Financial Ombudsman Service

The complaint

Mr C has complained about the actions of Embark Services Limited when he tried to transfer his self-invested personal pension ("SIPP"). He says Embark caused the process to become unnecessarily protracted, causing him financial and emotional distress as a result.

What happened

Mr C held a SIPP with Embark, as did his wife (Mrs C). Mr C's SIPP jointly held a property along with investments (with "Firm A") and a relatively large amount of cash. In 2022, Mr and Mrs C decided to transfer to another SIPP provider, "Firm T". The first step was transferring the property in-specie. When this was done, the investments were sold and the cash in the SIPP (including the existing cash holding) was transferred to Firm T. The process wasn't completed until the middle of 2024, which was approaching two years after the initial transfer request – hence Mr C's complaint. Mrs C has also made a complaint which is being looked at separately.

Embark has accepted it caused unnecessary delays. It hadn't quantified those delays by the time the complaint was referred to us. But its eventual answer was that it caused a total delay of 139 days, which would result in a hypothetical transfer date sometime in early 2024 (although I'm not aware of Embark providing a specific date or any detail on how it came to its answer). Our investigator concluded the extent of the delay was far longer than that. He thought the transfer should have concluded on 4 May 2023. He set out what Embark should do to put things right for Mr C.

Embark accepted the investigator's findings. Mr C disagreed and asked for an ombudsman to decide on the 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.

Embark accepted our investigator's findings, including his proposed approach to compensation. The disagreement comes from Mr C. His points have already been addressed by our investigator. I largely agree with what our investigator has said but, for completeness, I will add my thoughts.

1. Delay in the in-specie transfer of property

The initial instruction to transfer was made on 28 October 2022. Little progress was made at that point. Our investigator found that this was because Embark was waiting for the return of a completed property disposal form. He didn't think this was Embark's fault so he excluded that particular delay from his considerations. The receiving SIPP provider (Firm T) confirmed it returned the form on 10 March 2023, which is the date used by our investigator for when the in-specie transfer of the property was in Embark's power to progress. From that point, he thought the property transfer should have taken "a few weeks". This was based on Embark's view that an in-specie transfer of property "can take from as little as a few weeks to as long

as several months". In the absence of evidence to the contrary, he didn't think there was reason to think this transfer should have been anything other than towards the lower end of Embark's usual timetable. Embark hasn't disputed this.

In response, Mr C has sent in evidence which he believes shows the property disposal form was returned in good time to Embark. Specifically, he sent us an email dated 10 November 2022 from Firm T to a firm of solicitors. It says the following:

"Could we please appoint you for the Inspecie transfer of the above property from Hornbuckle private pensions [Embark] to the clients' SIPPs held with ourselves. Please find attached the property questionnaire along with the landmark report…We have sent transfer discharge forms to Hornbuckle and are awaiting their response."

Clearly this doesn't categorically prove Mr C's point. It's an email from his new SIPP provider appointing a firm of solicitors which happens to make reference to it having previously sent "transfer discharge forms" to Embark. This isn't quite the same as an email showing discharge forms were actually sent, or whether the property disposal form in question was part of what had been returned. I also note here that Embark wrote to the receiving SIPP provider on 2 December 2022 and 5 January 2023 saying it had not yet received the property disposal form. It wrote to Mr C on 12 December 2022 with the same message (along with a link to the form). So, for whatever reason, Embark didn't think the property disposal form had been returned. The receiving SIPP provider – Firm T – also said the property disposal form was returned on 10 March 2023 and draws the distinction between that particular form and the discharge forms it sent earlier:

"We initially sent the transfer discharge forms on 28th October 2022, sent by both post and email on this date.

"Property disposal forms were sent to them on the 10th March 2023." [email from Firm T to Mr and Mrs C and their adviser, 28 August 2024]

With the above in mind, I consider the most likely scenario here is that discharge forms were sent to Embark back in November 2022 but the property disposal form wasn't included in that submission. But even if I'm wrong about this, I have to consider the fact that Mr C was subsequently made aware that Embark still needed the property disposal form, as was the receiving scheme. Whilst I take on board what Mr C has said about difficulties in contacting Embark, I don't think it's a stretch to say there were opportunities for any oversight to have been rectified far sooner. With all the above in mind, I don't think it's fair to rewind the hypothetical date of the property transfer back any further.

