

## The complaint

Mr T is represented. His representative was also his [new] adviser in the background facts summarised in the next section.

Embark Services Limited trading as Embark Pensions ('EP') provides and administers his Self-Invested Personal Pension ('SIPP').

He says EP committed a succession of errors and caused multiple delays when, in 2023, he sought to change the adviser for his SIPP (and sought to conduct transactions in the SIPP that were recommended by his new adviser). He seeks compensation for the trouble and inconvenience he was caused and redress for financial loss.

## What happened

### *Chronology of Key Events*

- Mr T's signed Letters of Authority ('LoA'), with regards to the SIPP and its underlying investments, were emailed by his new adviser ('the adviser') to EP on 12 May; this was sent in aid of the application to change agency for the SIPP to the adviser; EP confirmed receipt on the same date.
- As of 6 July, EP had still not processed the change of agency, but it sent the adviser details of the SIPP; and the adviser still had not been granted access to the SIPP or to its underlying investments (it says it obtained confirmation from the investment provider Quilter that it had not received the completed LoA). The adviser fed back to EP, and both it and Mr T enquired for progress on 11 and 19 July.
- On 24 July the adviser complained, on Mr T's behalf, to EP.
- Valuation breakdowns for the SIPP were sent by EP on 25 July, but there was still no news about the change of agency.
- The adviser chased EP for progress on 2 August. On the day before, paperwork for a company payment into the SIPP had been sent to EP, in response to which an automatic acknowledgement was received.
- On 17 August Mr T made a contribution of £46,666.60 into the SIPP; on the same date EP confirmed that it required new completed agency forms. The adviser completed them and returned them on the next day. It chased EP for progress on 23 and 25 August. It says on the latter date EP said the new agency forms were yet to be processed and promised that would be done by 29 August.
- EP responded to the complaint in its letter dated 5 September, accepting responsibility for delays, offering Mr T £100 compensation for the trouble and inconvenience caused to him and promising to address matters.

- On 13 September EP said it could not apply Mr T's contribution to the SIPP because there was a 7p difference between the payment and the amount stated on the associated contribution form. A new form was submitted in response. On the same date, EP provided login details for the SIPP's online portal, but the adviser had problems in using them. Mr T's complaint was then referred to our service on 19 September.
- Around 20 September, communication from EP to the adviser showed that EP still had the SIPP's previous adviser on record as Mr T's agent for the SIPP.
- On 18 October, the adviser fed back to EP that the online portal showed no client information, and EP responded on 25 October to say that problem had been fixed.
- In November the adviser received communication that again referred to Mr T's previous adviser. Late in this month the adviser received projections from EP that it had asked for in late October. However, it raised concerns about information within them that appeared to be incorrect. EP then issued revised/updated projections on 29 November and, on the same date, granted the adviser access to the Quilter investment account (within the SIPP), which it needed for an investment transaction in the account.
- On 4 December EP confirmed that investment capital from the SIPP (£55,383) had been paid to Quilter.

Matters spilled into 2024, in the form of the adviser raising, to EP, the non-payment of its ongoing fee, and making another complaint about the delays (including those that followed the first complaint) on behalf of Mr T. In February 2024 EP responded to the second complaint, accepted responsibility for delays and offered him an additional £150 in compensation for the trouble and inconvenience caused to him. It also offered to conduct a financial loss assessment in the matter.

One of our investigators looked into the complaint and concluded it should be upheld. He noted that there was no need to determine merits in the case because EP already concedes responsibility for the delays and for the potential financial loss they caused. He did not consider that EP should have to pay more compensation to Mr T for the trouble and inconvenience caused to him – that is, it should not have to pay more than the total of £250 it has offered – but he set out how redress for financial loss should be approached, calculated and paid by EP to Mr T.

With regards to redress, the investigator mainly said:

- It is evident in the complaint that EP delivered a poor and delayed service. For example, it received the application for the change of agency in May, but the adviser did not have full access to the SIPP until December; during this period Mr T's previous adviser still had access to the SIPP, which should not have been the case; during the period, on at least two occasions EP issued correspondence addressed to the previous adviser; and during the period the adviser had to submit the change of agency forms on more than one occasion.
- If EP had completed the change of agency in a timely manner, it is more likely (than not) that the adviser would have been able to review Mr T's investments and implement recommendations sooner than it did. The adviser was able to make a fund switch recommendation on 24 July. But for EP's delays it is more likely (than not) that the recommendation would have been executed shortly thereafter.

- EP has already agreed to undertake a financial loss assessment.
- EP ought reasonably to have completed the change of agency within 10 working days of receiving the application to do so. That would have meant completion on 26 May. On this basis, the adviser would have been able to follow the 24 July fund switch recommendation with implementation. In this respect, Mr T's contribution of £46,666.60 on 17 August would have been used for the fund switch at the same time. Allowing five working days for execution, this means the recommended SIPP fund switch would probably have been completed on 24 August.
- EP should calculate redress for Mr T based on 24 August as the start date and the date of settlement as the end date, and based on the fund switch to the specific investment – Quilter's Blended 6 Portfolio (the 'B6P') – having happened on the start date.

