

Ombudsman's Determination

Applicant	Mr D
Scheme	Hornbuckle Mitchell Self Invested Personal Pension (the SIPP)
Respondent	Embark Group Limited (the Administrator)

Outcome

1. I do not uphold Mr D's complaint and no further action is required by Embark Group Limited

Complaint summary

2. Mr D complained that:
 - The Administrator failed to respond to an Origo transfer request, causing avoidable paperwork to be required. It avoided answering questions about the Origo transfer.
 - The Administrator failed to execute a partial transfer following sale of a share portfolio.
 - The Administrator delayed the sale of an investment account, which caused a delay in executing his transfer and resulted in a financial loss.
 - He suffered poor and delayed service.
 - The Administrator agreed to refund fees then refused to do so.
 - The Administrator failed to properly investigate his complaint or provide the timeline of events he requested.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. In March 2020, Mr D instructed the Administrator to sell a portfolio of shares in which the SIPP had invested. There was a delay in executing Mr D's instructions, about which he was unhappy. He complained that, because of the poor service, the Administrator should allow him to transfer the SIPP to another provider and refund

the 2020/21 annual fee of £822 that had been deducted from the SIPP around the due date of 7 March 2020.

5. The Administrator did not uphold Mr D's complaint, and in its response said:

"Taking the above into consideration, if you decide to transfer your benefits to a new provider, as we have not been the cause of any delays, a refund of fees is something that would be agreed to."
6. Mr D took no further action regarding the Administrator's response to the complaint about the sale of the share portfolio, as the SIPP had benefited from favourable share price movements over the period of the alleged delay.
7. On 2 May 2020, the Administrator received a request from another pension provider (**the New Provider**) to transfer the SIPP to a pension plan for Mr D with the New Provider. The transfer request was submitted to the Administrator using an electronic platform known as Origo. The Administrator's criteria for the use of the Origo platform said that it could only be used where the transferring plan's fund value was held entirely in the form of cash. When the Origo transfer request was received, the SIPP held investments in an investment account with Investec (**the Investment Manager**). Applying the Administrator's criteria, the Origo transfer request was rejected.
8. Around the same time in May 2020, Mr D received an invoice for fees relating to the SIPP, which included the annual fee due in March 2020. He drew the Administrator's attention to its letter of 5 May 2020, which he said included an agreement to refund the annual fee in the event that he should proceed with a transfer to a new provider. The Administrator disputed that it had agreed to a refund of fees. Mr D felt that this amounted to the Administrator reneging on an agreement to a refund.
9. On 7 May 2020, the New Provider sent a transfer questionnaire to the Administrator for completion to establish if the former could accept the transfer from the SIPP. The Administrator returned the completed questionnaire to the New Provider on 14 May 2020, and enclosed the transfer application and discharge forms (**the transfer forms**) that Mr D needed to complete and return to proceed with the transfer.
10. On 20 May 2020, Mr D contacted the Investment Manager directly to arrange the sale of the investments in the investment account.
11. Mr D returned the transfer forms to the New Provider on 21 May 2020, by email and on 22 May 2020, by post.
12. On 29 May 2020, the Administrator confirmed, in response to a request from Mr D, that a partial transfer of funds from the SIPP was possible. The Administrator advised that in order to make a partial transfer, it would require Mr D's confirmation of the amount to be transferred, his completed transfer forms and details of the bank account for the New Provider to which any partial transfer value should be paid.
13. By 4 June 2020, the Investment Manager had sold all of the SIPP's investments in the Investment Account.

14. The Administrator received the transfer forms from the New Provider on 5 June 2020 along with a copy of the receiving pension plan's HMRC registration certificate. The New Provider's covering correspondence with the transfer forms said Mr D had requested a full transfer. The Administrator emailed Mr D on 8 June 2020 to confirm the transfer was underway and to provide him with Risk Warning and Pension Scam warning documents.
15. On 9 June 2020, the Administrator emailed an instruction to the Investment Manager to close the investment account. The investment account's value was paid back into the SIPP on 18 June 2020.
16. The Administrator expected to transfer the full value of the SIPP to the New Provider on 22 June 2020, but did not do so until 25 June 2020.
17. Mr D used part of his fund value in the pension plan with the New Provider to purchase new investments on various dates between 30 June 2020 and 15 September 2020.
18. Mr D complained to the Administrator that he had lost out on investment growth due to the delays in completing the transfer of the SIPP. He indicated that the funds in which he intended to invest under the new plan were linked to the Nikkei index. The Administrator considered the relevant dates to assess any possible loss to be 10 June 2020, the date the Investment Manager confirmed receipt of the closure instruction for the investment account, and 29 June 2020, the date the transferred funds were most likely to have been received by the New Provider. It noted that the Nikkei 225 index was 23,124.95 on 10 June 2020 and 21,995.04 on 29 June 2020. As the index price had decreased, the Administrator's view was that Mr D's new plan was unlikely to have experienced any loss of investment growth due to any delay.
19. The Administrator awarded Mr D £100 in recognition of the transfer delay from 22 June 2020 to 25 June 2020 and for its failure to follow-up on Mr D's earlier enquiry regarding the facility to make a partial transfer.
20. Mr D did not accept the Administrator's award.

