

The complaint

Mr G has complained about the length of time it took Embark Investment Services Limited to switch his pension with them to his new provider. He says the delays they caused resulted in him losing out on investment growth in his new pension.

Mr G would like Embark to recompense him for the losses he says he's suffered.

What happened

In the latter part of 2020, Mr G visited his financial adviser to seek advice on his existing Embark pension plan. Following that meeting, his adviser submitted a transfer request to Elevate (Standard Life) to move his plan to them.

Embark received Mr G's transfer forms from Elevate on 11 January 2021. Due to a high volume of work at the time, Embark didn't start processing the transfer request until 2 February 2021.

On that day, Mr G's holdings were sold down to cash, with the exception of his Woodford fund which at the time had been suspended. So, Mr G's adviser asked for that holding to be transferred to Standard Life on an in-specie basis given it was illiquid at the time. At the same time, Embark wrote to Mr G's financial adviser to inform them the holdings had been liquidated as instructed. Embark also shared details of the consumers assets with Standard Life and they were asked to confirm their acceptance of the transfer. Embark said they received confirmation from Standard Life that they were able to accept the in-specie transfer on 26 March 2021.

On 8 May 2021, Embark discovered the Woodford fund couldn't be transferred electronically, so completed a stock transfer form and sent it to the fund manager on 16 May 2021. After issuing several chasers and having to re-send the stock transfer form, Embark received confirmation the fund had been re-registered on 23 September 2021.

Mr G's assets were then transferred to Standard Life on 7 October 2021. Unhappy with the delays, Mr G's financial adviser complained to Embark on his behalf. He said in summary, that he felt Embark had taken too long to arrange the transfer and consequently, Mr G had lost out on investment growth amounting to around £28,000 over the eight-month window the monies were sat in cash for.

After reviewing Mr G's complaint, Embark concluded they were partially responsible for the delays he'd suffered. They also said in summary,

- They acknowledged they didn't start work on processing his transfer until four weeks after having received his paperwork. They also acknowledged the delay in issuing the stock transfer form to the fund managers, a further delay of around 52 days.
- Embark offered Mr G £350 for the inconvenience the delays had caused him.

- However, they didn't believe they should be held accountable for the other delays Mr G had experienced because they felt these were all outside of Embark's control. They said those delays were attributable to third parties and not themselves.
- They explained it was standard industry practice to send the cash last after all funds had been transferred. They didn't believe they should be held accountable for the lost investment growth potential Mr G said he'd suffered from having his monies in cash for so long.

Mr G was unhappy with Embark's response, so he referred his complaint to this service. In summary, he said Embark's delays resulted in him losing out on investment growth. He was able to demonstrate where his monies were planning to be invested following the switch to Standard Life and so, he felt Embark should recompense him for his losses.

The complaint was then considered by one of our Investigators. He concluded that Embark hadn't treated Mr G fairly. He said that Embark should've kept Mr G's funds invested until such time as they understood what was happening with the Woodford fund. He felt that Embark should fully recompense Mr G for his losses as if he'd transferred his pension on 2 February 2021.

Embark however, disagreed with our Investigator's findings. In summary, they said unless they're told otherwise, they'll always follow the instructions they're given, which in this instance was to encash the investments. In addition, they didn't feel it fair they should be asked to recompense Mr G for delays that were as a result of other parties.

Our Investigator was not persuaded to change his view as he didn't believe Embark had presented any new arguments he'd not considered or responded to already.

Embark then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision explaining that I was planning to uphold Mr G's complaint. For completeness, I've set out the findings I made in full below.

My provisional decision

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

I can understand Mr G's frustration that the transfer of his pension didn't proceed as quickly as he felt it should have. In complex transfers such as that of a SIPP, the sending scheme is reliant on several third parties to complete the switch. But it's important for me to say, this decision focuses solely on the actions of Embark whom this complaint is against. And, having carefully considered both sets of submissions, I'm upholding Mr G's complaint. I'll explain why below.

The suspension of the Woodford fund was widely known throughout the industry and it's clear from the suitability report the consumer has sent in, they were aware of it too. But I'm not convinced Embark should've kept the consumer's other funds invested until such time as they knew what would happen with the Woodford fund. It's important to remember that Embark are a platform and not an adviser. When they receive an instruction to sell, it's their responsibility to ensure they action that request as they've been directed to do so in a prompt manner. Also, Embark weren't able to undertake a transfer of the cash and send the illiquid fund at a later date. That's because a partial transfer of a crystallised fund (as Mr G's

is) isn't possible. If the benefits have been designated to drawdown, the whole of the fund under the arrangement must be transferred.

Mr G explained to this service that despite the delays, he didn't wish to purchase new funds in Embark with his uninvested cash because, for all he knew, the Woodford fund could be transferred shortly after any purchase he'd made. That would mean he'd then have the inconvenience of either selling down those new funds or transferring those to the new plan with the Woodford fund in-specie too. So, I can understand his reluctance to want to do so.