Both sides asked for reconsideration of the findings on calculation of redress.

Mr T's representative referred back to earlier submissions presenting his claim for financial loss on the basis that, but for EP's delays, an initial Quilter fund switch would have happened earlier (around March 2023) and then an additional contribution would have been made in late July 2023 (which was also intended for the recommended fund switch), that the former would have had growth of 2.9% (around £20,400) which has been lost, that the latter would have had growth of 1.96% (around £1,100) which has also been lost, so Mr T's total loss is around £21,500.

His representative said the submission continues to stand, and that their plan had been to conduct the fund switch in March but the recommendation to do so was delayed until July only because that was when EP wrongly led them to believe they could access the SIPP. As such, and on the basis that a timely transfer of agency should have happened in March, his representative says the redress calculation should be based on its previous submissions. It also asked for the matter of trouble and inconvenience compensation to be reviewed.

The representative referred to new issues, from EP, that Mr T was facing. However, the investigator confirmed that they would have to be raised as a new complaint. The representative accepted this.

In response to the investigator's view, EP affirmed that it does not dispute responsibility for delays caused in the change of agency in the SIPP, but it said it disputes the timescales used in the investigator's redress findings. It says it is unfair to use the five working days timescale for the investment switch transaction (which results in the 24 August 2023 start date), because the SIPP was/is not platform based and was/is a bespoke product, so a like-for-like comparison with the timescales that would apply for a similar bespoke and non-platform SIPP should be used instead. EP says it would be fair to apply a timescale that results in a start date of 1 September 2023 (by when, it says, the fund switch would have been completed).

The investigator responded, and the matter was 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.

As both parties acknowledge, and as observed by the investigator, the merits of Mr T's

complaint are not in dispute. EP accepts responsibility for the delays caused in the process of changing agency for his SIPP. For the sake of completeness, on balance, and given the facts that I have considered, I too find that EP is responsible for the delays caused in its process for changing Mr T's adviser for the SIPP. I explain this next. Thereafter, I will turn to the matter of redress (including compensation for trouble and inconvenience), which is the aspect of the case that remains in dispute and requires resolution.

The process was an internal EP process, and following submission of the application and LoA in May 2023, it was mainly under its control. The notable headline of the delays EP caused is the period of around six to seven months it unreasonably took to properly complete the overall process (including remittance of the investment capital to Quilter) after receiving the May 2023 application and LoA – within which it took around three months just to ask for resubmission of the change of agency forms, around six months before the adviser was granted access to the SIPP, and around a month to address the 7p difference between Mr T's contribution and the figure stated on the contribution form.

There is evidence of the advice to Mr T in July 2023, which includes the fund switch recommendation, and it is reasonably clear from the facts that implementation of the recommendation had to be suspended pending completion of the change of agency and resolution of the issues that arose during that process. I also note that EP has not presented reasonable explanations for the delays caused. Instead, and to its credit, it has readily acknowledged that its service in the process was flawed and that it caused the relevant delays.

With regards to the trouble and inconvenience caused to Mr T, EP has offered him a total of £250. His representative says we should review this aspect of the case, with a view to awarding more. Overall and on balance, I am not persuaded to award more than EP has offered. I agree with the investigator's finding in this respect, and I endorse and echo his reason. The delayed process lasted months, but it is also the case that Mr T was assisted (and partly shielded from the trouble of having to chase EP for progress) by the adviser, who appears to have been at the frontline of the engagements with EP to pursue progress. This is relevant to assessing the trouble and inconvenience caused directly to him, it shows that the direct impact upon him was reduced for this reason. I consider that in this context, the amount of £250 is probably what I would have awarded to him if EP had not already offered him the same amount (in total). I shall reflect its offer in my orders below.

The only other matter to address is the start date recommended by the investigator for the calculation of financial loss (and redress for such loss). Both parties disagree with his use of 24 August 2023 as the start date. Mr T's representative says it should be earlier, in March 2023, and EP says it should be later (1 September 2023). Overall, on balance and for the reasons I explain below, I disagree with both parties. I support the use of the start date of 24 August 2023.

Even if Mr T and his representative planned to conduct the relevant fund switch in the SIPP around March 2023, the facts are that the application to change agency for the SIPP did not begin until May that year, the fund switch advice was not given until July that year and the additional contribution to the SIPP (which, based on the July advice, was also intended to be used for the fund switch transaction) did not happen until August that year.

I note his representative's argument that the advice report was delayed until July because that is when EP gave an indication (wrongly) that access could be gained into the SIPP, but if there was a plan for the fund transaction to happen in March and if, as appears to be the argument, the plan was set up for timely implementation, then the application to change agency would have happened in March (or before). I appreciate that the additional contribution might have been intended for a new tax/allowance/contributions year, so it might

not have been made in March, but it could have been made in April, as opposed to August when it was made.

