

The complaint

Mr C is unhappy about several transactions which happened in his Self-Invested Personal Pension ('SIPP') with Hornbuckle, a trading name of Embark Services Limited, between 2006 and 2019. He also complains that during this time he never received any updates or statements from them.

What happened

Mr C opened a SIPP with Hornbuckle in June 2006 and transferred around £850,000 into it. In September 2006 he transferred in another £68,000. On advice from an independent regulated financial adviser he invested around £280,000 into various non-standard investments which failed very quickly and lost all their value.

On 19 September 2019 Mr C transferred his pension to a different provider. By this point the value of his pension was around £512,000.

On 3 May 2023 Mr C made a DSAR request to Embark. On 7 September 2023 he called Embark to confirm receipt of the information and raised a complaint. He had looked at the transaction history and was unhappy with a number of transactions and charges including benefit payments to him which he said he never received.

Mr C referred his complaint to us on 25 March 2024. Embark provided a detailed response to the complaint on 28 March 2024. They gave explanations for the transactions Mr C had queried and didn't consider they had done anything wrong. They also explained they had sent annual statements each year, however in 2018 and 2019 they didn't hold a current address for him.

One of our investigators considered whether we could look into the complaint due to applicable time limits. He considered we couldn't look at anything that happened before 7 September 2017 which is six years before there was evidence of Embark having received Mr C's complaint.

Mr C says he complained earlier than September 2023. He provided a draft letter dated 28 November 2022 and said he had spoken to Embark earlier that month. However, the investigator found no evidence that such an earlier complaint was ever received by Embark.

As the complaint could not be resolved informally, it was referred to me for an ombudsman's decision.

I issued a provisional decision on 29 May 2025 in which I explained that I couldn't consider any complaint points which related to events that happened before 7 September 2017. I considered the transactions and lack of statements which Mr C was concerned about and which happened after 7 September 2017. However, I didn't think there was anything wrong with those transactions and I didn't uphold this part of Mr C's complaint. I've repeated my provisional findings again below.

What I've provisionally decided – and why

Can I consider Mr C's complaint?

The DISP rules in the FCA's Handbook set out what complaints we can and can't look at. One of those rules relates to time limits. DISP 2.8.2 (2) R says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service more than:

- (a) six years after the event complained of; or (if later)*
- (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

unless the complainant referred the complaint to the respondent or to the ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received.

Embark provided a call note that shows Mr C complained to them on 7 September 2023. I acknowledge that Mr C provided a copy of a draft letter dated 28 November 2022. However, there is no evidence this was ever sent. More importantly, the rules say there needs to be a written acknowledgement or some other record that the complaint was received. There is no such evidence that Embark received a complaint before 7 September 2023.

Most of the transactions which Mr C is unhappy about happened before 7 September 2017, which is six years before he complained. So I next considered the second limb of the rule which is whether he was aware or ought to have been reasonably aware that he had cause for complaint more than three years before he complained.

Mr C told us that he started making enquiries into his Hornbuckle pension after the investments in his new pension increased substantially over a few years and he was updated regularly by his new provider. He says this made him realise that Hornbuckle had obviously done something wrong and not managed his pension appropriately as during his time with them his pension had decreased significantly. He then asked for transaction statements and discovered fees and charges which he says he didn't agree to and payments to him which he says he never received.

Mr C's enquiries started because he was unhappy about his pension performance during his time at Hornbuckle. However, in my view he ought to have had such concerns a lot earlier.

When he complained to us one of the issues raised was that many of his investments failed early on and Hornbuckle obviously didn't monitor them properly. I've seen emails from 2012 from the Financial Services Compensation Scheme ('FSCS') to Hornbuckle asking for information on Mr C's policy as he had made a claim for compensation for his former adviser's advice to invest this way.

Mr C was copied into some of these emails and had signed an FSCS claim form in November 2011. So by 2011 at the latest Mr C was aware that some of the investments had failed and that he had lost a significant amount of money. The concerns he mentioned to us about Hornbuckle not monitoring the investments ought to have been evident then. So a complaint which relates to these particular investments ought to have been made within the following three years, so by 2014.

By September 2019 when Mr C transferred his pension it was still worth several hundred pounds less than what he had invested 13 years before despite further contributions from Mr C. Mr C said he didn't complain in 2019 as he was busy with work and family and because he didn't really need the money then. This explains why he didn't complain, however in my view the significant losses in his pension ought to have still been concerning and should have triggered his enquiries at the very latest at that point.

I acknowledge that he only discovered individual transactions which he says he wasn't aware of when he received a transaction statement in his DSAR. I haven't seen evidence that he received any transaction statements before, so I accept Mr C might not have known every detail that affected the performance of his pension including fee payments, fund switches and payments he says he didn't receive. However, in order to be reasonably aware that he had cause for complaint against Hornbuckle for mismanaging his pension which caused his pension value to significantly decrease, he didn't need to know every detail that might have gone wrong.

So I think by September 2019 when he knew the value of his pension was considerably less than what he had invested he ought to have reasonably aware that he had cause for complaint. Mr C had three years from this point in time to complain, so until September 2022. Mr C complained on 7 September 2023 which is nearly a year too late. I note that even if there was evidence that Mr C complained to Hornbuckle in November 2022, this would have still been too late.

I could look at a complaint which has been referred to late if Embark gave their consent to us considering the complaint or if exceptional circumstances prevented Mr C from bringing the complaint earlier. However, Embark hasn't given their consent. And Mr C has said he was too occupied with work to bring his complaint which isn't an exceptional circumstance.

