

The complaint

Mr P complains that Embark Investment Services Limited ('Embark') unfairly delayed the transfer of his ISA causing him financial loss.

Mr P had also complained about the receiving firm who I'll refer to as 'C' below but hasn't referred that complaint to our service. My decision here will only cover his complaint with Embark.

What happened

Mr P had a stocks and shares ISA with Embark which he requested be transferred from Embark to another provider, C.

A summary of the events to date as I consider them from the evidence to be, are:

- **27 November 2023** – C sent the transfer and valuation request along with Mr P's authority to Embark.
- **4 December 2023** – Embark received the transfer request but couldn't action it because the email address associated with the e-signature wasn't what Embark had on its records for Mr P.
- **12 December 2023** – Mr P's adviser updated the email address for him with Embark.
- **13 December 2023** – Embark sent C the valuation for Mr P's ISA to progress the transfer.
- **4 January 2024** – C told Mr P there were 12 assets in the request it couldn't hold on its platform and asked him for instructions. Mr P gave instructions to sell the affected holdings the same day.
- **10 January 2024** – C sends the updated acceptance and sell instruction for the 12 assets to Embark.
- **15 January 2024** – Embark confirms to C it has received the instruction to sell.
- **23 and 24 January 2024** – Embark carries out the necessary sales.
- **30 January 2024** – All but one of the sales settle as cash with Embark – WS Morant Wright Nippon Yield Fund ('Nippon Yield Fund').
- **1 February 2024** – Embark request re-registration of the assets which could be transferred to C.
- **9 February 2024** – C asks Embark for an update on the sales proceeds and queries

the amount of cash to expect to be sent to it.

- **12 February 2024** – Embark responds to this update request to say in line with its normal process the cash will be transferred once the assets have all be transferred.
- **20 February 2024** – Embark tells C that the fund manager for the Nippon Yield Fund rejected to transfer as the nominee address was incorrect, and asks for new details to be sent.
- **4 March 2024** – Embark again requests the nominee details.
- **8 March 2024** – C asks Embark to transfer the cash.
- **11 March 2024** – A further request for the nominee address is sent by Embark to C.
- **12 March 2024** – C sends Embark a different nominee address to use in re-registering the Nippon Yield Fund.
- **21 March 2024** – Embark sends the re-registration request for the Nippon Yield Fund to the relevant fund manager.
- **26 March 2024** – The final re-registration is complete.
- **4 April 2024** – Embark sends the cash balance of £333,091.24 from Mr P's ISA to C.

Unhappy with the time taken to transfer his ISA, Mr P complained to Embark about its role in the transfer. Embark considered his complaint and offered Mr P £100 and agreed to consider any further loss he could evidence. It explained this was because while normally cash is sent after all other assets have been transferred, it can send the cash part earlier if asked. As it received such a request on 8 March 2024 it agreed it delayed that part of his transfer.

Mr P was unhappy with the offer and didn't provide Embark with any further evidence of losses. He referred his complaint to our service, which was considered by one of our Investigators. He didn't find Embark caused any other delays but did increase the compensation to £200 which he felt was a fair reflection the impact of the delay caused.

Responding to our Investigator, Mr P didn't agree £200 fairly compensated him given the amount of money that was delayed, and for his efforts in communicating with Embark to progress the transfer. Embark also didn't agree, it said its earlier offer of £100 was proportionate given the length of the delay was around two weeks.

As an agreement wasn't reached, Mr P's complaint was passed to me to decide. In doing so issued a provisional decision as I my conclusion to uphold the complaint differed to our Investigator as did how I thought Embark should put things right with Mr P.

In my provisional decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Relevant considerations

The key issue in Mr P's complaint is whether Embark took longer than it should've to transfer his ISA. In deciding whether Embark has done so, DISP 3.6.4 requires me to consider what is fair and reasonable in all the circumstances of the complaint. Taking into account the relevant law, regulation, FCA rules, guidance and standards, codes of practice and where relevant what I consider to be good industry practice at the time.

