

The complaint

Mr G has complained about the time taken to transfer his pension from Sterling ISA Managers Limited trading as Advance by Embark (Advance) to a new provider Interactive Investor Services Limited (IISL).

Mr G has stated the delay led to a period of time where he could not make investment changes to his pension and additional charges being taken by Advance.

What happened

Mr G completed the forms to commence the transfer of his pension from Advance to IISL on 22 August 2022. These were sent to Advance on 5 September 2022 and chased up on 12 September 2022.

Advance sent a valuation and list of assets on 6 October 2022. Following receipt of this IISL confirmed to Advance on 10 October 2022 the assets which could be accepted in-specie by the new scheme and those which would need to be encashed prior to transfer. Re-registration details were also provided at this time.

Having received an updated valuation from Advance, the same transfer information was provided by IISL again on 16 October 2022.

The re-registration of the funds to be transferred in-specie began on 21 October 2022. Those funds which would not be accepted by the new IISL pension (and could not be transferred in-specie) were sold with the resulting cash transferred to the new pension on 4 November 2022.

IISL chased Advance for an update regarding the remainder of the funds later in November 2022, with Advance suggesting IISL contact their platform partner FNZ for further information.

IISL chased FNZ on 16 November 2022 and were then informed that the Stock Transfer Forms (STFs) were issued to the various fund managers on 16 November 2022.

Given the delays suffered and the still incomplete transfer of his pension, Mr G complained to Advance. Advance issued their response to the complaint on 20 December 2022. This accepted that there had been delays in the process and upheld the complaint. Advance accepted that they had not actioned the initial stages of the transfer process within their usual timeframes. Additionally, Advance stated that the STFs had to be issued by post and that delays had been suffered due to postal strikes, with a number of fund managers confirming that the STFs had not been received. £100 was offered to Mr G to cover the trouble and upset caused.

FNZ re-issued the outstanding STFs on 21 December 2022.

An auto dis-investment from some of the underlying funds held within Mr G's Advance pension occurred to fund ongoing advice and platform charges on the pension. As a result,

FNZ confirmed to IISL that some units would have to be returned – this information was provided on 25 January 2023.

FNZ re-issued further STFs to four different fund managers on 9 February 2023. These were chased on 16 February 2023 when it was confirmed that some had not been received with two having incorrect information, meaning they could not be actioned.

FNZ re-issued STFs again on 14 March 2022 with the entirety of the funds being re-registered with IISL by 28 March 2023.

Unhappy with Advance's response to his complaint Mr G registered his case with this service in January 2023.

Our investigator looked into things. Whilst initially providing this service with some of the information requested, Advance did not respond to our investigators requests for additional evidence. As such, findings were issued based on the information already on file.

The investigator examined the chain of events and concluded that the transfer should have been completed sooner than it was. Having looked at each step in the transfer process and removed what were considered the unreasonable delays suffered, our investigator concluded that the transfer of all funds should have been completed by 25 November 2022.

To put things right our investigator stated that all fees charged by Advance from 25 November 2022 until the Advance pension was closed should be returned to Mr G with added interest.

Following the issuance of these findings Mr G confirmed he accepted what had been said.

Advance did not respond to the findings issued nor any subsequent contact from this service in relation to this case.

As such the case has been passed to me.

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.

Firstly, I would like to note that I have based this decision on the evidence available with incomplete information provided by Advance.

Additionally, I would like to point out that in cases such as this it is impossible for me to know exactly what would have happened and when, the decision I have reached is therefore based on industry guidance and best practice, as well as the principles of reasonableness and fairness.

Overall, having looked at the information on file I have reached the same conclusion as our investigator – the transfer of Mr G's pension from Advance to IISL was unduly delayed. I have also concluded that the hypothetical alternative timeline proposed by our investigator in the findings already issued is entirely reasonable, and as such I see no reason to change it. Given the timeline has been well documented to both parties within the findings already issued, I have only included a summary of the key dates and reasons for these dates within this decision.

The framework guidance for pension transfers is set out by the Transfers and Re-registration

Industry Group (TRIG). This explains that:

“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.”

Additionally, it is noted that any steps which require documentation to be posted would add at least one day to each step.

Additional guidance which is useful to consider in cases such as this is PERG 12.2 which states:

“The operator of a personal pension scheme is the person who is responsible to the members of the scheme for ensuring that the scheme is operated in accordance with relevant pensions and tax legislation, the scheme's constitution and the regulatory system. Provided he remains responsible to the members for such matters, he will remain the operator even though he may delegate or out-source the day-to-day carrying out of his functions as operator to another person. That other person will not become an operator of the scheme purely as a result of carrying out such functions on behalf of the operator.”

