

The complaint

Mr H complains that Embark Investment Services Limited (Embark) is unable to sell a share held in his account and has failed to provide adequate explanations or updates. Resulting in ongoing administration fees being charged by his Self-Invested Personal Pension (SIPP) provider. He wants the shares sold and compensation for the inconvenience.

What happened

Mr H has a SIPP with James Hay, which holds an investment account on the Embark Stocktrade platform. He'd invested in an Australian based mining company Danakali Limited which was also listed on the London Stock Exchange (LSE). Embark isn't authorised to provide financial advice and hadn't recommended Mr H purchase the shares. Danakali decided to delist from the LSE, meaning it was no longer tradable on the LSE. The delisting completed in September 2021. Embark was subsequently provided with details confirming the share register was now maintained by Danakali's Australian registrar.

The details of what subsequently happened over around two years are known to both parties, so I'll only summarise them here as much of this time was taken up waiting for responses from third parties in Australia.

On 14 December 2021 Embark confirmed to Mr H that Danakali had been delisted from the LSE. He asked for further information and Embark said no action was required from him. Mr H's adviser then contacted it as the shares were no longer showing on the James Hay SIPP valuation. Embark didn't respond to this until chased in February 2022, when it contacted James Hay and raised queries internally.

Various emails were exchanged requesting updates and confirming information was still awaited. On 24 March 2022 Embark said it still hadn't had a response from Danakali's registrars in Australia. On 12 April 2022 the adviser asked if the shares could be sold. Embark continued to try to contact the Australian registrars without success. Mr H appointed a new adviser, who asked for an update. Embark confirmed on 11 October 2022 that the shares weren't tradeable or transferrable and it would update all clients once the available options were confirmed. It subsequently said the shares had no value. And could, subject to approval of James Hay and Mr H, be removed from the portfolio. It then said the shares could be sold or transferred to Mr H if the statement confirming his holding was sent to the registrars in Australia.

James Hay was asked to approve the transfer of the shares to Mr H in November 2022. In January 2023 the adviser confirmed the shares couldn't be removed from the SIPP as they had some value, and this would cause adverse tax consequences for Mr H. Further exchanges followed and Embark said the share wasn't currently being priced and it confirmed it couldn't trade in the Australian market.

The adviser said Mr H still wanted to sell the shares and raised queries about charges and what would happen to the proceeds if the Australian registrar could action the sale. Embark referred these queries to the registrar in March 2023, who asked for more information, but it didn't reply until around three weeks later. On 25 April 2023 the registrar confirmed that to

sell the shares a UK stockbroker who was able to deal on the Australian Stock Exchange was required. It also provided some other details about potentially transferring the shares to other holders. Embark forwarded this information to the adviser.

The adviser emailed Embark on 20 June 2023 asking if it could act as broker to sell the shares, and whether it had acquired them initially. This was referred by Embark to senior management. With no update a complaint was logged on 5 September 2023.

When Embark didn't respond to the complaint within eight weeks, Mr H referred it to our service. And our investigator looked into it, but he didn't uphold it.

Our investigator said Embark hadn't advised Mr H to buy the shares and it wasn't responsible for them delisting from the LSE. He said it provided a platform for investors to hold investments, but it couldn't make any changes without instruction from Mr H. He said Embark didn't operate in Australia and as a business it was free to choose what services it wanted to provide. And it wasn't reasonable to expect it to enter an entirely different stock market to try and sell an illiquid share which hadn't originally been acquired there.

Our investigator said Embark had been generally active in chasing the Australian registrars for updates and information and in giving updates to Mr H and his advisers. And it wasn't reasonable to expect it to have taken further action. He said Embark had provided more than a months' notice of the delisting from the LSE. And whilst Mr H had said this hadn't provided *"any detail on the impact of delisting"*, which it should have, our investigator said as Embark wasn't providing advice it wasn't its role to provide specific explanations or warnings about corporate actions, which could be construed as being advice. Instead, he said it was Mr H or his adviser's responsibility to be aware of the risks involved with the investments held, such as it becoming hard or impossible to sell following a delisting from the Stock market.

Our investigator said occasionally Embark had taken some time to respond to and had provided conflicting information around whether the share could or couldn't be traded. He said Embark accepted these errors and it wasn't responsible for the great majority of the delays. But for the delays it was responsible for, he said it was fair that it pay Mr H £100 compensation for the distress and inconvenience caused.

Mr H disagreed. He said when Embark told him about the corporate action it said no action was necessary. Our investigator said this referred to the automatic process of the delisting. Not to any investment related considerations such as whether Mr H should sell the shares before they delisted, which as Embark didn't provide advice wasn't its role.

As Mr H doesn't agree it has come to me to decide.

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 am upholding the complaint in part.

I appreciate that this has been very frustrating for Mr H and that not being able to sell the shares has resulted in ongoing administration costs from James Hay. But having considered Embark's role apart from some minor delays and communication errors I don't think it has done anything wrong. It isn't responsible for any difficulty in selling the shares following the delisting and does seem to have taken reasonable steps to obtain information about the options available.

Embark has said it doesn't operate in Australia. There is no requirement for it to do so, and it is free to decide what services it wants to provide. The Danakali shares, when purchased, were listed on the UK stock exchange. The corporate action Embark notified Mr H of was for information only. And no action was required because there was no right for shareholders to vote on the matter. And as Embark wasn't providing advice I think the onus was on Mr H to look into the potential implications and what, if anything, he should do.

Following the delisting it does seem to have taken a very long time for the details to have been clarified by the registrar, but again this wasn't Embark's fault. As Mr H may be aware from Danakali's own website the shares were suspended from the Australian stock market in April 2023, with the Company subsequently referring to the liquidity issues this raises and that it was exploring other options for shareholders. This might be something Mr H could look into further if he hasn't already.

Whilst I don't think Embark prevented the sale of the shares or had a responsibility to provide Mr H with advice it did give some conflicting information over whether the shares could be sold or not. But if sale was then possible, this still required the services of a broker who could deal in the Australian market which it had confirmed it couldn't. So that error doesn't appear to have affected the outcome. But there were short delays in replying to the Australian registrar and updating Mr H's advisers. So, I think Embark was only responsible for relatively minor inconvenience given the overall situation was outside its control. But it is fair that it compensates Mr H for that.

Putting things right

Mr H was caused some inconvenience, which Embark accepts and I think it's fair that it pays him £100 compensation in respect of that.

My final decision

My final decision is that I uphold the complaint against Embark Investment Services Limited.

I direct Embark Investment Services Limited to pay Mr H £100 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 September 2024.

Nigel Bracken
Ombudsman