There's no specific law or regulation that sets obligations on how long an ISA transfer should take. When it comes to re-registration of assets however, COBS 6.1G requires those actions take place in a reasonable time and efficient manner. I've also taken into consideration the overarching principles in PRIN 2.1, which apply to all dealings of FCA authorised firms, of particular relevance here are:

- *Principle 2 – conducting business with due skill, care and diligence.*
- *Principle 6 – paying due regard to the interests of consumers and treating them fairly.*

Also relevant are two publications I consider reflect what would be good industry practice at the time. The first of these is HMRC's well known position around ISA transfers which has been generally accepted as good industry practice, which says a stocks and shares ISA transfer should be completed within 30 calendar days.

The second is the framework issued by The Transfers and Re-registrations Industry Group ('TRIG'). Embark is a member of STAR, an industry group which endorses the framework set out by TRIG. The FCA said supportively of TRIG in its market study of investment platforms said in 2019 that it, 'may prove the most timely, proportionate and cost-effective remedy to improve outcomes for consumers'. TRIG is endorsed by the industry bodies making up the framework and those bodies in turn encourage their members, which includes Embark to use it. In my opinion then I think when considering the way Embark carried out the transfer, the TRIG framework is regulator endorsed good industry practice, which I have had regard for in line with DISP 3.6.4R.

The most relevant parts of TRIG in relation to this in my opinion are:

"30. The TRIG believes that organisations should adopt a maximum standard of two full business days for completing each of their own steps in all transfer and re-registration processes within the scope of this Framework, with the exception of pension cash transfers.

31. This approach would enable each counterparty in a process to be equally accountable for ensuring that an efficient transfer and reregistration process is in place. Similarly, organisations will not be accountable for the underperformance of counterparties that are outside of their control.

32. This window would comprise two full business days, with a 'business day' defined as a day when the London Stock Exchange is open. Each firm would process its step by 2359 of the second business day following the day of receipt. This means that, in practice, some firms might have more than 48 hours to process their step, e.g. if they received an instruction at 0900 on day one, and did not complete their step until 2300 on day 3.

33. Each step in the process would begin at the point that an organisation can begin processing, rather than when the organisation does start processing. Similarly, each step would be deemed complete at the point when the relevant communication has been sent to the consecutive counterparty, to enable it to commence the following step."

There are circumstances set out at point 34 in TRIG where it may not be possible to complete a step in time. This includes such issues such as legitimacy concerns or dealing low liquidity assets.

In summary then the TRIG framework asks firms to deal with each 'step' when transferring an ISA within two full days after being in a position to do so. With HMRC's general timeframes of 30 calendar days for transferring a stocks and shares ISA sitting with that.

The potential delays in the transfer

From events as I consider them to have most likely occurred, I think Embark are responsible for delaying the following parts of the transfer.

- *Not sending the cash when requested*
- *The selling down of assets*
- *Delays in re-registering the Nippon Yield Fund*

Not sending the cash when C requested

Embark says C asked it to send the cash in Mr P's ISA on 8 March 2024, which was instructed due to Mr P's frustrations at the time the overall transfer was taking. I accept Embark's standard process is to send the cash following the in-specie part of the transfer completing. It had told Mr P's financial adviser it does make exceptions to this where a request to send the cash early is received. The request Embark received on 8 March 2024 to send the cash is clearly driven by Mr P's frustration at how long the transfer was taking, and in my view then wasn't an unreasonable request for Embark to follow in a timely manner.

Given it has allowance in its process to do so and received the request it did from C, I think Embark should've acted on the instruction on 8 March 2024, rather than 4 April 2024 when it did.

Had it done so then applying TRIG's framework that firms should carry out each step within two full business days of being able to, I'm satisfied Embark should've started the process to send the cash at the latest 12 March 2024.