I'm also aware that Mr C has pointed to another delay in the process, which is the four weeks he says it took Embark to appoint solicitors to deal with the property transfer. This doesn't strike me as being a particularly egregious error given the receiving scheme took just under two weeks to do this. I also note that the approach taken by our investigator, which I agree with, is that the property transfer in its entirety should have completed at the shorter end of Embark's typical experience once it had everything it needed – so weeks, rather than months. So an idealised timeline has already been factored into my considerations. Squeezing that timeline even further wouldn't therefore be appropriate.

2. <u>Embark could have sent over Mr C's cash holdings as soon as the property had been transferred</u>

Mr C's SIPP held a relatively large amount of cash. This wasn't transferred until the investments held with "Firm A" had been sold down. Mr C says Embark didn't need to delay transferring the cash – it could have been sent across as soon as the property transfer was

complete. He further notes Embark's rationale that the whole process had to be done together doesn't hold because some residual amounts of cash in the SIPP bank accounts are still to be transferred.

However, our investigator has already rewound the completion date for the transfer and reinvestment of the cash and investments back to 4 May 2023. This assumes Embark had two working days from the completion of the property transfer in which to contact the provider of his existing investments, Firm A, and a further 22 days from then for the transfer to complete and funds be reinvested. That's how long the process took once the various issues that had beset this part of the transfer had been resolved (the details of which our investigator has already catalogued) so it's a reasonable basis from which to work. Our investigator has also taken into account the impact of Mr C not being able to access his pension benefits because of the delays, a point I will come on to later. Embark hasn't disputed any of this.

With all that in mind, Mr C's point has, in essence, already been accepted by everyone. The transfer of both cash and the investments have been assumed to have completed at the same time, and the hypothetical timeline for that part of the transfer process is a reasonable one. And the impact of being unable to access pension benefits for a period has also been considered.

3. <u>Adviser fees</u>

Mr C has pointed to the additional work completed by his financial adviser, and the unfairness of that given it was prompted by Embark's mistakes. He says Embark should pay for the cost of that additional work, which he has estimated to be in the region of £3,000.

Our investigator originally noted that he couldn't consider the financial impact of Embark's delays on Mr C's adviser. Whilst that's true to an extent because we can only direct Embark to compensate a complainant, which is Mr C in this case, it doesn't take into consideration the possibility that Mr C potentially paid more to his adviser because of the extra work she had to do. If so, then that's something we can consider in so far as we can award additional compensation to Mr C if he ended up having to pay additional costs that he otherwise wouldn't have had to pay.

Our investigator subsequently addressed this and I agree with his conclusions. Even if I was to accept Mr C paid additional fees to his adviser, I would then have to be persuaded those extra fees were an unavoidable consequence of Embark's actions. Whilst I can understand why Mr C relied on his adviser, I consider it a stretch to say paying a financial adviser additional fees to progress a stalled transfer was an unavoidable expense. But, more importantly, I'm not even aware of Mr C having to pay additional fees to his adviser above and beyond what he would have had to pay anyway. He hasn't provided any evidence along those lines. And it wouldn't typically be the case that advisers charge in this way for working on a transfer. Typically, fees are charged as a percentage of the funds being transferred rather than on, say, an hourly basis for each step of the process. So the additional work Mr C's adviser had to put in was essentially covered by that percentage fee. So that brings us back to where we were before, which is that Mr C's adviser may well feel out of pocket but Mr C – the complainant – isn't and that's the focus of my attention.

4. <u>Having to rely on savings and the overall impact on Mr C's retirement planning</u>

Mr C says Embark's delays meant he couldn't draw income on his pension as intended for around ten months which caused him to rely on his other savings. He says this meant he lost out on the interest he would have earned on those savings and that he used his tax-free cash to replenish those savings causing him to also lose tax advantageous growth. He also

says he ended up having to cut back on spending because of the delays.

Our investigator agreed with Mr C and set out what he thought Embark should do to put things right. Briefly, that involved paying Mr C 8% simple interest on the withdrawals he made from his savings and increasing the distress and inconvenience award it had offered to £400. Embark accepted all this (having previously taken the slightly different approach of offering 8% for any late payments from Mr C's pension).

In response, Mr C says he had to rely on his current account, not just his savings, and that taking tax-free cash early was more than just "inconvenient" – it has profound implications for his retirement planning that will last for the rest of his life. He goes on to list some of those implications, including the loss of compounded tax-free growth on a portion of his pension, an irrevocable impact on lifetime allowance calculations and the inability to now react to, and plan for, government changes to the pensions regime.

I'm not persuaded by Mr C's arguments.

