

## The complaint

Mr M and Mrs W complain that EBS Pensions Limited trading as Embark Pensions (Embark) have maladministered their Self Invested Personal Pension Plans (SIPP) by incorrectly allocating the ownership of a property investment between them. They want the problem resolved and compensation for any losses incurred.

## What happened

Mr W and Mrs W originally took out SIPPs with a firm called Liberty, Embark subsequently took over the administration of the SIPPs. Mr M and Mrs W used the SIPPs to invest in two commercial properties split between them. There is confusion around what these splits were, which is the basis of the complaint. The position seems to be that Property 1 was allocated 50:50 and that this was the intention when Property 2 was purchased. The correct split of a jointly owned property is important, so that rental, professional costs, borrowing costs and loan repayments and so on can be correctly allocated between the owners, all of which would influence future valuations. It appears that Property 1 was subsequently sold for around £320,000.

In September 2021 Mr M and Mrs W's financial adviser queried the SIPP valuations provided by Embark as these were different and asked what the split for Property 2 was. Embark replied on 13 October 2021, saying its records showed the split for property 1 as 65:35 in favour of Mr M. It then said the records showed whilst the intention was for a 50:50 ownership, "*funding issues*" required the split to be 65:35 and all property related transactions had been on that basis. The adviser queried this and Embark responded on 26 January 2022 that this split wasn't conclusive as it needed to "*track down the original employee for Embark who dealt with the property.*" It then said that "*the amount paid out was therefore not in the correct percentage of ownership*". It appears this had been split on a 50:50 basis and Embark said it had now calculated the correct share and made adjustments to the joint bank account shared by the SIPPs for property related activity.

Frustrated by the failure to provide a full explanation the adviser raised a complaint on Mr M and Mrs W's behalf in August 2024, as it said the latest valuations from Embark now showed property 2 being split 57.71:42.29 in favour of Mrs W. The adviser said the associated rental receipts and cash balances must also be incorrect in view of this discrepancy. A separate complaint was also raised about problems accessing tax-free cash from Mrs W's SIPP due to the outstanding questions around valuation. Embark upheld Mrs W complaint around the tax-free cash and offered her £250 for the inconvenience, but it didn't provide a final response about the other complaint, so Mr M and Mrs W referred that to our service on 20 December 2024. They said they wanted an explanation of how and when the error had occurred, what impact the error had had on benefits already taken and the proposed resolution.

Our investigator asked Embark for its file and it said it was looking into the issues and would respond as soon as possible but it didn't provide any further information. So, our investigator considered the available evidence and said it should be upheld.

Our investigator said Embark appeared to accept there was an issue. But no further details had been provided by it since 22 January 2022, other than it giving a completely different split on 29 August 2024 of 57.71:42.29 in favour of Mrs W without explanation. He said it was now around three years and four months since information was first requested from Embark and this was an unreasonable delay. He said without more details it wasn't possible to say whether financial losses had been suffered. He said Embark should fully investigate the property splits and provide a detailed explanation. And if a mistake had been made, this should be amended to ensure Mr M and Mrs W hadn't suffered a financial loss. He said if either Mr M or Mrs W believed there were any other consequential losses they should provide evidence for consideration. Our investigator said both Mr M and Mrs W had been caused distress and inconvenience for an extended period and it was fair that Embark should pay them £300 each in compensation for this.

The adviser said the compensation was inadequate in the circumstances as the problem remained unresolved and prevented Mr M and Mrs W's from undertaking any form of retirement planning as Embark was simply ignoring the issue. Our investigator said our service couldn't impose fines on Embark, but if it didn't respond to his view on the complaint, we could issue a legally enforceable final decision. And if this wasn't complied with the matter could be referred to the Financial Conduct Authority as the regulator.

Embark said it accepted our investigators view and would undertake the actions required. And after some delay paid the compensation of £300 each to Mr M and Mrs W.

Unfortunately Embark hasn't further responded to Mr M and Mrs W, the adviser or our service, so it has come to me to decide.

### **My provisional decision**

I issued my provision decision on; 21 October 2025, I explained the reasons why I was planning to uphold the complaint. I said:

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

*Having done so, I'm planning to uphold the complaint along the same lines as our investigator but think it's fair that Embark should pay a greater amount of compensation for the distress and inconvenience it has caused.*

*This is clearly very poor service from Embark over an excessively long period of time. Despite the initial enquiries being made nearly three years and ten months ago, it still isn't clear what has happened. I note an email from Liberty in 2016 shows that Property 1 was allocated 50:50 between Mr M and Mrs W within the SIPP and Property 2 was allocated 65.48% to Mr M and 34.52% to Mrs W, although it appears the initial intention was for the split to be 50:50 as for property 1. The email thread shows there was an enquiry from the adviser about equalising the split through Mrs W purchasing some of Mr M's share. The response dated 2 March 2016 sets out the current splits for both properties, cash balances and share of the commercial loan and states that if the split is to be changed up to date valuations would be required and a solicitor would need to liaise with Land Registry. So, there may or may not have been some subsequent activity around this. It's likely that this would have involved quite significant paperwork to finalise along with professional fees, all things that might be expected to be recalled had this taken place. Land Registry records maybe useful here and Mr M and Mrs W can obtain those directly from Land Registry, if they haven't already done so.*

