

The complaint

Mrs F complains about the service she's received from Embark Service Limited (formally Hornbuckle Mitchell Group Ltd). She says they've failed to help rectify issues with two land investments held in her late husband's pension.

What happened

Mrs F's late husband – Mr C – established a SIPP in 2006 with Hornbuckle Mitchell Group Ltd. Embark Services Limited later took over responsibility for the administration of Mr C's SIPP. And so, they are now responsible for this complaint. For ease, I'll only refer to Embark when talking about the SIPP administrators.

In 2007 Mr C purchased a plot of land in the Bahamas to be held in his SIPP (Lot 106). He purchased the land together with a Mr W. Mr C went on to purchase a second plot of land on the same development in the Bahamas in 2008 (Lot 97). He purchased that piece of land along with Mr W and a Mr B.

Sadly, in 2010 Mr C passed away. The beneficiary of Mr C's SIPP was his wife - Mrs F.

Embark say in 2011 Mrs F made them aware of Mr C's death, and it was then that they became aware of some issues with the way the land in the Bahamas had been registered.

In May 2013 Embark wrote to Mrs F, Mr W and Mr B. They explained several issues that they'd found with the way the properties were registered.

Regarding Lot 106, Embark said the property was mistakenly purchased on the basis of joint tenancy rather than tenants in common. That meant that on the death of Mr C the ownership of the property was passed to Mr W, and not Mrs F as intended. Embark said they felt the error was made by the Bahamian solicitors responsible for the purchase of the property at the time. They said they'd sought advice from a new firm of solicitors based in the Bahamas and Mrs F would need a further share of the property created in her name.

Embark said they'd cover the cost of creating a new share for Mrs F. However, they also said any costs that would have arisen from the transfer of ownership from Mr C to Mrs F anyway, would be taken from the SIPP.

Embark also noted that the property hadn't been registered by the Bahamian solicitor for property tax purposes, but that would also be completed by the new solicitors. And the costs (estimated to be \$350) would be taken from the SIPP.

Regarding Lot 97 Embark said the property was correctly registered as tenants in common. So, Mr C's share was passed to Mrs F. However, the original conveyance was stamped but not recorded which was a necessary step to register the property correctly in the owner's names. Embark proposed instructing the new solicitors to complete these formalities but said the costs would remain with the SIPP as they would have been costs incurred by the SIPP in any case.

Embark sent a further letter in August 2013. They said they didn't intend on making any charges in respect of work that was required to correct the issues from the original purchase. However, there were several costs that would have arisen despite the original issues. These included;

- Re-registering the land in Mrs F's name and obtaining the required certificate.
- Re-sealing the grant of probate or letters of administration and obtaining a deed of assent.
- Amendment to the property tax registration.

Embark said the Bahamian solicitors had estimated a cost of \$8,500 which they'd need to recover from Mrs F. They sent a list of documents for Mrs F to provide as many as she could to the Bahamian solicitors to progress the changes.

Embark wrote to Mrs F again in September 2017. The letter was regarding a valuation of the land in the Bahamas, but it also noted that no action had been taken regarding the re-registration of the two plots of land since their letters in 2013. They asked Mrs F to confirm her intentions for the future of the plots of land.

Embark sent a further letter later that month. They said they hadn't provided advice to Mr C about the purchase of land in the Bahamas which was arranged prior to the regulation of SIPP's. They said the Bahamian solicitors used at the time of purchase were responsible for correctly registering the land. They again asked Mrs F for her intentions for the future of the plots of land.

Between 2017 and 2022 Mrs F and Embark shared a lot of correspondence regarding the issues with the plots of land, but ultimately there was no resolution to the issues identified.

On 27 May 2022 Mrs F made a complaint to Embark about the ongoing issues in relation to the plots of land.

In response, Embark said the issues with the plots of land were complex and longstanding but they'd been gathering the necessary information to understand the requirements of the Bahamian authorities. They recognised the issues had been ongoing for several years but were unable to provide a timetable for resolution. Embark thanked Mrs F for her patience but didn't uphold the complaint.

Mrs F Was unhappy with Embarks response, so she brought her complaint to our Service. I initially looked at our Service's jurisdiction over this complaint. I decided that while Mrs F's complaint - that Embark were responsible for the errors in the registration of the plots of land - had been made too late, our Service had the jurisdiction to consider Embarks administration of Mr C's pension in the six years preceding the complaint.

