

The complaint

Mr O complains that Embark Services Limited (Embark) caused avoidable delays during the transfer of his Self-Invested Personal Pension (SIPP) from his existing provider – who I'll refer to as provider A - to Embark. He also complains that it took Embark longer than it should have to reinvest his funds with his platform provider – provider I.

Mr O has also brought a complaint to this service about provider A. My decision here will only cover his complaint with Embark.

What happened

Mr O had a SIPP with provider A. On 28 June 2023, he completed a transfer authority form, a provider A discharge form and an application form for a provider I account.

Embark received Mr O's SIPP application, along with certified documentation, on 3 July 2023. It sent him a welcome letter on 5 July 2023.

On 10 July 2023, Embark requested a transfer from provider A through the Origo transfer platform. On the same date it sent provider I the investment application. Embark didn't send the certified bank statement provider I would need at this point.

On 11 July 2023, provider A added an alert to Origo to ask Embark if the transfer was a full or partial transfer as the value quoted was higher than the value held. It said it issued no chasers to this alert.

Embark responded to this query through a different system on 1 August 2023. It confirmed this was to be a full transfer. Provider A said that as Embark hadn't used the Origo alert system to respond, it didn't pick up the comment until 9 August 2023. It said that it started the transfer process at this point, with sells being placed. I understand that all funds had been disinvested to cash on 15 August 2023. A payment of £166,039.01 was then issued to Embark on 16 August 2023. This was paid by BACs.

On 22 August 2023, the transfer in from provider A completed and £166,039.01 was received. Embark emailed provider I the same day with a copy of Mr O's investment application.

Provider I emailed Embark on 23 August 2023 to confirm it'd uploaded the documents to Mr O's file. It said that it didn't yet have the certified bank account for the linked account and asked Embark to provide this.

Embark provided certified bank statements to provider I on 24 August 2023.

Embark emailed Mr O's IFA on 25 August 2023 to confirm that it had received £166,039.01 from provider A. It also said that it was waiting for Mr O's account with provider I to open. And that it would chase this regularly as part of its process. It said that it would let the IFA know when it had sent the funds for investment.

Embark chased provider I on 6 September for an update on the account opening.

Provider I wrote to Embark on 8 September 2023 to tell it that Mr O's application had passed its compliance checks and was waiting for account sign off. It said that once the sign off was complete, the account would be set up shortly after and a welcome email would be issued.

Provider I sent Mr O a welcome email on 8 September 2023 to tell him that his account had been opened.

Mr O's IFA emailed provider I on 13 September 2023. It said that it understood that Mr O's account had been opened on 8 September 2023 and he'd been informed. But it said that Embark hadn't been notified. It asked provider I to urgently contact Embark.

Provider I replied the same day to apologise for not sending Embark the welcome email. It said it had now notified Embark that Mr O's account had been opened.

On 15 September 2023, £165,844.50 was sent to provider I.

On 22 September 2023, Mr O raised a complaint with Embark about the delays he'd experienced.

On 8 December 2023, Mr O brought his complaint to this service, as he'd not yet received a response from Embark.

Embark issued its final response to the complaint on 13 March 2024. It said it'd taken it longer than usual to respond to Mr O's concerns. It upheld the complaint as it acknowledged that it had caused processing delays with the transfer from provider A to Embark, and with the subsequent investment of the funds with provider I. It said this was caused by an oversight and by a higher than usual demand.

Embark felt that if there'd been no delays, it should've been able to open Mr O's investment account on 27 July 2023 and the funds should've been placed for investment on 1 September 2023. It said it would undertake a loss assessment to see if the delays had led to a financial detriment. It also offered £100 compensation for the distress and inconvenience caused by the delays.

Our investigator issued his first view on the complaint on 18 March 2024. He said this service wasn't able to consider the complaint handling aspects Mr O had raised. He felt that Embark had caused delays to the transfer, but he didn't agree with Embark's timeline for calculating any potential financial redress.

Our investigator considered that Embark should've sent the transfer request to provider A on 10 July 2023, as it had. He felt that provider A would have then uploaded the query to Origo on 11 July 2023. Embark should then have responded to this within three working days, so by 14 July 2023. And the response should've had the proper alert attached to it on Origo, so provider A would've then received and processed the response within one working day, by 17 July 2023. It would've then been able to begin the process of selling the funds down. So, using the actual amount of time it took to sell down the funds, this would've completed on 21 July 2023. Provider A would then have taken one working day to make payment to Embark on 24 July 2023. As it had then taken four working days for the funds to reach Embark, it should've received the funds on 28 July 2023.