*From the limited information it isn't clear whether the split on Property 1 should also have been changed to a roughly 65:35 split, Liberty's email of 2 March 2016 says not. But Embark's email of 26 January 2022 suggests that this was changed and that when the property was sold the proceeds were incorrectly allocated between Mr M and Mrs W. That might mean that Mrs M received too much and had also previously been allocated more rent but also paid more to any loan costs. The email only says the error had been corrected by moving cash about within the SIPP without giving any details. That is clearly unsatisfactory.*

*It maybe that Embark's attempt to correct this has resulted in the ownership of Property 2 being adjusted to provide the 57.71:42.29 split advised subsequently, which would seem contrary to Embark's earlier explanations. Summary valuation and transaction statements for Mr M and Mrs W's SIPPs showing a last entry date of 17 February 2025 have been provided. These indicate splits including cash of 54.77% in Mrs W's favour and 41.59% in Mr M's, which doesn't add up to 100%, so it all makes little sense. But for any reallocation of property assets to have been carried out without consultation with Mr M and Mrs W and using updated valuations of the remaining property asset seems most unusual. The statement for Mrs W shows rental being received each month of £833.33, whereas Mr M's statement shows no rental but an employer contribution of same amount. Mr M's employer might pay contributions, but there should still be some rental income. So, these statements only add to the confusion.*

*Whilst I appreciate Embark didn't originally set the SIPPs up or deal with the property acquisitions, its primarily role is ensuring compliance with legislative requirements and HMRC regulations. Record keeping is an important part of that and even if there are problems with the records it isn't reasonable for it to simply provide no update of what, if anything, has been achieved in clarifying matters. It maybe that there are in fact no errors and everything is correct. But it is clear that the uncertainty has and is preventing Mr M and Mrs W from managing their pensions as they want over an excessive period of time. That is unreasonable and Mr M and Mrs W haven't been treated fairly by Embark, with the ongoing uncertainty and worry resulting in continuing distress and inconvenience for them. I think it's fair that the £300 each in compensation proposed by our investigator should be increased to £500 each and Embark should clarify the details of their SIPPs as a matter of urgency.*

### **Putting things right**

*I said that Embark should urgently provide Mr M and Mrs W with a substantive explanation of what has happened and what the correct position was for both SIPPs is, with appropriate supporting evidence, setting out any calculations necessary in a simple manner.*

*I said if any financial losses, costs or expenses have been unnecessarily incurred, Embark should, put Mr M and Mrs W as closely as possible back into the position they should have been in but for any errors made. Interest should be paid where appropriate at the rate of 8% per year simple to the date of settlement.*

*I thought the distress and inconvenience that had been caused was significant over a sustained period of time and compensation of £500 each in total should be paid to Mr M and Mrs W, including any payment already made to them in respect of this.*

I asked both parties to send me any further information or comments they would like me to consider.

### **Response to provisional decision**

Mr M and Mrs W accepted my provisional decision.

Embark also accepted my provisional decision, it said if Mr M and Mrs W also accepted, it would settle the complaint as I'd proposed.

Our service confirmed Mr M and Mrs W acceptance to Embark and closed the complaint. But, Mr M and Mrs W then contacted our service to say they hadn't heard any further from Embark and requested that a legally enforceable final decision be issued.

### **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've decided to uphold the complaint.

It is unfortunate that Embark still hasn't resolved the complaint and dealt with all outstanding issues, despite confirming it would do so, both after our investigators initial view and my provisional decision. These continuing delays are causing ongoing inconvenience and uncertainty to Mr M and Mrs W and the very poor service they have experienced now extends over a staggeringly long period of time.

Maintenance of adequate records is a key responsibility of a pension provider and there are clearly shortcomings with Embarks here, and it hasn't and isn't treating Mr M and Mrs W fairly. It should contact them, without further delay with a thorough update and explanation of its enquiries to date.

### **Putting things right**

Embark must urgently provide Mr M and Mrs W with a substantive explanation of what has happened and what the correct position for both SIPP's is. It must provide copies of Land registry records and other documents in support of its conclusions.

It must set out the details of the correct position and calculations of any financial losses incurred in a simple manner.

If any financial losses, costs or expenses have been unnecessarily incurred, Embark must, as our service expects, put Mr M and Mrs W as closely as possible back into the position they should have been in but for any errors made. Interest must be paid where appropriate at the rate of 8% per year simple to the date of settlement.

If there is a loss, Embark should pay into Mr M's and or Mrs W's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Embark shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M's and or Mrs W's as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr M and Mrs W have remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

Income tax may be payable on any interest paid. If Embark deducts income tax from the interest, it should tell Mr M and or Mrs W how much has been taken off. Embark should

provide a tax deduction certificate in respect of interest if requested so that tax can be reclaimed on interest from HM Revenue & Customs if appropriate.

The distress and inconvenience that has been caused is significant and suffered over a sustained period of time. So, Embark must pay compensation of £500 each in total to both Mr M and Mrs W, including any payment already made to them in respect of this.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against EBS Pensions Limited trading as Embark Pensions.

I direct EBS Pensions Limited trading as Embark Pensions to undertake the actions detailed above and pay any compensation due to Mr M and Mrs W.

I further direct EBS Pensions Limited trading as Embark Pensions to pay Mr M and Mrs W a total of £500 each in compensation for the distress and inconvenience they have been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs W to accept or reject my decision before 19 January 2026.

Nigel Bracken  
**Ombudsman**