Mr D's position

21. The transfer from the SIPP was delayed by the requirement to complete forms that would not have been required if the Administrator had replied to the Origo transfer request.
22. The Administrator reneged on an agreement to refund the 2020/21 annual SIPP fee.
23. He should receive an apology for poor and delayed service.
24. The Pensions Ombudsman should sanction Hornbuckle for failing to properly investigate his complaint.
25. The Administrator's delay in transferring his pension to the New Provider deprived him of considerable investment growth for which he should be compensated.

26. The Administrator failed to provide a full timeline of events relating to the transfer.
27. The Administrator upheld his claim that it failed to make a partial transfer between 28 May 2020 and the eventual transfer date of 25 June 2020. In his opinion, the offer of £100 in this regard was derisory. The Administrator should compensate him for the lost investment growth as a result of the delays.

The Administrator's position

28. It had not done anything wrong in relation to completion of the transfer. Mr D's transfer request could not be processed using the Origo platform as the SIPP was not invested wholly in cash. It then required transfer forms to be completed, along with the receiving scheme's bank details. The completed forms were received on 5 June 2020.
29. Mr D's pension fund was unlikely to have suffered a loss of investment growth as a result of the waiting period after the instructions to close the investment account had been given to the Investment Manager.
30. A partial transfer would have been possible prior to the conclusion of the full transfer. It initially upheld this part of Mr D's complaint as it saw no reason the partial transfer was not processed. It offered Mr D £100 in recognition of any distress and inconvenience he experienced as a result of the delay in transferring the part of the SIPP funds that could have been transferred earlier. However, it subsequently noted that, regardless of any oversight, it would have been unable to proceed with a partial transfer until the New Provider had provided details of the bank account to which the transfer should be made.

Adjudicator's Opinion

31. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Embark. The Adjudicator's findings are summarised below.
32. Mr D's expectations and consequent complaint were predicated significantly on his misunderstanding that the transfer of the SIPP could be successfully conducted using the Origo transfer platform.
33. Participation in the Origo platform was voluntary and the Administrator's internal policy regarding its use were entirely at the Administrator's discretion. The Administrator's policy was that the Origo platform could only be used for SIPPs which were invested wholly in cash. As the SIPP was not invested wholly in cash when the Administrator received the Origo transfer request from the New Provider, Mr D's transfer request was rejected. The Adjudicator was of the view that rejection of the Origo transfer request did not amount to maladministration by the Administrator.
34. As Mr D's transfer could not be conducted using the Origo platform, it had to be conducted using the conventional paper-based transfer method. The Administrator

required transfer forms to be completed and signed by Mr D. In the Adjudicator's Opinion, the requirement for forms to be signed did not amount to maladministration by the Administrator.

35. The Administrator received Mr D's signed transfer forms on 5 June 2020. It contacted the Investment Manager on 9 June 2020 to instruct the closure of the investment account. The Investment Manager sent the proceeds of the sale of investments held by the SIPP to the Administrator on 18 June 2020 and the transfer to the New Provider was concluded on 25 June 2020. The Adjudicator's view was that there was no maladministration by the Administrator in the stages through which it progressed Mr D's transfer, or the time it took to progress it.
36. When the Administrator received its transfer requirements from Mr D on 5 June 2020, Mr D had already instructed the Investment Manager directly on 20 May 2020 to sell all of the investments held by the SIPP and the sales were concluded on 4 June 2020. In the Adjudicator's view, the Administrator could not be held responsible for any losses associated with the timing of the sale of investments from the investment account. The sales had already been arranged by Mr D and completed by the time the Administrator would otherwise have been arranging them once it had received its requirements to proceed.
37. In the Adjudicator's view, the Administrator's performance on completion of the transfer was not unreasonable and did not represent poor or delayed service. If the Administrator had been clearer in its communications with Mr D in explaining the Origo rejection and the consequences for the timing of the transfer, this might have better informed his expectations.
38. It might have been good practice for the Administrator to follow up Mr D's enquiry about a partial transfer with a reminder that it required him to confirm the amount to be transferred. The Adjudicator was of the view that the Administrator was under no obligation to follow up, so not doing so did not amount to maladministration.
39. As the failure to process a partial transfer did not represent maladministration by the Administrator, the Adjudicator was of the view that any investment loss calculations were academic.
40. In the Adjudicator's Opinion, it was clear that the Administrator, in its message of 5 May 2020, had disagreed that it was responsible for any delay in relation to the sale of shares in March 2020. Agreeing to a refund of fees that were correctly deducted, whilst not accepting that it had done anything wrong to warrant such a refund, was clearly counter-intuitive. The Adjudicator was of the view that it could reasonably have been concluded that the word "not" had been omitted in error from a sentence in the Administrator's email of 5 May 2020. The final line was logically intended to read "as we have not been the cause of any delays, a refund of fees is not something that would be agreed to".
41. The Adjudicator was of the view that the Administrator's handling of Mr D's complaint did not amount to maladministration. The Administrator had reached the correct

conclusion and had provided information to support its conclusion, even if the information was not presented in a way that Mr D would have preferred.