Our investigator felt that Mr O's transferred funds should've been invested with provider I on 31 July 2023. He said this was because Embark acknowledged that the provider I account should've been opened on 27 July 2023, if the certified bank statements had been sent on 10 July 2023. So the SIPP should've been open and ready for funds to be invested by the time they should've been received by Embark on 28 July 2023. He felt that allowing Embark

one working day to process meant that the funds should've been invested on 31 July 2023.

Our investigator felt that Embark should put Mr O back to the position he would've been in but for the avoidable delays it had caused, in line with the dates he'd suggested. He also felt that as the delays Embark had caused to the transfer were around a month, a total of £200 compensation - £100 more than Embark had offered, would be fair for the distress and inconvenience the delays had caused.

Mr O said he was content with our investigator's findings.

Embark didn't agree with our investigator. It didn't think he should've reasonably expected it to complete a transfer through the Origo system within 10 days. It said it was a bespoke SIPP provider and that its services weren't automated like other platform pension providers.

Our investigator still felt that 10 working days was reasonable for a transfer through the Origo system, regardless of the fact that Embark was a bespoke provider. He said that Embark was listed as being part of the Setting the standard for smoother transfers (STAR) group which meant it had agreed to normal service level standards such as 10 working days to complete a cash transfer as per the Transfers and Registration Industry Group (TRIG) guidelines.

Embark also made the following points:

- It acknowledged that our investigator had suggested that a three-day service standard was reasonable to respond to provider queries through Origo. It said while it always tried to respond to straightforward queries as soon as it could, its service standards were in place to ensure fair prioritisation of work. It said that in busy periods, such as at this time, it did its best to work within its service standards, but didn't commit to meeting them. It said it had acknowledged the delay and made what it felt was a reasonable offer for redress to be calculated in line with its service standards.
- Embark said that only part of the group to which it belonged had confirmed its intention to participate in STAR MI and standards. It said it hadn't agreed to participate in such standards at the present time. It felt that committing to improving future standards shouldn't mean that it should be reviewed against those standards now. It said that if it had responded to provider A's 11 July 2023 query within its 10 working day service standard, the reply should've been sent by 25 July 2023. But instead it was sent five working days late on 1 August 2023.
- Embark felt that there'd been a breakdown in communication between provider I and it, with Embark records suggesting the action was with provider I, as calls were returned as requested.

Embark said it sent the application on 10 July 2023 to an email address it had previously corresponded with. It said it then received a request on 13 July 2023 for the application to be sent unencrypted and to an alternative address. It said there was then some back and forth between Embark and provider I with messages left on both sides.

Embark said that ultimately the application was re-sent to provider I on 22 August 2023. It said its standard process after an investment account was received and acknowledged by the provider was to wait for confirmation of outstanding requirements and the account opening. And that this process can often take a couple of weeks.

Embark felt that provider I hadn't been proactive during the process. It said provider I had acknowledged receipt of the application and exchanged calls with it, but hadn't tried to progress the account opening after the initial contact. It also said that it hadn't been immediately informed by provider I when the account was opened. It said that Mr O and his adviser received this information on 8 September 2023, but it wasn't notified until 13 September 2023.

- Embark felt its offer showed that it had taken full responsibility for the delays in the transfer being received and the provider I account being opened. It acknowledged that it was difficult to determine the likely dates that the account would've been open and ready to receive funds if it had initially acted within its service standards for the transfer. But it felt it'd made a best attempt to act fairly for Mr O based on the opening timeframe for the provider I account. It also said that provider I had taken 16 working days to open the account. And that if the transfer had been received earlier, there was no guarantee that the account would've been open to receive it.
- Embark accepted that a distress and inconvenience payment of £200 was reasonable under the circumstances.

Our investigator considered Embark's points and issued a second view on 22 April 2024. He still felt that the transfer should've taken place by 28 July 2023. But he now considered that Embark should've invested the funds with provider I by 4 August 2023, rather than 31 July 2023.

Our investigator felt that Embark should put Mr O back to the position he would've been in but for the avoidable delays it had caused, in line with the dates he'd suggested.

Embark didn't agree with our investigator. While it felt that there was now agreement that the provider I account could've been opened and able to receive funds for investment with effect from 4 August 2023, it still didn't agree with the methodology our investigator had used in relation to the response timescale for the provider A query submitted through the Origo system.

