

The complaint

Mr C had a self-invested personal pension (SIPP) with Embark Services Limited. And says that service over that time has been poor in a number of ways causing him distress and inconvenience.

What happened

Mr C complained to Embark about a number of issues including the following:

- He thought he'd been overcharged fees for holding non-standard investments after those investments ceased to be held
- He'd received no bank statements for his SIPP
- He thought that there was a lack of clarity in the SIPP statements he received in 2017 and then 2019
- That he had no clarity over what happened to the proceeds of the sale of a property in 2017 that his SIPP was set up to hold
- That he hadn't had regular valuations of his SIPP, and wanted to be compensated for that

Embark looked into Mr C's concerns and acknowledged certain failings. It explained that it hadn't been informed of the change in the investment types held in his SIPP but waived the additional fees that had been levied on the SIPP for the investments it had formerly held. It accepted that it failed to provide Mr C with information about his investments and apologised for that. It found that it hadn't issued Mr C with Annual Valuation Reports (AVRs) in 2018 or 2019 and offered him £100 for the distress and inconvenience that caused.

Mr C was unhappy with this response and brought his complaint to our service. We contacted Embark who explained it's finding and said it would increase its offer of compensation from £100 to £250.

Our investigator looked into what happened and agreed that Embark had failed to offer a satisfactory service in a number of areas. But thought that it's increased offer of £250 for the distress and inconvenience was fair.

Mr C disagreed and referred his case for an ombudsman's decision. I considered all of Mr C's issue afresh and issued a provisional decision to both parties explaining my view on the issues that I considered to be the crux of Mr C's complaint. I explained why I thought Mr C's complaint should be upheld, addressing the areas that I considered to be at the heart of the complaint. And recommended that Embark pay Mr C £750 for the distress and inconvenience he'd experienced. And that it clearly explained how the fees were refunded.

Embark acknowledged my provisional decision, accepting what I'd suggested and offering no further comment or evidence.

Mr C responded offering comments on each of the issues that I'd addressed. He disagreed with some of the conclusions that I had reached and ultimately disagreed with the amount of compensation that I had suggested was appropriate.

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.

Which includes the comments and observations that Mr C provided in response to my provisional decision. I have considered everything he's said, as well as everything that has been shared in the time the case has been with us, and I am aware that he doesn't agree. So I understand that he will be disappointed to hear that I have not changed my mind. My final decision remains the same as I provisionally explained. I agree that Embark's service to Mr C fell short in a number of ways that I will explain below. I think this complaint should be upheld, even though I understand that Mr C doesn't think that the way that I've proposed putting things right goes far enough.

I will start by explaining that, in reaching this decision, I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Of particular relevance in this case are:

- COBS 4.2.1R(1): The fair, clear and not misleading rule.
- PRIN 2.1 (Principle 2) – Embark must conduct its business with due skill, care, and diligence.
- PRIN 2.1 (Principle 6) – Embark must pay due regard to the interests of its customers and treat them fairly.

Mr C's issues with the service that he's had from Embark go back over a considerable period. And he has sent us a great deal of correspondence that he has had with Embark. I have looked at and considered everything that has been sent but will not comment on everything he has raised. That isn't intended as a discourtesy but rather a practical consideration. That's because our service is an informal alternative to the courts and we are here to try to resolve disputes with the least formality. As I explained in my provisional decision I'll focus on what I think is the crux of Mr C's complaint.

Fees for holding non-standard investments

Mr C raised this issue and Embark responded to explain how the problem arose. It has said that its charging structure varied dependant on the types of investments held within the SIPP. Whilst neither party has provided us with SIPP statements prior to 2017, I don't think it's disputed that Mr C's SIPP held unregulated investments. And the platform fee that Embark charged most likely reflected that.

It appears that the investments in question were subsequently removed from the SIPP. I understand that Embark didn't receive formal notification from Mr C or any IFA on his behalf that his investment strategy had altered. But I don't think that ought to mean it didn't know that the SIPP no longer held non-standard investments. I refer here to Principle 6, because I

don't think that continuing to charge a premium for a service it no longer had to provide is treating Mr C fairly.

But, irrespective of Embark's view of this, it offered to refund Mr C the additional fee that had been levied on his SIPP. Which is what I would have instructed it to have done in these circumstances.

I can see that Mr C broadly welcomed this finding in my provisional decision. But requested that I share the finding in a wider way. I will address this by reiterating the point that was made in the provisional decision's cover letter. Which is that all of our final decisions are published on our website.

Issues with the information Mr C received

Mr C expressed his disappointment with the information that he received from Embark. And I think it is understandable that he is confused.

Embark have told Mr C that it issued annual valuation reports 18 months apart from one another. But Mr C points out that he hadn't received that. And I think he is correct. Embark agreed that it didn't send Mr C valuation reports in 2018 and 2020. And have apologised for that.

I've considered what Mr C was entitled to expect regarding this. And asked Embark to send us the terms and conditions (T&Cs) of his SIPP to help me understand. Those T&Cs that Embark have provided say that it will provide a yearly statement covering the investments of the plan. It says, *"this will give details of all investments relating to your Plan although (due to issues of timing and costs in obtaining valuations) this might not be a current valuation"*.