In relation to his first argument, the financial loss is not the total amount of money Mr C had to spend from non-pension sources per se – he isn't being awarded "free" money in that respect. Rather, the loss is the *cost* of having to fund spending from non-pension sources. That cost accrues from Mr C withdrawing savings, and the interest foregone on those withdrawals, rather than his use of his current account, the financial implications of which would likely have been far less significant. As such, the financial losses Mr C suffered have adequately been accounted for by awarding 8% simple interest on the amounts he withdrew from his savings. It's a fair and reasonable way to account for the interest he has lost out on by having to use those savings rather than being able to rely on his pension as planned.

In relation to Mr C's second argument, he points to the losses resulting from taking tax-free cash early in order to replenish his depleted savings. But that doesn't explain precisely why he had to immediately replenish his savings with his tax-free cash or the extent to which those losses were mitigated by, say, using any ISA allowances. I also haven't seen anything that makes me think Mr C has suffered a financial loss in relation to his lifetime allowance, or from any recent government changes to pensions.

Ultimately, I need to assess the likely financial impact on Mr C of Embark's actions. And I haven't seen any persuasive, or particularly specific, evidence of those losses beyond what I've addressed above. With that in mind, I will follow the approach set out by our investigator, which is to pay Mr C 8% simple interest on his share – assumed to be 50% – of the withdrawals made from Mr and Mrs C's savings. Further detail is provided on this in the "putting things right" section below.

Similarly, I won't be increasing the distress and inconvenience award again. Little of what happened was ideal. But my role isn't to punish a business – it's to assess the impact Embark's failings had on Mr C beyond just the financial losses I've addressed elsewhere. And whilst I acknowledge everything Mr C has said in this respect, I must also take into account the fact that his adviser shouldered much of the burden here – as discussed above. Furthermore, for much of the time under review, Mr C's assets were invested (indeed, the property was never disinvested) which would have given him at least *some* comfort that his pension was being cushioned, to some extent, from significant investment losses arising from being out of the market. And being able to rely on his savings softened some of the potential stress of being unable to access his pension funds. This isn't meant to downplay the impact Embark's actions had on Mr C. But with all the above in mind, I'm satisfied £400 is a fair and reasonable amount for the distress and inconvenience caused to him.

Putting things right

Investment losses resulting from the delays

My aim in awarding fair compensation is to put Mr C back into the position he would likely have been in had it not been for Embark's errors. It's not possible to say *precisely* what Mr C would have done had the transfer happened sooner but I'm satisfied he would have invested in the same way as he did when the transfer finally did complete in 2024.

Any loss Mr C has suffered should be determined by obtaining the notional value as at the date of my final decision of the non-property assets he transferred assuming they had been transferred and reinvested on 4 May 2023. Embark should assume Mr C would have invested those assets in the same way as he did when the transfer finally went through in 2024. Embark should then subtract the current value, as at the date of my final decision, of those non-property assets from this notional value. If the answer is negative, there's a gain and no redress is payable.

Embark will likely need to contact the receiving SIPP provider, Firm T, and the provider of Mr C's investments prior to transfer, Firm A, to calculate these values.

As outlined by our investigator, Mr C shouldn't have to pay Embark's SIPP fees for the period of the delay. Ordinarily, this would be accounted for in the approach outlined above. However, if that isn't the case here Embark should make the necessary adjustments to the approach outlined above to allow for those charges that Mr C wouldn't have paid had there been no delay in the transfer.

The compensation amount should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid 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 C as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. This isn't a payment of tax to HMRC, but an adjustment to ensure Mr C isn't overcompensated.

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

Using savings to supplement income

Embark should pay Mr C 8% interest (simple) per year on 50% of each of the withdrawals listed below from the date of each withdrawal to the date of my final decision. The withdrawals below have been shared with the parties previously, but I haven't been provided with the precise date of each withdrawal. For simplicity, Embark should assume each withdrawal was made on the first of the month:

- December 2023/January 2024: £3,000
- February 2024: £8,328.68
- March 2024: £1,500

- April 2024: £2,800
- May 2024: £2,000
- June 2024: £3,000
- July 2024: £2,000
- August 2024: £2,764.51

Distress and inconvenience

If it hasn’t already done so, Embark must pay Mr C £400 for the distress and inconvenience it caused.

Late payment of compensation

Embark must pay the compensation within 28 calendar days of the date on which we tell it Mr C accepts my final decision. If Embark fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

My final decision

For the reasons explained above, I uphold Mr C’s complaint and require Embark Services Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 16 March 2026.

Christian Wood
Ombudsman