Assets had been sold down to cash prior to C's request to Embark to transfer the cash. That means Embark could've potentially sent the cash earlier than it did, but I've not seen it was unreasonable it didn't. I say this because the rejection of the re-registration of the Nippon Yield Fund wasn't known until around 20 February 2024. That step hadn't then yet completed, and I'm satisfied Embark acted in a reasonable time and manner in asking C to provide the correct details. When it hadn't heard anything, it asked C again for the correct details nine business days later.

I'm satisfied this step wasn't completed due to issues reasonably outside of Embark's control. As that step didn't complete until 12 March 2024 it isn't unreasonable Embark didn't act to transfer the cash prior to Mr P's instruction to on 8 March 2024.

Had the cash been transferred in a reasonable time following Mr P's instruction to do so, in my view the cash transfer would've started on 12 March 2024, rather than 4 April 2024 it actually was.

It follows then I'm satisfied Embark caused an unreasonable delay of 23 days in transferring Mr P's cash balance to C. I'll explain below how I intend to direct Embark to compensate Mr P for that.

The selling of the assets

When Embark received the instruction to sell Mr P's assets on 15 January 2024, it began instructing the sales six business days later, across 23 and 24 January 2024. When C asked for an update about this step of the transfer, Embark explained its internal process is to do so within 10 business days.

Embark doesn't, from the available terms and policies I've seen, set out with Mr P when on receipt of instructions it will sell assets. In my view it isn't fair that Mr P has no clarity on how long this step would take. While Embark has a 10 business day internal timescale, I've not seen that set out to Mr P. And even if it was, I'm not satisfied that would be a fair timescale to apply given the good industry practice TRIG sets out to be two full business days.

The objectives of TRIG were to reduce the time between each step when transferring assets between providers. With the overall aim being to reduce the impact these individual accumulations have on the overall transfer.

Given that and as Embark hasn't agreed to a specific timescale with Mr P from the outset, I consider it fair and reasonable to follow the good industry practice set out in TRIG here. In doing so, I don't think Embark carried out the sales in a fair and reasonable manner where it took six business days to instruct.

If Embark had processed Mr P's request in a fair and reasonable way, then in my view its likely it would've instructed the sales at the latest by 17 January 2024, two full business days after the instruction was received.

It follows then had Mr P's assets been sold on 17 January 2024 rather than 23 and 24 January 2024 as they were, it's possible he's incurred a financial loss from that delay. I set out below how I intend to direct Embark to address that in settling this complaint.

I've not though seen this delay contributed to the overall time it took for Embark to transfer the cash balance of his ISA. If I were to count back the delay from when the cash balance transferred then that would be after the date Mr P asked for the cash to be transferred. I'm not persuaded then this delay affects when Mr P's cash ought to have been received as I've set out above.

Transferring the Nippon Yield Fund

Mr P says Embark unfairly delayed the transfer of the Nippon Yield Fund contributing to the overall delay of his ISA transfer.

The transfer request form Embark received from C grouped the funds into two lists, one for each of the two nominees to be used along with the respective addresses to use. In response to the request to re-register the Nippon Yield Fund, its fund manager rejected the transfer on the basis that nominee address was incorrect.

Embark notified C and asked it to provide new details to use, with C providing the same details on 4 March 2024. When Embark asked again for the correct address on

11 March 2024, it was given updated details to use to re-register the fund the next day, which led to the Nippon Yield Fund transferring successfully.

It wasn't until 21 March 2024 however that Embark resubmitted the re-registration request. Following the good industry practice in TRIG, Embark ought to have requested the re-registration by 15 March 2024 – within two full business days following the day of receipt. Given the transfer as it actually happened completed within three business days, I'm satisfied had Embark requested that in a reasonable time the final asset would've transferred at the latest on 19 March 2024.