Following that, our investigator considered the merits of the complaint. Having done so, he concluded that Embark hadn't treated Mrs F fairly. He said they'd left Mrs F without an update for significant periods of time although noted that some of the delays were for reasons outside of their control. Our investigator recommended Embark pay £250 compensation for the distress and inconvenience caused.

Mrs F didn't agree with our investigator and so, the complaint has been passed back to me for a decision.

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 previously sent both parties my decision on this Service's jurisdiction over the matters Mrs F has complained about.

In summary, I explained that in 2013 Mrs F ought to have had cause to complain to Embark about how the properties were registered and who was at fault for the issues identified. So, she had three years to make that complaint to Embark. As Mrs F hadn't complained to Embark within the required timeframe, our service didn't have the jurisdiction to now decide who was at fault for the errors made.

However, I explained that the operation of a personal pension is a regulated activity which Embark continued to perform for Mr C, even after his death. And as Mrs F is the beneficiary of that personal pension, she could complain to Embark about any services they've performed or failed to perform in relation to the administration of Mr C's SIPP in the six years prior to her making her complaint in 2022.

Before reaching this decision on the merits of Mrs F's complaint, I've again considered our jurisdiction over this complaint. And none of the information or evidence sent by both parties since my decision has caused me to change my mind.

I appreciate that Mrs F remains of the view that many of the issues she faces now stem from the error in how the plots of land were initially registered, and that she feels Embark are responsible for those errors and so need to put things right. I understand her position.

However, as I've explained, I'm unable to make any findings as to who is responsible for the errors made. This decision will only focus on Embark's actions, in the six years preceding the complaint, acting as the administrator of Mr C's SIPP.

As a regulated firm Embark needed to ensure it acted within the Principles for Businesses (PRIN) set out in the Financial Conduct Authority's (FCA's) handbook. The principles of relevance here are:

PRIN 2.1 (2) A firm must conduct its business with due skill, care and diligence

PRIN 2.1 (6) A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 2.1 (7) A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

In order to assess whether Embark have met these principles, I've reviewed the communications between Embark and Mrs F over the period in question. And while I won't go into the specific detail of each communication sent, as there are many, I'll summarise my findings on the material communications I've seen.

2017/2018

In early September 2017 Embark asked Mrs F if the plots of lands were intending to be valued, as the previous year there had been an indication from Mr B and Mr W that they were looking to do so. Embark also provided Mrs F with copies of letters from 2013 it had sent her, detailing the requirements needed to fix the errors with the registration of the plots

of land.

Embark reminded Mrs F that, as no action had been taken at that point, the land was still incorrectly registered and so they were unable to complete the statement of death claim for Mr C and close his pension scheme. They asked Mrs F to clarify what her intentions were with the land.

When Mrs F responded to Embark, I can see they sent a further letter in late September 2017, explaining their position and again asking Mrs F to clarify her intentions with the land.

It seems in late 2017 Embark started a review of the investments made in the Bahamas and in February 2018 provided a copy of their findings to Mrs F. The letter explained that although a couple of lots had been sold, there didn't appear to be a market for these pieces of land. They assumed Mr B and Mr F would no longer proceed with a valuation of the plots of land on that basis.

There seems to have been little further communications in 2018 but I don't find that surprising. At that point in time, while Embark were aware of the issues with how the land had been registered; there was likely to be costs involved to rectify it but it seemed the investment was illiquid at that time. I think therefore at that time, it was up to Mrs F to decide how she wanted to proceed.

2019

There's evidence that Mrs F met with Embark in early 2019. One of the questions she asked was whether the SIPP had been changed into a beneficiary SIPP in her name. Embark replied a few days later to explain that Mrs F had elected to have Mr C's assets transferred to her. Some shares had previously been transferred over to her own investment platform, but the plots of land remained in Mr C's SIPP due to the issues and costs identified in 2013.

In their letter, Embark offered to resume looking into the transfer of the plots of land to Mrs F but noted the costs involved may have reached \$10,000-\$12,500.

In the context of the letters from 2018 which pointed out there seemed to be very little market for the land and the costs involved in transferring them to Mrs F, I think it was reasonable that Embark wouldn't actively pursue the issue further until they had clear instruction from Mrs F that she wished to proceed despite the potential cost.