Embark still didn't agree with our investigator's view that it should be held to TRIG guidance, given its position that only part of the group to which it belonged had confirmed its intention to participate in STAR MI and standards. It said it hadn't agreed to participate in such standards at the present time. And that it was therefore unjust to have such timeframes applied in our investigator's view, given the product in question was non-platform based and was a bespoke pension product. It felt the timeframe should be assessed on a like-for-like scenario with another, bespoke SIPP provider.

Embark said it still wanted to ensure that Mr O hadn't lost out. But it didn't agree with the timescales our investigator had used.

Our investigator still felt the timescales he'd used were reasonable and in line with what this service would've otherwise suggested, regardless of whether a business is bespoke or not.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm going to uphold it, for largely the same reasons as our investigator. I'll

explain the reasons for my decision.

I note that Mr O is unhappy with the time it took for Embark to consider his complaint. However, I agree with our investigator that this service doesn't have the power to consider that part of his complaint.

I first considered when the transfer from provider A should've completed.

When should the transfer from provider A have been completed?

The evidence shows that Embark caused no avoidable delays up to 10 July 2023, when it issued a transfer request to provider A through Origo. I say this because the timeline up to that point shows that the application was processed in a reasonable timeframe. As was the transfer request to provider A.

However, the evidence also shows that provider A issued a query to Embark on 11 July 2023 on Origo. Embark didn't respond to this query until 1 August 2023, but provider A didn't pick this up until 9 August 2023 as Embark hadn't used Origo to respond. Provider A then started the transfer process at this point. The evidence shows that provider A then processed the transfer in a reasonable timeframe, with the funds being sent to Embark by BACS on 16 August 2023. BACS can take between 3 and 5 working days, which it did in this case. Embark received the funds on 22 August 2023.

Embark's position is that the three-day service standard our investigator suggested should've been used to respond to provider A's query through Origo wasn't reasonable. It felt 10 working days was fair.

As our investigator noted, this service can't dictate to businesses what their internal processes and standard practices should be. But we can and do take account of reasonable industry standards.

I agree with our investigator 10 working days to respond to a basic query on Origo. would be considered an unreasonable timescale under the TRIG guidance. And I also agree that a query like this should've reasonably been responded to within three working days.

I therefore consider that Embark should've responded to provider A's query within three working days, which means it should've replied by Friday 14 July 2023. I also consider that the response should've had the proper alert attached to it on Origo. If it had, I'm satisfied that provider A would've received and processed the response within one working day, which would've been by 17 July 2023.

I acknowledge that Embark's position is that it should've responded to provider A's 11 July 2023 query within its ten working day service standard. It therefore feels that it should've sent a reply by 25 July 2023. Instead it said it sent the reply five working days late on 1 August 2023. But I don't agree.

I agree with our investigator that provider A's 11 July 2023 query was a legitimate one. It needed to confirm whether the transfer was to be full or partial. It also needed to understand why the transfer request was for a larger amount than the value of the policy at that time.

Although provider A did take from 1 August 2023 to 9 August 2023 to action Embark's query, I'm satisfied that this was because Embark didn't respond to the Origo alert through the same channel. Therefore provider A only found the query on 9 August 2023. It then actioned the transfer on that day. Therefore I consider that Embark is also responsible for the delay from 1 August 2023 to 9 August 2023.

Overall, I consider that if Embark had responded to provider A's 11 July 2023 query in a timely manner and using the correct platform, there wouldn't have been a delay to the transfer process.

If Embark replied to provider A correctly and by 14 July 2023, I'm persuaded that provider A would've then completed the sale of the funds on 21 July 2023. I say this based on the actual amount of time it took it to sell down the funds.

Provider A would've then been able to make payment to Embark one working day later on 24 July 2023. I say this again based on the actual time taken. Given it took four working days for the funds to reach Embark, I consider that the funds would then have reached Embark on 28 July 2023.

While I acknowledge that Embark has told this service it was faced with particularly high demand at the time of this complaint, this shouldn't lead to a consumer losing out. Therefore I'm satisfied that the transfer should've taken place by 28 July 2023.

I next considered the investment of the funds with provider I.

When should the funds have been invested with provider I?

I understand that Embark now agrees that the provider I account could've been opened and able to receive funds for investment with effect from 4 August 2023.

