

The complaint

Mrs P complains that Embark Services Limited (trading as Hornbuckle Mitchell) processed her application to take pension benefits as a lump sum without her having taken financial advice.

What happened

Mrs P's husband had a self-invested personal pension ('SIPP') with Hornbuckle Mitchell. Which is part of Embark Service Limited ('Embark'), who are the respondents in this complaint.

Mrs P's husband sadly passed away and the trustees of his SIPP nominated Mrs P as the sole beneficiary. And on 17 June 2020 Embark wrote to Mrs P notifying her of that. The cover letter set out the value of the fund and the options available. It clearly stated that it was not authorised or regulated to provide financial advice. And the letter stated:

"We always recommend that financial advice is sought before making a decision. Also the Government offers guidance via Pension Wise... This is a free and impartial service to assist you in deciding how to use your pension savings."

Embark wrote to Mrs P again on 30 July 2020 with a reminder letter, resending the correspondence of 17 June 2020. The letter said, *"I fully appreciate that this is a complex decision, and you may not feel ready to make a decision at present."* And explained that it would make further contact in a month if it hadn't heard from Mrs P.

On 31 July 2020 Mrs P called and left a voicemail message with Embark. She explained that she was still sorting out probate and that she was not able to decide what to do. Embark called Mrs P back on 3 August 2020 and explained that it understood it was a difficult time and reassured her that there was no pressure to decide.

On 20 January 2021 Embark had a phone call with Mrs P and her personal representative on loudspeaker. In that call Embark's representative talked through the options that were set out in the earlier letters. And said to Mrs P and her representative that they recommend that financial advice is taken before deciding.

On 28 January 2021 Mrs P sent Embark the signed form applying to take benefits as a taxable lump sum. The application included the declaration, *"I understand that once my option has been selected, it cannot be altered."*

Embark processed Mrs P's application and paid her benefits as a lump sum net of tax.

In May 2021 Mrs P complained after speaking with a financial adviser. The basis of that complaint was that Mrs P was a vulnerable customer and Embark hadn't treated her fairly. It said that Embark should not have made comments relating to taking her benefits and should not have advised her to put her pension funds into her bank account. Mrs P said that Embark's compliance team should have contacted her to make sure that she'd taken financial advice. It alleged that allowing Mrs P to take the benefits, in the way she did,

caused her to pay excessive tax and meant these funds would now also be liable for inheritance tax.

Embark considered Mrs P's complaint but rejected it. It explained that it had directed Mrs P to Pension Wise and recommended taking advice prior to deciding. It understood that she was supported in making her decision. And explained that it cannot force someone to take financial advice.

Mrs P referred her complaint to our service. An investigator at our service looked into what happened and didn't think that Embark had done anything wrong. He explained that Embark were not in a position to give advice to Mrs P. He thought the information Embark provided was fair and reasonable.

Mrs P didn't agree and asked for the case to be referred to an ombudsman.

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.

For similar reasons that Mrs P has already been given, I will not be upholding her complaint. I sympathise with the position that she was in. But I will explain my reasons for deciding that Embark didn't treat her unfairly.

I will explain that I have fully considered the obligations on Embark in providing this service. Including how the principles for businesses set out by the Financial Conduct Authority in PRIN affect what I'd expect of Embark.

I've considered the notification to Mrs P that she was the nominated beneficiary of her late husband's SIPP. I think it was clear and it included references to Pension Wise, including the website. And it clearly recommended financial advice before making the decision. I think that this correspondence was fair, clear and was not misleading. It didn't steer Mrs P to any particular option. But it made her aware of her choices, which I think was fair.

The follow up it sent was also fair. It didn't place time pressure on Mrs P and was a reminder. Which I don't think was unreasonable. Overall I've seen no evidence that Mrs P was hurried into making any decision at a difficult time. And she was signposted to appropriate support in the right way.

I have listened to the phone call that Mrs P had with Embark on 20 January 2021. It is clear from that call that she had the support of a friend who she authorised Embark to speak with. Which I think was a fair way to treat a vulnerable customer in need of support. There is no evidence that Embark did anything in this call that amounted to giving Mrs P advice. Embark's call handler went through the options that Mrs P had already been sent in a balanced way. And specifically pointed out that it always recommends that financial advice is taken before making a decision.

I've seen no evidence that Mrs P was 'advised' to put her pension money into a bank account. Overall, I've seen nothing to suggest that Embark did anything to influence Mrs P's decision. It was not authorised to provide advice, and based on the evidence I've seen, it didn't provide that to Mrs P.

Having received her application, with a clear cover letter from Mrs P explaining what she wanted, I don't think it would be reasonable of Embark to have put barriers in her way. There was no reason for Embark to consider that Mrs P wasn't aware of the options for

independent advice. It had already explained them in letters and a phone call. And financial advice was not a mandatory requirement in this transaction.

For these reasons I don't think Embark did anything wrong in the way that it treated Mrs P. So I cannot direct it to do anything to reverse the decision that Mrs P made.

My final decision

For the above reasons I am not upholding Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 26 April 2024.

Gary Lane
Ombudsman