In May 2019 Mrs F chased Embark for an update but Embark again confirmed they were waiting on instruction from Mrs F due to the costs involved. And I think that was a fair response at that time. Embark, as the administrators, couldn't give Mrs F advice on what to do. They estimated there would be significant cost to Mrs F to proceed at that time, and without clear confirmation from Mrs F that she was willing to accept those costs, I wouldn't expect them to do more.

In September 2019 Embark wrote to Mrs F. They explained that the deeds relating to Lot 97 were sent to a solicitor's firm in 2013 for checking, but unfortunately they were lost. As a result, the solicitors had agreed to replace the deeds but in doing so would correct the issue with the deed and assign Mr C's share to Mrs F in the process. There was a cost to this of \$3,500 which Embark agreed to settle. Embark sent Mrs F, Mr B and Mr W an application form to complete along with a list of documents they all needed to supply to the solicitors. The documents included things like a police record check and statement of financial standing from a bank.

Around the same time, in November 2019, Embark also offered to have the plots of land

valued. This was part of a wider exercise for all of their clients with investments in the same development. The valuations were completed and shared with Mrs F, Mr B and Mr W. The valuations explained that the plots were largely overgrown and access to them was in a poor state of repair. The letter also gave a bleak outlook on the likelihood of development in the area. It said plot 97 was valued at just \$7,500 and Plot 106 was valued at \$12,500.

In a covering letter to Mr B Embark also pointed out that the annual tax on the property had not been paid from the SIPP.

By December 2019 Mrs F had sent in some of the required documents to Embark. However, Embark emailed Mrs F, Mr B and Mr W on 11 December 2019 to say that Mrs F was the only one who had completed the required documentation so they were unable to move forward on correcting the deed. Embark said they'd close their file for now but invited the recipients to send the required documents in if they wanted to move forward.

I appreciate it must have been frustrating for Mrs F at that point. But I can't hold Embark responsible for the actions of Mr B and Mr W. I think it's likely the solicitors would be unable to progress things without the required documentation from Mr W and Mr B. Embark were clear on what was needed and so it wasn't them causing a delay at that point. Embark would have also been aware of the 2019 valuation of the land and the previous lack of secondary market for these investments. So, I think it was reasonable for Embark to close its file pending Mr B and Mr W providing the required documentation to move things forward.

Despite Embark saying the file was closed, I can see they still answered Mrs F's questions on some of the further documentation she needed to supply and forwarded on questions and answers from the solicitors into early 2020.

2020

In the early part of 2020 it's clear Mrs F was still gathering the documentation required including a reference from her bank. During that time Embark also explained that all the same information would be required for making changes to both plots of land, not just Plot 97.

In February Embark also wrote to all parties explaining what was still required of Mrs F and Mr B but also noted Mr W had yet to send in any of the required documentation. They sent a further email in late February, again noting that nothing had been received from Mr W.

Over the following months the evidence shows Mrs F had difficulties obtaining the required reference from her bank. Mrs F sent a letter from her bank to Embark in August 2020. Embark at that point sent a further chaser to Mr W for the documentation required from him.

Embark at that time also explained to Mrs F and Mr B that they'd only received one of the required documents from Mr W. As the original documentation sent in by Mrs F and Mr B was over six months old, it's possible it was now out of date, and may need to be requested again.

I appreciate from Mrs F's point of view how frustrating and upsetting it must have been to hear that she may need to start over again. In one of their emails Embark acknowledged that it had been 18 months since their meeting, and they still weren't in a position to move forward. In October 2020 Embark said they'd sent the information they did have to the solicitors for comment. I think Embark's actions here were fair. They weren't responsible for Mr W's actions and the frustration that caused that Mrs F may have to reapply for some of the documentation. They'd chased Mr W during that time and also asked the solicitors for comment.

In December 2020 Mr B chased Embark for an update. Embark responded to say they had not heard back from the solicitors but would chase a response from them.

2021

Mrs F chased Embark again in February 2021 which Embark responded to the following day. They explained that they'd received a response from the solicitors and had identified various documents which needed updating.

When thinking about Embark's actions here, I think they ought to have been more proactive in chasing the solicitors and keeping Mrs F updated. The issues had been going on for years at that point, and there was already concern about the age of the documentation sent to the solicitors. So, I think if Embark were acting in the best interests of Mrs F they would have chased the solicitors sooner. That being said, when the solicitors did reply, I think it's clear that further work was still required, which would have always been the case even if Embark had been more proactive in chasing a response and keeping the parties updated.