In shaping my decision, I've carefully considered the actions of Embark along with the respective timeline on this complaint. When raising his concerns to this service, Mr G stated he originally submitted his transfer request to Embark on 3 December 2020. However, Embark states they only received the form on 11 January 2021. I'm satisfied from what I've seen that Embark received the request from Standard Life on 11 January 2021.

So, if Embark received the switch application on 11 January 2021 and Mr G's monies were sent to Standard Life on 7 October 2021, that means the switch took a total of 270 days from start to finish. At different stages within that time period, Embark were waiting upon third parties to respond to them before they could proceed with the processing of the switch. I've considered those interactions:

New Pension Provider

Embark contacted Standard Life on 2 February 2021 asking for confirmation they could accept the in-specie transfer. In their complaint response, Embark said they received confirmation back from Standard Life that they were able to accept the in-specie transfer on 26 March 2021. However, from the file that Embark have sent this service, it seems to me that confirmation acceptance was actually received back from Standard Life on 18 March 2021. Therefore, that element of the process took 45 days. I've seen no evidence from the file that during those 45 days Embark chased Standard Life for a response until they were prompted by the consumers IFA on 12 March 2021. At which point they chased Standard Life and received a response back the same day – that's the 18 March 2021. I would've expected that during the month and a half the query was with Standard Life, Embark should've chased them sooner than they did and importantly, more often.

I have to decide on the balance of probabilities what would most likely have happened had Embark adopted a more robust follow-up and chase process. So, I think had Embark chased Standard Life earlier than they did when seeking confirmation of the in-specie transfer, I conclude that element of the process would most likely have been completed within no more than 21 days. I say that because Embark were only asking Standard Life for confirmation of their acceptance, rather than asking them to action any paperwork. So, it therefore follows that I find Embark responsible for delays of an additional 24 days (45 days – 21 days).

Fund Manager

I've also thought about the 131 days Embark were waiting for the Fund Manager to re-register the fund. Embark sent the stock transfer form to them on 16 May 2021 and received it back on 23 September 2021. Embark chased the Fund Manager on four separate occasions including the 1 and 28 June along with the 17 and 24 August. On 4 September the Fund Manager asked Embark to resend the stock transfer form which they did 12 days later, on 16 September which Embark then received back a week later. Embark were chased themselves on multiple occasions by both the consumer's adviser and Standard Life. I don't think their approach was robust enough. That's because they waited 51 days between the second and third chases and they took nearly two weeks to resubmit the transfer form when asked to do so.

Again, I have to decide on the balance of probabilities what would most likely have happened had Embark adopted a more robust follow-up and chase process. There was a window of 51 days between the second and third chases which I don't think is reasonable and drew out the process longer than it needed to. As such, I've concluded that had Embark chased the Fund Manager earlier, it would've more likely than not brought the issue to a close sooner. I therefore find it reasonable to hold Embark accountable for 25 days of those delays for failing to chase in a timely manner. In addition, I also believe Embark should be responsible for part of the 12 day delay in sending the stock transfer form back to the Fund Manager. Given the length of time the consumer had already been waiting for this transfer, I can see no reason why that couldn't have been concluded within 2 days of the Fund Manager's request and as such, I believe it's reasonable to hold Embark accountable for an additional 10 day delay in that regard.

I think it more likely than not had Embark applied a closer focus and more regular but importantly, consistent chases, Mr G's pension would've been re-registered sooner.

Summary - What delays should Embark be held responsible for?

So, as I've already explained the full end to end process took 270 days.

Embark have already conceded they're responsible for the first 23 days' worth of delays - that takes account of the time it took them to start processing the application. They've also conceded they're accountable for delays of 52 days - that's the time it took from Standard Life confirming they'd accept the transfer to the time they sent the stock transfer form to the fund managers. However, as I've already explained, I think that should be 60 days because it seems to me that confirmation of acceptance was actually received back from Standard Life on 18 March 2021 and it's at that point the clock starts ticking to 16 May.

My role is to ensure any outcome is fair and reasonable to both parties. I've already explained in some instances I'm having to work on the balance of probabilities and my assumptions are not an exact science. And in any switch process, there's multiple variables that can impact the length of time it takes to move from one provider to another. For example, processing needs to be undertaken and delays are typically inevitable, but, I think what I've set out is equitable.

Therefore, Embark are responsible for the following delays:

270 days – (23 + 60 + 24 + 25 + 10) = 128 days

It therefore follows that I conclude had Embark adopted an efficient and consistent chase and follow-up process, Mr G's pension switch would've been undertaken within 128 days which would mean his fund moved to Standard Life on 18 May 2021. That assumes Embark received the application on 11 January 2021. Therefore, Embark should pay Mr G for any lost investment growth he would have achieved between 19 May 2021 and 7 October 2021, when his pension was eventually switched away.