I've considered whether Mr P has incurred a loss from the late transfer of the fund itself but not seen it likely he would've sold it prior it being transferred. I say this because the contract notes when he did later sell it evidence he sold it on 20 August 2024 and no other evidence suggests he likely would've. Given the distance in time I've not seen on balance its likely Mr P would've sold it sooner if the transfer hadn't been delayed.

To Mr P's point this delayed the overall transfer, if I take into account the time loss there it wouldn't in my opinion change the date Embark ought to have initiated the cash transfer. I say this because even without that delay Embark wouldn't have been in a reasonable position to enact the cash transfer until after 8 March 2024 in any event, where without this part of the delay wouldn't have been able to start the transfer 15 March 2024. Which is after when I reasonably think Embark should've started the cash transfer.

Summary

Having fully considered Embark's role in this transfer, I'm satisfied it would be responsible for three delays in the course of this transfer. But only how it handled Mr P's request to transfer the cash balance early impacts the date it would be likely, had everything gone as it should've, that the cash transfer would've been initiated to C.

But I'm satisfied that this delay along with the other two has caused Mr P inconvenience, and potential financial loss in relation to the sale of assets, by delaying those parts of the transfer which contributed to him to eventually ask the cash transfer being sent.

Putting things right

Mr P says he would've received interest from his ISA with C which due to the delays caused by Embark caused him to lose out on. Given he sold assets as part of the transfer, I also considered whether it was likely he would've taken any particular course of action once the ISA transferred had it done so without the delays I've identified above.

Mr P has provided a large number of contract notes for trades he placed from 3 April 2024. I'm not able to fairly determine that any of these particular transactions would've taken place had Mr P received the cash balance when I think he should've. Mr P's trades, once the cash balance transferred, were staggered out over a period of several months and across a wide range of funds in small amounts relative to the size of the cash transfer.

I'm not persuaded on balance then that Mr P would've taken a specific course of action when it comes to potential trades which would've been placed without the delay that I can direct Embark to compensate. Nor do I think it would be putting Mr P in the

position he would be if I was to direct Embark calculate loss by comparing his transferred cash against a benchmark to reflect the possible growth position he would be in if he reinvested this, given he slowly reinvested this money and left a large proportion in cash.

However, I've received evidence that shows Mr P would've received an interest rate on cash balances in his stocks and shares ISA with his new provider, who has told me the applicable interest rate at the time was 4.2% p.a. I'm persuaded Mr P has lost out on that interest and provisionally I think Embark should compensate him for that. As well as any potential loss in his assets being sold down later than I think they reasonably ought to have been.

I also think Mr P has been caused frustration and inconvenience by Embark for the parts of the delay I consider it to be responsible. Mr P was eager to transfer his ISA in part to obtain the higher interest rates his new provider offered, to which Embark was the cause of three separate delays. And the delays Embark were responsible have inconvenienced him where the transfer wasn't completed when he reasonably expected it to be and caused him to engage with the parties at times.

*I intend to direct Embark Investment Services Limited to pay Mr P the value of **E**, where:*

***A** = the difference between the mid-price of the sold assets as on 17 January 2024 and the price actually sold for.*

- If that amount is equal to or greater than £0 then that value is 'A'*
- If that amount is a negative number then there's no financial loss on this part and **A** = 0.*

***B** = the cash balance transferred, which I understand to be £333,091.24*

C** = **A** + **B

D** = 4.2% interest for 23 days applied to **C

***E** = **C** + **D** less any interest or other income Mr P received from Embark between 13 March 2024 until 4 April 2024.*

And, pay Mr P £200 which fairly reflects the inconvenience and worry caused"

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 reviewed the complaint again including the responses to my provisional decision, I've not seen to depart from the conclusions I reached in my provisional decision. I will however provide further comment on the responses I've received and explain why those haven't led me to a different conclusion.