The communications from the solicitors in February 2021 listed the outstanding and outdated documents required from each of the parties, including documentation required from Embark. The list shows that while Mrs F had supplied most of the documentation needed, there were still several pieces of documentation missing from Mr B and Mr W.

Mrs F says she began to correspond directly with the solicitors, something she feels Embark should have been doing. I can see why Mrs F thought it might be more productive to directly communicate with the solicitor firm. As I've explained, Embark hadn't always been proactive in contacting the solicitors and keeping Mrs F updated. However, it was Mrs F's choice to contact the solicitors and engage with them. I think Embark would have continued to, and did, keep engaging with the parties involved. The delays up until that point hadn't been caused by Embark who were still waiting on third parties to send the required documentation.

Throughout March and April 2020 Mr B remained in contact with the solicitors. He confirmed in late April that Mr W would be submitting his police record check shortly and enquired as to whether that was all that was needed.

In May 2020 the solicitors confirmed they had almost everything they needed from Mrs F, Mr B and Mr W. However, they still required documentation from Embark as outlined in their letter earlier in the year.

It's disappointing that, after all the time Mrs F had been waiting, it was Embark who hadn't supplied the required documentation which had clearly been asked of them several months earlier. While Embark later supplied information to the solicitors, this delay could have been avoided if Embark had acted sooner.

Throughout June Mr B chased Embark on behalf of Mrs F and Mr W, although it's possible he used an incorrect email address. In July the solicitors confirmed they had submitted the application to the relevant authorities in the Bahamas. However, a question had arisen over the property taxes due on Plot 97.

Mrs B questioned whether any property tax was due as the land remained undeveloped. Embark referred back to their letter sent in 2019 confirming that property tax had not been paid from the SIPP.

In July 2021 the solicitors confirmed that the authorities in the Bahamas would ensure that there were no government taxes owed before issuing the required permit. Therefore, the

issuing of the permit would be conditional on payment of the fees and any outstanding taxes on the property.

Embark also emailed Mrs F, Mr B and Mr W to say each of them had previously been asked if taxes had been paid outside of the SIPP. And it had also been flagged as early as 2013 that taxes might be due.

The letters sent to Mrs F in 2013 had already explained that some of the costs involved in correcting the joint tenancy of lot 106 would be covered by Embark. However, certain costs that would have arisen anyway from the transfer of ownership to Mrs F would not. In regard to the property tax they said *'The property tax registration formalities can then also be completed. The property tax registration would have been required in any event and this cost (estimated at \$350) will therefore be borne by the SIPPs. Clearly, ongoing property taxes payable in the Bahamas will also be met out of SIPP funds as they fall due.'*

Having reviewed the correspondence on file from 2019 I can see the covering letter of the valuation sent to Mr B pointed out there was an annual tax of 1% of the value of the property which hadn't been paid by the SIPP. A similar letter was sent to Mrs F, but it didn't include the comments around tax.

At that time the SIPP was still held in Mr C's name and so I can understand why Embark didn't ask the same question of Mrs F who wasn't the owner of the SIPP. However, it ought to have been clear to Embark that Mrs F was still trying to get the issues with the properties resolved. And so, I think the outstanding tax ought to have been flagged to her again at that point. I say that because it's likely to have lessened the shock to Mrs F in 2021 when she was reminded that there may still be property taxes outstanding.

2022

I've seen no evidence of further updates from either side until January 2022 when Mrs F reached out to Embark for an update on progress.

In February 2022 the solicitors provided an update to say the Bahamian authorities had said the property hadn't been registered for tax purposes. The solicitors had recommended they submit an application to the authorities but warned it might trigger back taxes that were due. The solicitors asked for approval to move forward with their recommendation.

Mrs F, Mr B and Mr W attempted to meet with Embark to discuss the continuing issues. I haven't seen Embark's reply, but I'm led to believe they declined to meet with the investors at that time.

The following day Mrs F questioned where the money from the original investment was, and whether the funds could be returned to the SIPP if they decided not to go ahead with the changes to the deeds.

Embark updated Mrs F that a new staff member from their senior review team was looking into the issues with the land.

Over the course of the following few months Embark kept Mrs F up to date that they were continuing to try and discuss the outstanding issues with the solicitors in the Bahamas and also sought to see if they could find other legal representatives to help. Embark also explained that the funds had been used to purchase the plots of land, and while they hadn't been registered correctly, there had been no suggestion that the land wasn't owned by Mr C, Mr B and Mr W.

