

The complaint

Mrs G complains that Sterling ISA Managers Limited trading as Advance by Embark ("Sterling") failed to pay her income from her pension savings in a timely manner.

What happened

I issued a provisional decision on this complaint in October 2023. In that decision I explained why I thought the complaint should be upheld and what Sterling needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mrs G held pension savings with Sterling. In March 2023 she requested, via her financial advisor, that her pension savings be used to provide her with a pension commencement lump sum ("PCLS" – otherwise known as tax free cash) and a regular annual income payment. The request was sent by her financial advisor to Sterling and was received by the firm on 24 March.

Sterling paid the PCLS to Mrs G the same day. And it sent her a drawdown income summary document, also dated 24 March, confirming that her first annual income payment would be made on 3 April. Mrs G says that date was important as she hadn't used her income tax personal allowance for the tax year 2022-23 so wouldn't need to pay income tax on her annual income payment.

But the payment to Mrs G wasn't made until 11 April. When she complained to Sterling about the delay it told her that her financial advisor had been made aware that end of tax year deadlines were in place, and that her request would have needed to have been received by 16 March for it to be paid in that tax year. So Sterling didn't think it had unfairly delayed Mrs G's payment and suggested that she discuss the problem with her financial advisor. Unhappy with that response Mrs G brought her complaint to us.

I think some of the basic facts that underpin this complaint are not in dispute. I have seen that, on 1 March, Sterling published information about the deadlines it would need to apply to transactions approaching the forthcoming end of the tax year. The deadline that applied to Mrs G's request, to set up a new regular pension income payment, was 16 March. The request that Mrs G's financial advisor submitted on her behalf was made on 24 March, so around a week later than Sterling's deadline.

The end of the tax year is exceptionally busy for pension providers. So it isn't at all unreasonable that firms should put deadlines in place to ensure consumer's expectations are fairly managed, and that there is sufficient time for all instructions to be processed. Mrs G's instruction was received well after the deadline date, so it wouldn't have been at all unreasonable for Sterling to tell her that the requested income couldn't be paid until the following tax year.

But that isn't what happened. On the day that Mrs G's instruction was submitted she received confirmation from Sterling that her payment would be made on 3 April – so

before the end of the tax year. I don't think that should have raised any alarm bells with Mrs G. Whilst it is entirely clear that her request had missed the deadline, that wouldn't necessarily mean that Sterling would be unable to process it in time. It might, for example, have received far fewer requests than it had anticipated when the deadline was originally set. And it wouldn't be unreasonable to think that, in circumstances such as those, Sterling would use its additional capacity to process whatever transactions it could. I think that was the obvious conclusion that could have been drawn from the information it sent to Mrs G.

I think that, when Sterling wrote to Mrs G and told her that it would make the first payment on 3 April, it formed an agreement that is what it would do. As I've said above, Sterling would have been entirely within its rights to delay Mrs G's request. But, once it provided her with confirmation of the date her income would be paid it is reasonable for her to expect that date to be met. I think that the subsequent issue of the specific and personalised information about Mrs G's pension arrangements superseded the generic deadline information Sterling had published more than three weeks earlier.

Sterling didn't make the payment to Mrs G until 11 April. It told her that date was in line with what would be expected given she hadn't met the deadlines it had previously set out. But for the reasons I've given above I don't currently think that is a reasonable conclusion. So I'm minded to conclude that Mrs G's payment was made 8 days later than it should have been. And, as I will now go on to explain, that delay has caused Mrs G to lose out. So, subject to any further comments I receive on these provisional findings I intend to direct Sterling to pay Mrs G some compensation.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mrs G didn't provide anything further. Sterling has said that it doesn't agree with my provisional findings and has provided some additional comments. Although I am only summarising here what Sterling has said, I want to be clear that I have read, and carefully considered, the entire response.

Sterling accepts that the letter it sent to Mrs G was misleading and apologises for that. But it points out that the Advance platform is for advised consumers only, and so Mrs G's advisor was responsible for guiding her through the income process. It says that it had clearly set out to advisors the deadlines that would apply to income requests made in the run up to the end of the tax year. So it says that Mrs G's advisor should have been well aware, and passed that information onto Mrs G, that her payment instruction had been submitted after the published deadline. So it says that it doesn't think Sterling should be expected to pay any compensation to Mrs G in respect of the income tax that was deducted from her income payment.

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 explained in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs G and by Sterling. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I have looked carefully at the response that Sterling has provided to my provisional decision. But there is little new information in that response, and so I'm not minded that I should change the findings that I reached in my provisional decision. But I will, for completeness, repeat some of my findings on the matters that Sterling raises.

There is no doubt that Sterling clearly set out the deadlines that would need to be met in order for a consumer's income payment to be guaranteed to be made before the end of the tax year. And it is equally clear that the instruction submitted on Mrs G's behalf by her financial advisor was received by Sterling after the deadline that had been set. So, as I said in my provisional decision, Sterling would have been perfectly entitled to tell Mrs G that her payment wouldn't be made in the current tax year. And, had that been contrary to her expectations, that would have been something she would have needed to discuss with her financial advisor who, as Sterling correctly points out, was responsible for managing Mrs G's pension investments via the Advance platform.

But Sterling sent what it has told us was a misleading document to Mrs G telling her that her income payment would be made on 3 April – before the end of the tax year. I think it was entirely reasonable for Mrs G, once she had received that letter, to expect the payment to be made in line with what Sterling had told her. I haven't seen anything to make me think there were any reasons, other than Sterling's potential processing capacity, that would mean that payment could not be made. So as I set out in my provisional decision I think it was reasonable for Mrs G to conclude that Sterling would be able to make the payment despite its earlier warnings about the processing deadlines.

So my conclusion remains that Mrs G's payment was made 8 days later than it should have been. And as I set out in my provisional decision, and repeat below for clarity, that delay has caused Mrs G to lose out. So I am directing Sterling to pay Mrs G some compensation.

Putting things right

I think the impact of the delayed payment is twofold. Mrs G has told us that she hadn't used her personal tax allowance for tax year 2022-23 so if the payment had been made on the agreed date it wouldn't have caused any income tax liability. And Mrs G has lost out on the use of her income payment for a period of 8 days. So to put things right I direct Sterling to;

- Pay Mrs G an equivalent amount to the income tax she will have needed to pay on the income payment that was delayed. That payment was valued at £2,679 so the basic rate tax payable at a rate of 20% would be £535.80

- Pay 8 days of simple interest Mrs G at a rate of 8% per annum on the total amount of her income payment. HM Revenue & Customs requires Sterling to take off tax from this interest. Sterling must give Mrs G a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Mrs G's complaint and direct Sterling ISA Managers Limited trading as Advance by Embark to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 19 January 2024.

Paul Reilly
Ombudsman