I think this makes it clear that Embark should have provided annual valuations of Mr C's SIPP. I also think that this made it clear that Embark didn't need to delay the issuing of statements if there were delays in obtaining the most up to date valuations. This included the provision that its valuation might not be current in every respect. I think it would have been okay for it to say that. I don't think it was fair or reasonable to send Mr C valuations at random times of the year. Or not to send a valuation at all as occurred in 2018 and 2020.

The terms of Mr C's SIPP allowed him to request additional valuations or statements at any time though. So, whilst the failure to provide routine or regular statements was a failing, I don't think it's likely that it would have materially inconvenienced Mr C. Nor have I seen evidence that it would have caused him to have made or postponed making investment decisions based on the information being provided.

Mr C has additionally raised an issue that Embark failed to provide him with bank statements for the SIPP account until he requested those. It explained that it stopped routinely sending out bank statements as they were available on the online platform. But it hasn't provided information that Mr C was ever aware of that. Which I don't think was reasonable.

Embark have also responded to Mr C's complaint point about what happened to a property investment held in his SIPP. Embark acknowledged it hadn't updated Mr C with the result of that transaction and apologised for that. So I won't make a further determination on this point, and will accept that this is an agreed failing which I will consider in deciding how Mr C should be compensated.

Referring again to the rules I outlined above. Embark needed to provide information that was fair, clear and not misleading. Failing to provide the information that Mr C was entitled to receive wasn't fair. But Mr C has correctly identified that the valuation he received in 2017

was misleading. It wasn't actually correct. It listed the holdings in his SIPP and it included, in that list, details of a bank account that didn't belong in Mr C's SIPP at all. So, overall I think Embark has repeatedly failed to comply with its obligation under COBS 4.2.1R.

Mr C has explained that he remains unhappy about the 2017 statement and says he has never had a satisfactory explanation about how that happened or whether it was actually a mistake. I understand his confusion and think that Embark could have offered a better explanation about how the error occurred. So I asked to see the statements in question to understand whether Mr C might reasonably have been led to believe that the error had inflated the value of his SIPP. Or, that the removal of it may reasonably have been considered to have taken value out of the SIPP that Mr C was entitled to.

The statements that I received showed that the entry in question in the 2017 valuation is described as a *Trustees Bank Account*. This is listed separately to the *Main SIPP Bank Account* that held the cash value in the SIPP. It was one of only six listed assets in the SIPP. Previous statements wouldn't have had that specific bank account listed. It certainly isn't right that a mistake like this was made in the valuation statement. But I don't think that it is fair or reasonable to conclude that this was anything other than an administrative error. Mr C hasn't claimed that he opened this account for his SIPP or that he placed funds into it. It would have been helpful had Embark been able to better explain this error. But, on judging this on a balance of probability, I'm satisfied that it was an error and that neither that account nor the money in it belonged in Mr C's SIPP.

I understand that Mr C is not in agreement with the conclusions I've reached. In my role I am unable to instruct Embark how to conduct its business. Nor is it to provide information that Mr C thinks Embark should have provided. Instead, I have sought to look into what happened and determine whether Embark treated Mr C fairly or reasonably. And my conclusion, as explained is that I don't think it did. And I have taken all of this into consideration collectively when deciding what Embark should do to put things right.

Putting things right

I've considered the impact on Mr C for the mistakes that have happened. I can see that the random and unreliable nature of the annual valuation reports has caused Mr C distress. Which has been aggravated by the fact it happened over a number of years and the fact that information contained within one of the valuations was incorrect.

And Mr C has had to chase Embark for the bank statements that he wanted. I can see that this has caused him inconvenience. Although I can see that this may not have meant that this information was unavailable to Mr C through another medium.

Mr C has still queried the refunding of the surplus fee he was charged for a type of investment that he no longer held. He is unclear whether that has been refunded and if so what that amounted to.

I have considered all of this in the context of the types of awards that our service makes. And still think that what I suggested in my provisional decision is fair and reasonable. I would point out that Mr C responded to say that "*a £750 fine, in my opinion, does not send a strong enough message to them for consistent bad customer service.*" I would therefore like to point out that this award is not a fine. Our service is not the regulator, and it isn't our role to penalise firms for mistakes. In considering this figure, I weighed up what I thought was a reasonable level of compensation for the amount of distress and inconvenience that I reasonably considered these mistakes were responsible for.

Taking all of this into account I think that Embark should:

- Itemize the surplus charges Mr C incurred as a result of being charged for investment types he no longer held. And refund those charges if it hasn't already. If it has already done this, demonstrate that to Mr C by showing how the refund was made in a clear way.
- Pay Mr C £750 in compensation for the distress and inconvenience that he's experienced over the last few years of trying to resolve these issues. It has meant he has engaged in extensive correspondence and reviewing a lot of information to understand what has happened.

If payment of compensation is not made within 28 days of Embark receiving Mr C'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 C how much has been taken off. Embark should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

My final decision

I uphold Mr C's complaint and direct Embark Services Limited to compensate Mr C as I've explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 November 2023.

Gary Lane
Ombudsman