If Embark have not already done so, they should also pay Mr G the £350 they've offered for the trouble and upset they've caused him for the delays he's experienced as a consequence of their inaction.

Responses to my provisional decision

Embark responded explaining they agreed with the provisional decision but, they believed the redress calculation should start later than I'd originally set out. Embark explained they originally sent the cash on 7 October 2021, however, this wasn't credited into Mr G's SIPP

until 15 October 2021, six working days later. Purchases were then made on 15 October 2021 and 18 October 2021.

Embark went on to say that meant if the cash balance was sent on Tuesday 18 May 2021, those monies would have been applied on Wednesday 26 May 2021, six working days later and the trades would have been placed on 26 May 2021 and 27 May 2021. So, Embark said a week should be added to the start date.

After sharing Embark's response to the provisional decision with Mr G, he didn't agree with their viewpoint. He said he'd be disadvantaged by pushing the notional start date along by a week because having checked his investment, Mr G explained his plan would've benefited from a notable increase in growth had it been invested on 18 May 2021. He felt Embark's argument only stood up if the redress was altered from 26 May to 15 October.

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 I've already highlighted in my provisional decision, my role is to ensure any outcome is fair and reasonable to both parties. I've already explained in some instances I'm having to work on the balance of probabilities and my assumptions are not an exact science. In summary, I'm still upholding Mr G's complaint for the same reasons I've given in the provisional decision but, I'm making a small revision to the redress calculation I'm asking Embark to undertake. I'll explain why below.

In summary, Embark are saying that after the monies left, it took six working days for those funds to reach and then be invested within Mr G's pension. They're saying they shouldn't be held accountable for those delays.

However, if I add a further allowance of six working days at the front end of the notional start date, that time would in effect be reducing the delay to 136 days rather than the 142 days I've already determined Embark is responsible for (if I left the end date as 7 October 2021). That's because in my provisional decision, I'd run the loss calculation to 7 October 2021 (when the monies left Embark) and not the 15 October 2021 (when the monies were actually invested).

Had the investment started after the six working days on 26 May 2021, then the monies would've already been invested and therefore earning a return between 7 October 2021 and 15 October 2021. So, that time period must be accounted for when considering any lost growth potential Mr G hasn't benefited from.

In addition, had the monies been sent on 18 May 2021, they wouldn't have been invested until 26 May 2021 and therefore Mr G wouldn't have benefited from whatever growth there would've been during that interim period.

Therefore, I am altering the redress to reflect what I think would most likely have happened in reality. I've concluded the delay calculation should run from the actual point the money would've been invested in Mr G's new pension, which is 26 May 2021, and run until 15 October 2021. If I don't run the loss calculation up until 15 October 2021, Mr G would be losing out on any growth he would've benefited from during the period of 7 October 2021 to 15 October 2021 – because as I've already explained, the monies would've been invested during that period.

Whilst I've moved things along by a week, the time period is still 142 days which Mr G should be recompensed for. As such, I require Embark to take the following steps below to put things right:

Putting things right

To compensate Mr G fairly Embark should:

Compare the performance of Mr G's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

If there is a loss, Embark should pay into Mr G's pension plan, to increase its value by the amount of the compensation. Embark's 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 Embark are unable to pay the compensation into Mr G's pension plan, they should pay that amount direct to Mr G. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation 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 isn't a payment of tax to HMRC, so Mr G won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.

Provide the details of the calculation to Mr G in a clear, simple format.

Income tax may be payable on any interest paid. If Embark considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr G how much they have taken off. Embark should also give Mr G a tax deduction certificate in respect of interest if Mr G 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
Embark Pension	Switched to Standard Life	ASI MyPortfolio Index IV fund.	Between 26 and 27 May 2021 in line with when the actual funds were purchased	Between 15 and 18 October 2021 in line with when the actual funds were purchased	8% simple per year on any loss from the end date to the date of settlement**

** Despite the fact the consumer has switched their pension away, any loss Mr G has suffered needs to be brought up to date. To keep things simple for both parties, rather than asking Embark to seek out third party information from Mr G's new provider calculating what would've happened with his fund, I'm satisfied that adding 8% simple interest per year is a fair award.

Actual value

This means the actual amount of Mr G's Standard Life pension at the end date.

Fair value

This is what Mr G's Embark Plan would have been worth at the end date had it produced a return using the benchmark.

Embark should in their calculation use the value of what Mr G's fund would have been on 26 and 27 May 2021 had all units been switched to the ASI MyPortfolio Index IV fund.

Any withdrawal from the Embark pension 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'll accept if you total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

Mr G had intended to switch his plan to Standard Life in February 2021. I've started the redress at 26 May 2021 as that's the point at which the consumer's pension should've been with Standard Life by. Therefore, Embark are responsible for the delays they've caused thereafter.

My final decision

I uphold the complaint and require Embark Investment Services Limited to pay Mr G the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 July 2023.

Simon Fox
Ombudsman