In May 2022 Embark sent a more detailed update. They explained that they'd had conversations with several Bahamian solicitors and had varying responses from each regarding the land tax. They confirmed they were still unable to give any accurate calculations as to what the charge might be but as the taxes due were potentially higher than the lands value, they might be able to make a proposal to the authorities in the Bahamas. They'd asked the existing solicitors to try and find a more accurate figure but noted many of the solicitors they'd spoken to had highlighted the difficulties of dealing with the land authorities.

I appreciate the frustration and upset Mrs F was clearly feeling at that point in time. It didn't appear, even after several years, that much progress was being made. But I think the evidence shows Embark were still acting in their role as administrators of the scheme, chasing for a resolution from solicitors based abroad. I can't hold Embark responsible for the difficulties they faced in getting clear answers from the solicitors and authorities based in the Bahama's. And while at times they again could have been more proactive in chasing a response, I don't think it would have had much impact on the overall time it was taking to progress things. That was something outside of Embarks control. Embark had, however, assigned a staff member to try and progress things which was reasonable.

Around this time Mrs F stated to Embark that her preferred resolution would be for the funds to be returned to her late husband's SIPP. However, as Embark explained at the time, the funds had been used in 2007 and 2008 to purchase physical assets - the plots of land. So, there were no funds to return to the SIPP.

Mrs F also questioned around this time why the tax was due, as she didn't think other investors had had to pay it. Embark went on to explain that the land tax had become due, and would have always become due, when the land was being transferred from Mr C to Mrs F.

Embark raised a complaint for Mrs F as they said she was dissatisfied with the progress being made to resolve the issues with the plots of land. I think that was the correct course of action for Embark as Mrs F's communications had met the definition of a complaint from the regulators point of view.

Summary

The issues here have been ongoing for many years, so I can appreciate Mrs F's strength of feeling in relation to this complaint.

Having reviewed the evidence on file there were clearly points in the six years preceding the complaint where the level of service provided by Embark fell below what's expected. These were broadly that Embark weren't always proactive in chasing updates from the solicitors or other parties involved in Mrs F's complaint; they failed to provide timely updates to Mrs F; they delayed sending the required documentation when Mrs F, Mr B and Mr W had all sent theirs in; And they failed to give timely reminders to Mrs F about the property tax issue which still hadn't been resolved.

However, my role isn't to punish a business when they make mistakes. Instead, I have to consider what would have happened had the business acted as they ought to have done and whether that's led to a financial loss for Mrs F.

I can't say with any certainty that the delays and lack of updates caused by Embark have made a material difference to the outcome for Mrs F. I say that because I don't think Embark could have provided many meaningful updates to Mrs F. When they were contacted, the only update Embark had was that they were still waiting for further information or clarification

from the solicitors. And when the solicitors were chased, it seems little meaningful progress had been made.

I also can't hold Embark responsible for the complexities and difficulties that they have faced when trying to help Mrs F resolve the issues. And while Embark may have caused some delays, it's still unclear whether it will be financially viable for Mrs F to continue her pursuit to have the land transferred over to her. From the evidence I've seen there was little secondary market for the land. So, even if the land got transferred to Mrs F without any additional delays caused by Embark, I can't fairly conclude that the delay has caused a financial loss.

Putting things right

I understand that Mrs F considers that she has suffered the loss of the originally invested funds in her late husband's SIPP. But I've explained that isn't something I can consider in this complaint because Mrs F didn't make her complaint in time. Having looked at those issues that I can consider I don't think Embark caused a financial loss, although I think their actions have clearly caused Mrs F distress and inconvenience.

When assessing the level of distress and inconvenience caused by Embark I've been mindful that some of Mrs F's frustrations have come from the difficulties faced in dealing with legal practices and authorities based abroad. That's not something I can hold Embark responsible and is an inherent risk of these types of investments.

This is clearly a complex, time consuming and difficult process which I think was always likely to be the case. And I don't think Embark's actions up until the point Mrs F complained have ultimately impacted the outcome here. But there was a lack of updates and some delays caused by Embark for which I think the sum of £250 fairly compensates Mrs F.

My final decision

I uphold this complaint. I direct Embark Services Limited to pay Mrs F £250 if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 9 July 2024.

Timothy Wilkes
Ombudsman