This shows that whilst elements of the running of the pension scheme can be outsourced it is the operator (Advance) who remain responsible and accountable to the policyholder (Mr G).

It is clear from the timeline above, and Advance's own response to the complaint (issued on 20 December 2022) that the early part of the process was delayed.

In line with what has been proposed by our investigator I have concluded that the initial policy valuation should have been issued by Advance by 20 September 2022.

Allowing for the issuance of a new updated valuation and adding time for IISL to respond to this, all the information would have been available for Advance (and their administrative partner FNZ) to enable the STFs to be issued by 6 October 2022.

Here I would note that there did seem to be a significant delay in sending the STFs and the incomplete information available to me means I cannot say whether this was due to errors by Advance, FNZ or both. However, in line with the PERG guidance above I do not consider it unreasonable to hold Advance accountable, given it is they who held the relationship with Mr G.

Following the issuance of the STFs some of the funds were re-registered within two weeks, and it is clear that there were significant variances between the response times for individual fund managers. However, given some funds had been re-registered after two weeks it is not unreasonable to expect Advance to chase the remaining fund managers after this timeframe.

This would result in unresponsive fund managers being chased on 20 October 2022.

Following this more detailed enquiries could have been made to individual fund managers with any incorrect STF information being amended and correct forms being issued.

Had this alternative chain of events been followed all re-registrations would have been completed by around 22 November 2022, with final confirmation of complete transfer being issued by IISL by 25 November 2022.

I would again like to note that it is impossible for me to know exactly what would have occurred had there not been any unreasonable delays on Advance's part, especially given the incomplete evidence available to me. It has been informed by the TRIG and PERG guidance and has in part been based on actual turnaround times achieved during the transfer process.

Whilst I would note that in some parts the timescales allowed could be considered generous, allowing more time for Advance / FNZ / individual fund managers to complete their internal processes I do not consider them unreasonable.

As such I have upheld this complaint and have not amended the alternative timeline detailed by our investigator.

Putting things right

Fair compensation

My aim is that Mr G should be put as closely as possible into the position he would probably now be in had the unreasonable delays to his pension transfer been avoided.

I take the view that Mr G would have incurred fewer charges on his Advance pension had the transfer been completed in a reasonable timeframe. As such the redress instructions below seek to rectify this issue.

As per the findings issued by our investigator, the fees charged by Advance from 25 November 2022 to the date the Advance pension was closed should be calculated and paid to Mr G with 8% simple interest applied from the date they were charged to the date of settlement.

As the funds remained invested throughout the delay period no investment loss occurred and as such this does not need to be factored into the redress. The only actual loss suffered by Mr G relates to the additional fees paid. I have noted Mr G's comments that during the delay period he did not have the ability to make changes to his underlying investments however switches to the underlying funds could still have been made whilst the transfer process was being completed by Advance.

As such, the redress instructions below remain in line with those proposed by our investigator.

What must Advance do?

To compensate Mr G fairly, Advance must:

- Calculate the Advance fees deducted from the Advance pension from 25 November 2022 onwards.
- Advance should also add any interest set out below to the compensation payable.
- Advance should pay into Mr G's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Advance is unable to pay the total amount into Mr G's pension plan, it should pay

that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount 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%. However, if Mr G would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay to Mr G £200 for the distress and inconvenience the lengthy delays would have undoubtedly caused. This is in addition to the £100 already offered. If the £100 already offered has not been paid (or the cheque no longer valid) this payment should be re-issued to Mr G in addition to the above.

Income tax may be payable on any interest paid. If Advance deducts income tax from the interest it should tell Mr G how much has been taken off. Advance should 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
Advance pension charges	No longer in force	Actual charges deducted	25 November 2022	Date Advance pension ceased to be held	8% simple per year on any charges deducted from the date of charge to the date of settlement

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr G wanted to transfer his pension with Advance causing unreasonable delays to the process. Additional Advance charges were incurred during this delay period.
- No consideration or deduction to the redress needs to be made to factor in the new IISL pension charges, as these are flat charges, already being paid, that would have been unaffected by the transfer in value.

My final decision

I uphold the complaint. My decision is that Sterling ISA Managers Limited trading as Advance by Embark should pay the amount calculated as set out above.

Sterling ISA Managers Limited trading as Advance by Embark should provide details of its

calculation to Mr G in a clear, simple format. Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 September 2023.

John Rogowski
Ombudsman