However, in Embark's view, if there'd been no delays the funds should've been ready for investment on 1 September 2023.

As noted above, Embark felt there'd been a breakdown in communication between it and provider I. It felt that provider I had used a different email address than usual which had led to its 10 July 2023 email only being responded to on 13 July 2023 with a further request. It felt that provider I hadn't been proactive during the process. And that it hadn't tried to progress the account opening, or informed it when the account had been set up. Embark also felt that provider I had taken 16 working days to open the account.

I acknowledge that Embark feels provider I is at least partly responsible for delays. But I don't agree.

I say this because when Embark sent provider I the investment application on 10 July 2023, it didn't send the certified bank statement provider I would need. Embark sent a copy of Mr O's investment application on 22 August 2023. And provider I then emailed Embark the following day to say it didn't yet have the certified bank account for the linked account.

Embark provided this to provider I on 24 August 2023. After that, it took provider I until 8 September 2023 to set up the account – this was ten working days, which I consider reasonable.

I'm of the view that Embark should've sent the certified bank account alongside the initial application on 10 July 2023. If it had done so, and if provider I had then taken the same amount of time that it actually took to process the application, I'm persuaded that the provider I account would've been opened on 27 July 2023. And that the account would've been open and ready for funds to be invested by 4 August 2023.

I appreciate that provider I didn't proactively progress the setting up of the account. But I'm not persuaded that it was its responsibility to do so. I can also see that it failed to notify Embark that the account had been set up between 8 September 2023 and 13 September

2023. However, I'm not persuaded that this failure caused any additional delay under the circumstances.

I next considered Embark's point that it shouldn't be held to TRIG guidance given it hasn't agreed to participate in STAR MI and standards. And that it shouldn't be reviewed against those standards now, even if it had committed to improving future standards.

Embark also felt it was unjust to have such timeframes applied, given the product in question was a bespoke pension product.

I acknowledge Embark's points here. However, I agree with previous comments that working out exactly when something should've happened if there hadn't been any delays is difficult. But I consider that the timescales I've laid out are reasonable, regardless of whether a business is bespoke or not, and in line with what this service considers reasonable.

I next considered whether the compensation Embark offered to pay Mr O for the distress and inconvenience the delays caused was reasonable.

Distress and inconvenience

Embark offered to pay Mr O £100 for the distress and inconvenience the delays had caused. Our investigator felt that given the length of the delays, £200 would be more appropriate. And in line with what he would've otherwise awarded.

I can see how frustrating and disappointing this whole experience has been for Mr O, but I agree that £200 is reasonable for the distress and inconvenience he has suffered as a result of the delays. Embark has agreed to pay this.

I do appreciate that Embark took steps to put things right for Mr O. And I acknowledge that its aim from the start has been to ensure he doesn't lose out. However, as I've explained above, I consider that the financial redress should be based on different dates from those put forward by Embark.

Putting things right

My aim is that Mr O should be put as closely as possible into the position he would probably now be in but for the avoidable delays.

What I require Embark to do

To compensate Mr O fairly, I require Embark to take the following steps:

Transfer from provider A to Embark

Embark needs to contact provider A to compare the value that was transferred on 16 August 2023 and then received on 22 August 2023 with what should've been transferred on 28 July 2023, based on a sell down date of 21 July 2023.

If Mr O would've had a higher transfer value on 28 July 2023, then Embark should make up the difference in this value.

If Mr O received more in the transfer than he should've done, Embark would need to take no further action other than to confirm this with Mr O and provide proof where necessary.

Investment with provider I

Embark should contact provider I as it intended. But it should compare the date the funds were invested with provider I with the date those funds reasonably should've been invested - 4 August 2023. Embark should take into account the loss assessment results from the transfer from provider A, and then cover any investment loss with provider I.

Overall, the redress - if any - should be paid as follows:

- If there is a loss, Embark should if possible pay the compensation amount into Mr O'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 O as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr O 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.

- Pay Mr O £200 for the distress and inconvenience caused by these delays. Embark can deduct any amount it has previously paid him for distress and inconvenience if it has already made any such payment.
- Provide the details of the calculation to Mr O in a clear, simple format.

If payment of compensation is not made within 28 days of Embark receiving Mr O's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Embark deducts income tax from the interest, it should tell Mr O how much has been taken off. Embark should give Mr O a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've given above, I uphold the complaint. Embark Services Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 29 August 2024.

Jo Occleshaw
Ombudsman