These surrounding circumstances do not give support to setting a redress calculation start date in March 2023. On balance, I consider it fair and reasonable to use the approach taken by the investigator, whereby it is found that the change of agency should have been completed well before the 24 July 2023 advice, that the move to implement the fund switch/investment recommendation would probably have followed Mr T's 17 August additional contribution (on the same day) and that the fund switch/investment transaction should then have been completed within five working days.

There were around three weeks between the advice and the contribution. It is possible that the transaction could have happened in one move (to include the fund switch and investment of the contribution in the same new fund) and that it could have taken place after the contribution. It is also possible that the transaction could have been split, with the fund switch within the SIPP happening closely after the advice and then investment of the contribution happening after the contribution was made and cleared. The additional contribution is mentioned in the advice, it was not an afterthought, it was part of the main plan. I consider it more likely (than not) that the transaction would have happened in one move after the contribution. This is supported by a conclusion in the advice report that refers to topping up the SIPP and then investing in the Quilter portfolio, and it matches the idea of setting the redress calculation start date five working days from the 17 August contribution (and the fund switch/investment instruction that would have probably been given at the same time).

With regards to EP's objection, it is true that the SIPP was/is not on a platform, and that SIPPs on platforms can generally facilitate quicker fund and investment related transactions. However, the allowance of five working days appears to be reasonable in the circumstances.

I appreciate that this means processing the additional contribution and executing the overall fund switch/investment during this period, but the former was a relatively straightforward matter that would not have consumed too much time, and it is more likely (than not) that the adviser would have given timely instructions and conducted equally timely follow-ups, if necessary, in order to help in the latter being executed promptly.

Fund switches generally tend to be, and are usually expected to be, approached in a time efficient manner, to minimise the time over which an investor is out of the market. I have not seen evidence from EP to support the 10 working days turnaround period (between 17 August and 1 September, and discounting a bank holiday) that it has argued for. Instead, in the circumstances and despite the SIPP not being held on a platform, I consider it broadly reasonable to use the five working days turnaround period, ending 24 August. Time needed for fund switches can sometimes vary, depending on the type of funds being liquidated and those being invested in, and depending on the facts, execution periods can take between two to seven working days. In this context, for the reasons address above and given that the switch in Mr T's case was to a model portfolio, I am not persuaded to allow more than five working days or to set a redress calculation start date beyond 24 August 2023.

In conclusion, and in summary, I uphold Mr T's complaint, I consider that EP has offered sufficient compensation (a total of £250) to him for the trouble and inconvenience he faced in the complaint matter, I will order it to make that payment to him and I will set out, below, orders to calculate and pay him redress for financial loss calculated from 24 August 2023.

## **Putting things right**

### **Fair compensation**

My aim is to put Mr T as closely as possible into the position he would probably now be in, with regards to his SIPP's Quilter investment, if it had not been delayed by EP. I take the view that he would have invested earlier. For the reasons given above I find he would have invested on 24 August 2023 and that this is the start date for calculating redress to him.

The end date is the date of settlement. The effect of the delayed investment extends to any lost net growth to date. Therefore, the effect presently continues. The redress calculation should fairly reflect this, so it must be conducted to the date of settlement.

In Mr T's case there is a natural benchmark for calculating redress. As treated above, we know that it is the B6P he was advised to invest in, that he was given that advice in July 2023 and that he would probably have invested the SIPP's Quilter portfolio into the B6P on 24 August 2023, but for EP's delays. Therefore, the B6P is the natural benchmark to use in calculating whether (or not) there has been a financial loss caused by the delayed investment.

For the reasons given above, I find that EP's offer of £250 (in total) to Mr T, for the trouble and inconvenience caused to him, is reasonable.

### **What must EP do?**

To compensate Mr T fairly, EP must:

- Compare the performance of his SIPP/portfolio with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and compensation is payable.
- Pay the compensation into his pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If EP is unable to pay the total amount into his pension plan, it should pay that amount direct to him. Had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it is not a payment of tax to HMRC, so Mr T would not be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age.
- It is reasonable to assume that he is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr T the total of £250 compensation it has offered him for the trouble and inconvenience caused to him, if it has not already done so.
- Provide the calculation of the compensation to Mr T in a clear and simple format.

Income tax may be payable on any interest paid. If EP deducts income tax from interest it should tell Mr T how much has been taken off. It should give him a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The SIPP, Quilter portfolio	Still exists and liquid	The Blended 6 Portfolio	24 August 2023	Date of settlement	Not applicable

### **Actual value**

This means the actual amount payable from the investment at the end date.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in. Any withdrawal from it should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I will accept if EP totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

### **Compensation Limit**

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £350,000, £355,000, £375,000, £415,000 or £430,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr T's case it appears unlikely that this would apply. The complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2023, so the applicable compensation limit would be £415,000. Available information suggest that redress to him is unlikely to exceed this, but he is still reminded to consider taking advice before deciding whether to accept this decision.

### **My final decision**

For the reasons given above, I uphold Mr T's complaint and I order Embark Services Limited trading as Embark Pensions to apply the compensation and redress provisions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or

reject my decision before 3 September 2024.

Roy Kuku  
**Ombudsman**