In summary my decision is that I can't consider any transactions which happened before 7 September 2017. The same goes for Mr C's complaint that he wasn't sent any annual statements. Mr C transferred his pension in 2019. If he thought he didn't receive any statements since he opened his SIPP in 2006, he would have been aware that he had cause for complaint about this in 2019 at the very latest. So I also can't look at any alleged lack of statements or updates before September 2017 as this relates to events more than six years before Mr C's complaint.

I acknowledge that Mr C's main complaint points relate to transactions before September 2017 and I understand it will be disappointing that we cannot consider them.

Issues that I can consider

I've gone on to consider all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint in relation to any issues raised which happened after 7 September 2017. These are:

- Adviser charges of £4,692.43 on 25 July 2018 and £4,900.75 on 8 June 2019. Mr C wants to know if these charges were appropriate and why he wasn't informed of these.
- A payment of £31,182 on 19 September 2019. Mr C wants to know what this payment was for.
- Two payments of £30 each charged when he transferred his pension as well as a £92.78 payment in November 2019

- Lack of statements after 2017

Adviser fees

I've seen a letter to Hornbuckle that Mr C signed on 1 July 2009 with instruction and authorisation to pay Jelf Financial Planning Limited 1% as an annual adviser fee. He signed another agreement in 2013 agreeing to the ongoing adviser charge to Jelf of 1% per year which would be deducted from his pension. Jelf traded under the name of Mercer Jelf Financial Planning from 2016 onwards.

Mr C called Hornbuckle on 31 October 2018. A call note shows he wanted to remove his financial adviser and asked about his cash balances during this time over the phone. He was told he had to send in a letter requesting to remove the adviser. There is no evidence that such a letter was ever received by Hornbuckle and an email in 2020 shows Mercer Jelf was still requesting information on behalf of Mr C. So whilst at some point he was obviously thinking of removing Mercer Jelf as his advisers, it seems he didn't formalise this.

The payments in July 2018 and early June 2019 are the annual adviser payments (1% of the pension value at the time) that Mr C agreed to and were paid to Mercer Jelf.

Other payments and fees

The payment of £31,182 on 19 September 2019 was part of the transfer to Mr C's new pension provider.

After Mr C's plan value was transferred to his new provider and the Hornbuckle SIPP had closed, Hornbuckle received two further disinvestment amounts from Investec Wealth which had held Mr C's investments. These were received on 8 October and 8 November 2019 and transferred on each time to Mr C's new provider. Each time these residual amounts were transferred to Mr C's new pension plan a fee of £30 was charged. This is in line with Hornbuckle's fee schedule which allows for a closed administration fee of £25 plus VAT. The fee schedule forms part of the terms and conditions Mr C agreed to when he took out the SIPP.

The second residual payment received from Investec was £122.78. After the closed administration fee of £30 fee was deducted, the payment of £92.78 was transferred to Mr C's new provider.

Having looked at the transactions since September 2017-which are the only ones I can consider-I don't see that any inappropriate fees or charges were deducted from Mr C's account.

Statements

I can see Hornbuckle sent Mr C's adviser a statement in July 2018. They also sent it to Mr C directly by email. So I'm satisfied he received a statement in 2018 which also set out the ongoing adviser charges of 1% per year and annual management charges.

Call notes show Hornbuckle told Mr C about the missing address details in a call on 7 August 2018. I can see that Hornbuckle sent Mr C an account update form by post (assumably to the address he had given them over the phone) on the same day. I don't know whether this was ever returned by Mr C. However, there is another call note in January 2019 which implies Mr C had received a letter earlier that month from Hornbuckle, so they obviously had a corresponding address for him.

The 2019 statement was printed with Hornbuckle's own address. I see no reason why this could not have been sent to Mr C. However, I don't think not receiving this statement would have had a great impact on Mr C. By this time a transfer to his new provider had already been requested and his transfer completed a couple of months later. If he needed any further information he also would have been able to call Hornbuckle as he had done during the course of 2018 and 2019 on multiple occasions.

I'm not intending to uphold Mr C's complaint about transactions, fees and lack of SIPP statements after September 2017.

Responses to my provisional findings

Embark accepted my findings and had no further comments.

Mr C repeated that one of the main issues he had raised was that two cheques, both for £56,454.83, were issued in June 2007 and May 2008 and he had never received those amounts. He says his bank confirmed that the sums didn't arrive in his account. He had flagged this with Embark when he made his complaint and was told that if the money wasn't received this might have been criminal activity. He hadn't heard anything about this since. Mr C queried if he should report the issue to the police or a lawyer or if he should leave it for the "FSA to comment further" about whether he could retrieve his money. He asked for our suggestions in this matter.

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.

Mr C didn't provide any comments which change the outcome of my provisional decision.

I understand that Mr C is still looking for answers about what happened to the payments made in 2007 and 2008. I already explained I can't consider any complaint against Embark which relates to transactions which happened before September 2017. So our service can't help Mr C any further here.

I don't know what Mr C means when he refers to the FSA and what comments he might be expecting. The Financial Services Authority (FSA) became the Financial Conduct Authority (FCA) in April 2013. The FSA investigated, fined and removed the permissions to provide regulated activities from Mr C's former advisers (Pave) in March 2013. Mr C might also mean the Financial Compensation Scheme (FSCS) who looked into a claim against Pave in 2011. However, I'm not aware that Mr C has been in touch with either the FCA or FSCS about his concerns more recently. Also the FCA wouldn't look into individual complaints and the FSCS assumingly looked into the claim against Pave many years ago.

If Mr C thinks he might have been a victim of fraud he can contact Action Fraud for further information. Their contact details can be found here: <https://www.actionfraud.police.uk/>

My final decision

My decision is that I can't consider anything that Mr C complained about which happened before 7 September 2017.

I'm not upholding Mr C's complaints about transactions and lack of statements or updates from Hornbuckle after September 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 July 2025.

Nina Walter
Ombudsman