42. The Adjudicator's Opinion was that Mr D's complaint should not be upheld.
43. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which are as follows:-
 - As a consumer who was not a pension professional and did not have access to the detail of how Origo works, he should have received assistance to expedite the process with a presumption that time was of the essence. The Administrator failed to offer a partial transfer at the outset. The Administrator did not disclose that using Origo was at its discretion or that it had rejected the Origo transfer request.
 - The Adjudicator's Opinion meant the Administrator had no obligation of best practice to the consumer because matters were entirely at their discretion.
 - The Adjudicator used the wrong dates for the analysis of potential loss of investment growth. In paragraph 40, the Adjudicator's Opinion acknowledged that the Administrator had failed to execute a partial transfer in the period between 20 May 2020 and 25 June 2020. In paragraph 42, the Adjudicator's Opinion reverted to using the dates 10 June 2020 to 29 June 2020 when the date range had already been conceded by the Administrator.
 - Using the Nikkei index as a comparator for the calculation of potential loss of investment growth was erroneous.
 - If the Adjudicator's Opinion was that Embark could have been clearer in its communications, why were there no consequences to this and why was the subsequent complaint not upheld?
 - In relation to the refund of fees from the SIPP, the effective meaning of the Adjudicator's Opinion was that he should have assumed there was a missing word in the Administrator's message of 5 May 2020. Mr D asserts that he should have been able to rely on the actual construction of the Administrator's email and the Administrator should be liable for its error.
44. I have considered Mr D's comments but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

45. The conventional transfer process commonly involves the completion of transfer application forms and the physical exchange of information between the transferring and receiving pension schemes. Mr D's initial transfer request was made by the New Provider, via Origo on 2 May 2020. Origo is a voluntary arrangement which can, when the process succeeds, reduce the time taken to complete a transfer. The

Administrator was not compelled to use Origo. Mr D's transfer request did not meet the Administrator's requirements to be processed using Origo, so it was rejected.

46. Origo is an automated process under which the New Provider requesting the transfer on Mr D's behalf would have known whether the transfer request had failed or succeeded. There was no requirement for the Administrator to inform Mr D of the progress of the failed transaction that was initiated by the New Provider.
47. Mr D's expectation was that processing his transfer request would not follow the conventional, paper-based method but would be completed more quickly using Origo. I have not seen any evidence of discussion between Mr D and the Administrator regarding the transfer process prior to the New Provider's submission of the Origo transfer request. Mr D did not say who informed him that the transfer of the SIPP would be conducted via Origo, but if Mr D needed more information, he might have obtained that information from that same source. I do not agree that the Administrator was under any obligation to explain to Mr D how Origo worked. The Administrator would, however, when the attempted transfer failed, have been expected to issue whatever forms were required for Mr D to apply for the transfer using the conventional, paper-based method. Accordingly, the Administrator issued the transfer forms on 14 May 2020. It received the completed forms on 5 June 2020 and completed the transfer on 25 June 2020. This timeframe was well within any statutory requirements.
48. I find that there was no maladministration by the Administrator in rejecting the New Provider's Origo transfer request, or in how the transfer was conducted after the Origo request had been rejected.
49. As I have found that there was no maladministration by the Administrator in relation to the processing of Mr D's transfer request, I consider the calculation of any loss of potential investment growth over the period up to 29 June 2020 to be academic. Consequently, the dates that would have been used in any such calculation require no further consideration by me.
50. While the Administrator could have been clearer in its communications to Mr D, this would have served to correct Mr D's expectations of the transfer process rather than changing the requirements needed to proceed with the transfer, or the time taken for the transfer to progress. I find that the shortcoming in the Administrator's communications did not have any effect on the time taken to complete the transfer and did not cause the detriment that Mr D has claimed.
51. It is evident to me from the Administrator's email to Mr D on 5 May 2020, that it had rejected his complaint, and that its assertion that it had done nothing wrong was presented as the basis of its refusal to refund fees incurred by the SIPP. It would have been illogical for the Administrator to cite having done nothing wrong as the reason to agree to refunding the fees. I do not agree that it was reasonable for Mr D to ignore the clear and logical intended meaning of the Administrator's email in favour

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of a literal interpretation that was clearly illogical due to the accidental omission of one word.

52. Therefore, I do not uphold Mr D's complaint and Mr D should contact the Administrator directly should he wish to accept its offer of £100. .

Anthony Arter CBE

Deputy Pensions Ombudsman
10 October 2023