

## The complaint

Mr C complains that AJ Bell Securities Limited (“AJ Bell”) allowed him to incorrectly sell units in a fund which he no longer held following an ISA transfer from his old ISA provider. He feels AJ Bell should absorb him of any debt owed to it as it was AJ Bell’s error and not his.

## What happened

On 28 May 2020 Mr C initiated a full in-specie transfer of his stocks and shares ISA to AJ Bell. AJ Bell received a valuation from Mr C’s old ISA provider on 30 July 2020 which said Mr C held 12,799.84 units in a fund. I shall refer to this fund as “Fund A”. AJ Bell set up an expectation on its system so the units would be automatically allocated to Mr C’s ISA when they had been received from his old ISA provider. Whilst the units should have been visible in Mr C’s ISA account, he shouldn’t have been able to sell the units until AJ Bell had received these from his old ISA provider.

On 13 August 2020 AJ Bell received an updated valuation from Mr C’s old ISA provider which said that Mr C had sold the majority of his units in Fund A and now only held 0.84 units. AJ Bell said it ought to have amended the previously set up expectation to reflect this change but, due to human error, it failed to do so. As a result, Mr C was able to sell 12,799.68 units in Fund A with AJ Bell on 25 August 2020 receiving £24,254.20 in sale proceeds.

AJ Bell emailed Mr C on 4 September 2020 to explain that it had discovered the error. It said it would need to reverse the sale of these units and this would result in Mr C having a negative balance on his ISA account. AJ Bell also explained that, as Mr C didn’t have any remaining ISA allowance to allow him to deposit cash into his account, he had the following two options to put things right:

- Transfer over the £14,724 cash from his old ISA provider to cover the reversal of the sale, and place further sales on his ISA account to cover the remaining £10,000 (AJ Bell would arrange for these trades to be placed free of charge), or
- Make more cash available with his old ISA provider to transfer over, meaning AJ Bell could cover the full amount of the reversal using the transferred cash.

Mr C complained to AJ Bell as he didn’t think he should liable to pay back the funds from the sale of the units. He said he’d made investment decisions based on the fact he was able to sell the units in Fund A. He said, but for AJ Bell’s error, he wouldn’t have made the investment decisions he did and so AJ Bell should clear the debt it says he owes.

AJ Bell looked into Mr C’s concerns. In summary it said:

- It accepts it caused the error and apologised for this.
- It believes Mr C was aware he didn’t hold the number of units with AJ Bell which he sold on 25 August 2020.
- It reserves the right to reclaim the money from his account without his authority and could also reverse all purchased he places using the funds from the incorrect sale of his units in Fund A.

- Whilst it appreciates that Mr C should not have been able to see the units, these didn't belong to him and so it wouldn't be appropriate to cover any perceived financial loss.
- It acknowledges the poor service received and offered £100 in recognition of this.

Mr C didn't accept AJ Bell's findings and so he referred his complaint to our service for an independent review.

An investigator at our service looked into Mr C's complaint but didn't uphold it. In short, he said:

- The role of our service is to put a consumer back in the position they would've been in had the problem not happened. In Mr C's case, the problem was AJ Bell didn't update the expectation on its system, which allowed him to trade units which he didn't hold. So, if the problem hadn't happened, it would mean he wouldn't have been able to trade the units as he did.
- He didn't think it would be fair for Mr C to benefit from AJ Bell's mistake and said the action it had taken to recover the money from Mr C was reasonable.
- He acknowledged that Mr C's point regarding him being financially disadvantaged, but he didn't agree as Mr C had previously sold the majority of the units in Fund A prior to his ISA transferring.
- He felt AJ Bell's offer of £100 fairly recognised any distress caused by its error.

Mr C disagreed with the investigator's opinion. He was adamant that he's been financially disadvantaged as he wouldn't have made the investment decisions he did on the basis that the units in Fund A were available to sell.

The investigator responded to Mr C's comments. He said that he understood Mr C chose to take investment actions following the sale of his units in Fund A. However, he explained that Mr C had previously sold the same holding via his old ISA provider and so, considering the high value of this sale, he would have been aware he didn't hold the units with AJ Bell at the time of making those investment decisions.

As an agreement couldn't be reached, the complaint has been passed to me to decide.

### **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 agree with the investigator's findings for broadly the same reasons.

AJ Bell has acknowledged that it caused the error in incorrectly allowing Mr C to sell units in Fund A. And it has explained this was due to human error. Therefore, my decision will focus on whether AJ Bell's actions following it realising its error were fair and reasonable in the circumstances of Mr C's case.

AJ Bells terms and conditions explain what action it can take when a consumer's account has been incorrectly credited. These explain:

*"2.10 We reserve the right to reclaim without Your authority a Payment or Contribution or Subscription or Transfer or Government Bonus (whether in part or whole) made in error to or from Your Account.*

[...]

*8.9 We may deduct Cash from and/or sell any of the investments in Your Account to realise Cash if:*

[...]

*8.9.2 Your account has been credited in error;”*

AJ Bell deducted what was available in Mr C’s account as a result of the error and as this has left him with a negative balance, AJ Bell is attempting to reclaim the outstanding amount from Mr C. I’m satisfied that these actions are all in line with the terms and conditions Mr C agreed to when opening the account.

The above terms also make it clear that AJ Bell has the right to sell any of Mr C’s investments in his account to realise the cash owed to it. Whilst AJ Bell could’ve taken this immediate action, I’ve seen that it provided him with alternative options instead. It said that on reversing the sale of units in Fund A, Mr C’s balance would be in a negative balance and so AJ Bell would need to take one of two actions:

- Transfer over the £14,724 cash from his old ISA provider to cover the reversal of the sale, and place further sales on his ISA account to cover the remaining £10,000 (AJ Bell would arrange for these trades to be placed free of charge), or
- Make more cash available with his old ISA provider to transfer over, meaning AJ Bell could cover the full amount of the reversal using the transferred cash.

I think these options are fair and reasonable as it would put Mr C back in the position he would have been in if AJ Bell hadn’t allowed him to sell units. I understand Mr C feels this doesn’t put him back in the same position as he made investment decisions on the understanding that he was able to sell the units in Fund A. And says that if the proposed action is taken he will be left out of pocket. I’ve thought carefully about this, but I don’t think it would be fair to hold AJ Bell responsible for any losses as a result of Mr C’s investment decisions. Ultimately, I’m satisfied he was aware or at least ought to have been aware that he’d already sold the majority of his units in Fund A with his old ISA provider. As such, I think Mr C is responsible for the investment decisions he made.

Whilst I don’t agree AJ Bell’s error caused Mr C a financial loss, I think that finding out he has to pay back the proceeds of sale funds would have caused him so distress. Clearly there’s been a loss of expectation for Mr C as he thought he was able to sell the units. However, I’m mindful that he ought to have known this was a mistake and so I think AJ Bell’s offer of £100 is fair and reasonable in the circumstances.

### **My final decision**

I don’t uphold Mr C’s complaint against AJ Bell Securities Limited as I think the action it has taken respect to Mr C selling units in Fund A which he didn’t hold was fair and reasonable. And the £100 compensation offered fairly reflects any distress or inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 27 January 2022.

Ben Waites  
**Ombudsman**