

## The complaint

Mr M complains that EBS Pensions Limited trading as Embark Pensions ('Embark') made an administrative error when disinvesting his self-invested personal pension ('SIPP') and transferring it to another provider. Mr M says he suffered a financial loss as a result.

## What happened

Mr S has a SIPP with Embark. On 18 May 2023 he formally requested that Embark cash in his holding with a pension provider I shall refer to as 'P' and transfer it to another provider I shall refer to as 'W'. Embark took a while to act on Mr M's instructions but eventually it received from P his holding of around £1.2m on 12 July 2023.

Later the same day Embark told Mr M that it had transferred his holding as requested. Mr M immediately noticed that Embark had paid his holding to the wrong company (a provider I shall refer to as 'F') and he notified Embark within half an hour that it had made a mistake. Embark immediately instructed F to remit the funds but it took over a week for them to be returned. Mr M's holding was eventually deposited with W on 21 July 2023.

Mr M complained to Embark and said its mistake had caused him a financial loss

Embark looked into Mr M's complaint and issued its final response letter on 15 September 2023 in which it apologised and accepted that it had made a mistake. Embark said that if Mr M could provide evidence to support his losses it would review it.

Mr M responded to Embark's final response letter to say that he had asked W to determine the loss caused by the delay in receipt of funds. He said that W had calculated that had his holding been deposited with it on the correct date (12 July 2023) it would have benefitted from investment growth of 2.31% between then and the date the holding was actually deposited on 21 July 2023. W said this would have been £27,681. Mr M said that this was the direct loss he had sustained as a result of Embark's error and was the figure he was seeking in compensation.

On hearing nothing further from Embark, Mr M complained to the Financial Ombudsman Service in November 2023. We let Embark know that Mr M had made a complaint and asked it to provide us with its file. Embark asked us on more than one occasion for an extension to do so, which we granted, but its file was never provided. Our Investigator therefore proceeded to look into Mr M's complaint based on the available information he had and as permitted under our rules, known as the DISP rules, and specifically rules DISP 3.5.14R and DISP 3.5.9R(3).

Our Investigator recommended that Mr M's complaint was upheld. He thought that Embark hadn't acted fairly but noted that it had accepted it had made a mistake so he thought it needed to take steps to put things right.

Our Investigator recommended that Embark compensate Mr M. He said the compensation should be determined by obtaining the notional value of his pension with W on the basis it had been invested there since 12 July 2023 and then subtracting the pension's current value

from the notional value. Our Investigator said that if the answer was negative then there had been a gain and no redress would be payable. He also went on to say that any loss should be paid into Mr M's pension plan (subject to an allowance for charges and any available tax relief) unless doing so would conflict with any existing protection or allowance in which case it should be paid to Mr M as a cash lump sum after making a notional deduction for income tax. Finally our Investigator also thought Embark should pay Mr M compensation of £100 for the distress and inconvenience it had caused him.

Mr M accepted our Investigator's findings and said that he did indeed have a 'certificate for fixed protection' for £1.8m and that he was going to contact his tax adviser. Mr M then provided a further response to say he had been in touch with W for an updated calculation based on our Investigator's recommendation. He forwarded an email from W that explained that the loss to Mr M's SIPP based on the Financial Ombudsman Service's redress method was £28,990.68. Finally Mr M said that his tax adviser had said that as his pension was in flexi-access drawdown any compensation should be paid directly to him to avoid tax or 'fixed protection' complications.

Embark responded to our Investigator's findings to say that it had referred them to its senior management team and that it intended to reply by 8 March 2024. On 25 March 2023, Embark asked for an extension to respond by 27 March 2024.

No response has been received from Embark to our Investigator's findings.

The complaint was passed to me for a final decision.

### **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 accepts that it made a mistake by sending Mr M's funds to the wrong provider thereby delaying their receipt by W. In its final response letter, Embark said it would be willing to review any evidence Mr M had to support the loss he said he had incurred. I can see that Mr M provided Embark with evidence from W about the loss caused by the delay in receipt of his funds, however, if Embark has undertaken any review of that evidence it has not disclosed any finding it made. I am also mindful that Embark has not provided the Financial Ombudsman Service with its file or provided a substantive response to our Investigator's findings and recommendation.

Had Embark sent the reinvestment instructions to the correct provider (W) then there would have been no delay in investing Mr M's holding. It follows that as the delay was the fault of Embark, a mistake it has admitted making, it should take steps to put things right for Mr M.

Like our Investigator, I am of the view that the loss calculation needs to be undertaken at the present time in order for the outcome to be a fair one. That's so that Mr M can be placed back in the position he would have been in had the error not occurred. I think that means he would have been invested in a portfolio with W on 12 July 2023.

### **Putting things right**

My aim in awarding fair compensation is to put Mr M back into the position he would likely have been in had it not been for Embark's error. I think this would have meant he would have been invested in a portfolio with W on 12 July 2023.

Any loss Mr M has suffered should be determined by obtaining the notional value of the pension from W on the basis that it had been in its 'MPS balanced' portfolio from 12 July

2023 and subtracting the current value of the pension from this notional value. If the answer is negative, there's a gain and no redress is payable.

Mr W has explained that his pension is in flexi-access drawdown so any compensation should be paid directly to him as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr W has a 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. However, if Mr W no longer has a tax-free cash entitlement then a reduction of 20% of the total is applicable.

Where a financial business, through its words or deeds, causes a consumer trouble and upset above and beyond that which is normally associated with the transaction or advice it is providing, the Financial Ombudsman Service may require it to pay compensation. Here, by its own admission, Embark made an error in processing the transaction Mr M had requested. That error has caused Mr M some inconvenience as a consequence – Embark asked Mr M to provide it with evidence of his loss, which he went to the inconvenience of obtaining and forwarding, but Embark took no steps to assess or respond to Mr M.

I've thought about compensation awards this Service has made in cases with similar circumstances as Mr M's and, like our Investigator, I too am of the view that compensation is fairly and reasonably due to Mr M in the circumstances. For its customer service failings, I require Embark to pay Mr M compensation of £100 for the trouble and inconvenience it has caused him.

### **My final decision**

My final decision is that I uphold this complaint and I require EBS Pensions Limited trading as Embark Pensions to take the steps I've set out in the *'Putting things right'* section above,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 June 2024.

Claire Woollerson  
**Ombudsman**