding Embark responsible for.*
 - *In any case, I'm not blaming Embark for the actions of the transferee or its inability to hold certain asset class such that it wasn't possible to transfer certain funds in specie.*
- *I note that until recently three funds remained outstanding – namely Man GLG Undervalued Assets Prof (Acc) for Mr A, and Legg Mason Brandywine Global Fixed Income GBP Hdg X (Inc) and Jupiter UK Alpha U1 (Acc) for Mrs A which I understand have since been transferred.*
- *In other words, based on an email dated 20 November 2023, I understand that the remaining funds have been transferred so there are no transfers outstanding. Notwithstanding the challenges, it's not entirely clear why this couldn't have been done sooner.*
- *On the face of the evidence, and on balance, I think this transfer (and reinvestment) probably would've happened within three months, by 23 September 2021 – or 19 October 2021 including the one-month delay by the transferee, which appears to be the accepted position. This considers the delays by both parties, as well as delays for which neither party is responsible – such as the transferee's inability to accept certain funds – which I think is broadly reasonable.*
- *So, with the above in mind, to put things right, I think the business should do the following:*
 - *Compare the performance of each fund with the Growth 70 portfolio, using the date the transfer, and subsequent reinvestment, could've/should've happened – i.e., 23 September 2021 – and the actual date of transfer.*
 - *In other words, for the purposes of redress, and for simplicity, I've assumed that each fund for both Mr and Mrs A would've transferred on 16 September 2021, and then sold and reinvested by 23 September 2021. And the performance of such an investment should be compared to the actual performance to date.*
 - *If there's a loss, pay the difference between the value of the funds on transfer and the notional value had the fund been invested in the Growth fund since 23 September 2021.*
 - *As this is a portfolio investment if there are losses on a particular fund, arguably they can be netted off against gains on other funds to achieve an overall portfolio calculation.*
 - *Pay 8% interest if the redress isn't paid within 28 days of Mr and Mrs A accepting my final decision.*
 - *Pay Mr and Mrs A £300 compensation – which is £150 each – for the trouble and upset caused by the delays and mismanaging their expectation.*

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision.

Mr and Mrs A responded and accepted my provisional decision. Their representative previously wanted confirmation that transferring to a new platform wouldn't have an impact on any redress awarded which the investigator confirmed it wouldn't.

Embark also responded and accepted my provisional decision. In summary, it said:

- It agrees that it was responsible for some of the delays within the transfer out process. It's not reasonable to expect a transfer to take over a year.
- On the face of the limited available evidence, it agrees that it's difficult to know the precise time by which Embark delayed the transfer out.
 - In the circumstances, it's reasonable to state that the reinvestment would've likely been completed by 23 September 2021.
- It has contacted the transferee to request evidence of the transactions to allow it to perform the calculations as requested by me in the provisional decision. But based on what has been received, it's insufficient to carry out the calculations at the present time.
 - The transferee hasn't provided copies of the contract notes of the purchases being made within Mr and Mrs A's portfolio. Nor does the information show any information on the purchases being made.
- It asked if we have been provided with any of this information and if so, can we share the following information:
 - Copies of any contract notes or transactional statements confirming that purchases were made within Growth 70 Portfolio.
- The above notwithstanding, it agrees with the provisional decision and the premise of how to put things right, by completing a loss assessment on the actual purchases made within Growth 70 portfolio and compare these to being made on 23 September 2021 – assuming these purchases were made – and paying £300 compensation to Mr and Mrs A.

At my request the investigator contacted Mr and Mrs A's representative in order facilitate Embark with its request for the additional information. The representative after some time has provided information, that I hope will assist Embark. I've also requested that the relevant information is sent to Embark as soon as practicable. In the meantime, I don't need to delay my final decision any longer.

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, in light of Embark's acceptance of my provisional decision, my decision to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

In other words, despite being given time to respond to my provisional decision, and requesting additional information regarding redress, I'm satisfied that no new material points have been made that persuade me I should change my decision.

I'm aware that the information sought by Embark to assist with any calculations have now been provided. I don't think I need to delay my decision any further and any clarification or further documentation sought can be dealt with between the parties.

In this instance, and on balance, I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision, so I don't need to go over material already covered.

In other words, on the face of the evidence, and on balance, despite what Embark previously said, I'm still satisfied that it behaved unreasonably. I'm satisfied that it's responsible for some of the delays – by not responding to requests from the transferee in a timely fashion, not making clear its reason for rejecting a request, and failing to do so in a timely fashion – therefore, it should pay Mr and Mrs A compensation as set out by the investigator subject to the date of 23 September 2021 as the date of completion overall – on the basis that the transfer probably would've happened on or around 16 September 2021, and it would've taken Mr and Mrs A a few days to sell and reinvest.

Putting things right

To put things right, Sterling ISA Managers Limited trading as Advance by Embark should do the following:

- Compare the performance of each fund with the Growth 70 portfolio, using the date the transfer, and subsequent reinvestment, could've/should've happened – i.e., 23 September 2021 – and the actual date of transfer.
 - In other words, for the purposes of redress, and for simplicity, I've assumed that each fund for both Mr and Mrs A would've transferred on 16 September 2021, and then sold and reinvested by 23 September 2021. And the performance of such an investment should be compared to the actual performance to date.
 - If there's a loss, pay the difference between the value of the funds on transfer and the notional value had the fund been invested in the Growth fund since 23 September 2021.
 - As this is a portfolio investment if there are losses on a particular fund, arguably they can be netted off against gains on other funds to achieve an overall portfolio calculation.
- Pay 8% interest if the redress isn't paid within 28 days of Mr and Mrs A accepting my final decision.
- Pay Mr and Mrs A £300 compensation – which is £150 each – for the trouble and upset caused by the delays and mismanaging their expectation.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint.

Sterling ISA Managers Limited trading as Advance by Embark should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 23 April 2024.

Dara Islam
Ombudsman