Turning first to the application of TRIG, Embark has said the entity this complaint relates to, Embark Investment Services Limited, itself is not a member of STAR and so TRIG shouldn't apply. While this entity of Embark may not be listed as a member, Embark Group Limited is. That firm, as recorded by Companies House, is a firm with significant control of Embark Investment Services Limited. Embark then would in my view be reasonably aware of TRIG

and the best practice it sets out. Even so whether Embark was a member or not, for the reasons explained in my provisional decision outside of that, I'm satisfied it would be a relevant consideration for me when deciding this complaint given it represents good industry practice.

Embark has referenced several delays it considers A caused in this transfer. I can't comment on the actions of A here given this complaint is about Embark. To be clear, I have in reaching my provisional decision only considered the events as they relate to Embark. I'm satisfied then I'm not attributing any loss to Embark that were caused by any other party.

Embark says when it handled Mr P's complaint it asked him for contract notes to evidence any potential financial loss and that these weren't provided. It also references a comment I made that Mr P placed a trade on 3 April 2024, prior to the cash transferring. In my provisional decision I considered whether any trades would've happened earlier if the cash was transferred when I considered it ought to have been. In doing so, I wasn't persuaded there was evidence any such trades would've likely occurred because the trades which did take place afterwards weren't placed within a reasonable period following the transfer of the cash, instead being staggered over the following months. There isn't then in my view a financial loss from any trading activity that could've taken place but didn't. I only mentioned the 3 April 2024 as that was when trading activity took place around the time of the cash transfer, not to say that was a relevant trade to consider compensating in this complaint.

Mr P's main concerns relate to when he thinks it should be said the cash ought to have transferred. In his view that ought to be 31 January 2024, which is the day after all but the Nippon Yield Fund were sold down to cash. I understand why he says this, but I'm not persuaded the cash transfer ought to have happened sooner than I set out in my provisional decision.

There are several reasons why the industry typically send cash after all other assets have transferred, Embark has touched on the risk of rejection depending on the receiving firm. In Mr P's circumstances, one fund was held up due to an incorrect nominee address – which as I set out in my provisional decision was outside of Embark's control. In my view that would mean 'Step 4' set out in TRIG for ISA transfers hadn't yet completed, which encompasses the sell down and re-registration of assets.

Once those are complete then 'Step 5' involves the initiation of the cash transfer. I'm not persuaded then that Embark ought to have transferred the cash when the initial sales were completed while there was an outstanding re-registration. Had the transfer been cancelled, for example, because of that or instructions changed, that could cause issues as well as potential additional overheads for Embark. I'm satisfied Embark's explanation that it was following what it says is its standard process for transferring cash was reasonable here. Overall I'm not persuaded it was acting unfairly to Mr P in doing so where there are fair commercial reasons for waiting for the transfers and sales to complete and by doing so wouldn't be acting against the good industry practice I've highlighted above.

In my view then up until the point Mr P specifically asked for the cash to transfer and it was clear that would be accepted, Embark wasn't treating him unfair by not transferring the cash before that date. It follows for those reasons as well as what I said about this in my provisional decision that I'm satisfied the earliest the cash ought to have transferred was 12 March 2024, 23 days prior to when it was actually transferred.

It follows then my conclusion remains as it was for the reasons given above and in my provisional decision.

Putting things right

In putting things right then I direct Embark Investment Services Limited to pay Mr P the value of **E**, where:

A = the difference between the mid-price of the sold assets as on 17 January 2024 and the price actually sold for.

- If that amount is equal to or greater than £0 then that value is 'A'
- If that amount is a negative number then there's no financial loss on this part and $A = 0$.

B = the cash balance transferred, which I understand to be £333,091.24

C = $A + B$

D = 4.2% annual interest for 23 days applied to C

E = $C + D$ less any interest or other income Mr P received from Embark between 13 March 2024 until 4 April 2024.

And, pay Mr P £200 which fairly reflects the inconvenience and worry caused.

My final decision

For the reasons given above I uphold the complaint and direct Embark Investment Services Limited to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 May 2025.

Ken Roberts
Ombudsman