DRN-3700564

The complaint

Mr D complains AJ Bell Management Limited ("AJ Bell") are responsible for delays when switching from his previous Investment Partner (IP) to his new one. He says these delays caused him a financial disadvantage for which he asks to be compensated. He further complains about the service he received from A J Bell after raising his concerns.

What happened

I set out the background to this complaint in an earlier provisional decision. For clarity I repeat it here.

Mr D holds a Self-Invested Personal Pension (SIPP) with AJ Bell.

In February 2020, JM Finn wrote to AJ Bell asking them provide information regarding Mr D's SIPP, and to inform them that they were to be appointed as his registered financial advisers replacing his previous advisers. Unfortunately, AJ Bell failed to carry out this instruction.

In March 2020, JM Finn requested that Mr D's account with his previous IP be closed and the cash transferred to a new account with JM Finn. Mr D's cash was transferred to his new JM Finn account on 7 April 2020.

Mr D contacted AJ Bell to request an explanation of why there had been a delay in transferring his cash. As he didn't receive a response, Mr D chased up matters and was informed someone looking into things for him.

But by May 2020, having still received no response, Mr D told A J Bell he would bring the matter to this service.

AJ Bell then made contact. Mr D says the gist of this conversation was to lay the blame for the delay with JM Finn and asked him to withdraw his complaint. Concerned by this approach, Mr D asked AJ Bell to put their explanation for the delay in writing.

Having not received any written communication, Mr D tried again to contact the representative he spoke with but was unable to do so. He feels the adviser simply wouldn't take his calls.

In November 2020, Mr D received AJ Bells final response. It apologised for the delays in transferring his funds and accepted the level of service provided wasn't as expected.

It offered £300 for the trouble and upset caused. It then carried out calculations and offered to pay the interest it considered Mr D had lost of £55.08.

Dissatisfied, Mr D referred his complaint to this service.

An investigator looked into matters for Mr D. In summary he found:

- Mr D complained in April 2020 and received a final response in November 2020 over 7 months later. He agreed this amounted to poor service and pointed out Mr D would have been within his rights to refer his complaint to this service much sooner.
- He found that the offer of £300 to compensate Mr D for the trouble and upset this matter had caused to be in line with what this service would usually recommend and on that basis, fair and reasonable redress.
- He found AJ Bell's error of failing to change the appointed advisers when instructed had directly led to a delay in the cash movement of Mr D's funds. It should have taken place on 24 March 2020 but as a result of this error didn't happen until 7 April 2020, a delay of 10 working days.

- He also found that AJ Bell's calculation method was not in line with the approach used by this service and as such he asked A J Bell to re-calculate using this service's approach to fair compensation with the aim of putting Mr D as close as possible to the position he would probably now be in if AJ Bell not caused a delay.

AJ Bell does not seem to have responded to our investigators view.

Mr D did respond. He raised two main concerns regarding the redress and how it was calculated.

Firstly, he queried why the investigator had suggested the redress be calculated using the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index). This was because it was clear he was looking for growth from his SIPP and as such felt the FTSE WMA Stock Market Growth Index was a more suitable comparison.

Secondly, he pointed out he had a further £14,000 which he felt was similarly delayed and as such didn't understand why the investigator hadn't included this in his calculations.

Our investigator pointed to the basis on which this service uses indices to calculate appropriate redress are based on the circumstances and risk profile of the consumer. In Mr D's case the most appropriate benchmark is FTSE UK Private Investors Income total return index because it provides a mix of assets most closely suited to someone of Mr D's circumstances and risk profile.

With regard to the additional £14,000. The investigator explained he had not included this amount within the redress calculations because when the access situation was resolved on 7 April, JM Finn transferred the 69K to their account. But it wasn't until 17 April that they transferred the additional £14,000. He didn't agree he could find AJ Bell responsible for delays to this transaction as it wasn't carried out until 10 days after the access was resolved for so it wouldn't be fair to ask them to include this in their calculations.

Mr D still didn't agree and so he asked for an ombudsman review.

In my provisional findings I thanked Mr D for his patience. I said I appreciated this has been a long process in reaching an outcome and I understood his frustration.

In deciding this complaint, I explained I had considered the law, any relevant regulatory rules and good industry practice at the time. I also carefully considered the submissions that have been made by Mr D and where they have been made, by AJ Bell.

I said 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.

I said it was important to say at the outset, 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.

In this case, AJ Bell accepted it was responsible for delays when JM Finn transferred Mr D's cash to his JM Finn account, and that the level of service he received should have been better. So, I explained my role here, is to determine whether the amount AJ Bell has offered to compensate Mr D fair and reasonable given the circumstances.

Was the redress offered by A J Bell fair and reasonable?

The crux of Mr D's complaint is that he started to complain on 13 April 2020, but it wasn't until 23 November 2020 that a final response was issued. I said, Mr D would have been within his rights to contact our service sooner because his complaint should have been reviewed by AJ Bell in line with the guidance set out by the Financial Conduct Authority. This states that a business should respond to a consumer concerns within eight weeks of their complaint.

I could also see that there had been a number of attempted contacts by Mr D to AJ Bell by both email and telephone where he didn't receive timely responses and on the whole, it appeared to have been very poor customer service.

AJ Bell acknowledged this and offered £300 in recognition of the fact it could and should have done better. I said I understood that this has been incredibly frustrating for Mr D, but awards from this service for trouble and upset are relatively modest. This simply reflects the nature of this service as a free alternative to the courts and I found £300 to be a fair and reasonable in the circumstances of this complaint.

However, with regard to the delays, AJ Bell received monies on 24 March 2020 in the form of two cash movements. It acknowledged, JM Finn been correctly registered as Mr D's financial advisers on 14 February 2020, when it was notified, JM Finn would have been able to request a cash movement on the same day the funds were received. Because this hadn't been recorded correctly J M Finn weren't able to request the cash movement until 7 April 2020, this meant there was a delay of 10 working days.

Although A J Bell has accepted this error, it offered to put things right by making an interest payment on the amount that had been transferred to his JM Finn account. It said, although the Bank of England interest rate was 2%, it would pay 2.1% interest. It said the interest payment due would be £55.08.

I said I was in agreement with our investigator when I say that isn't the approach this service would take to calculate what is appropriate redress in the circumstances of this complaint.

How I said I thought the basis of the redress should be calculated

Mr D told this service he may have invested differently had the funds been transferred earlier. His fund is managed on a discretionary basis by JM Finn, and he has said that they may have invested differently had the funds been received sooner. Mr D confirmed his investment strategy is one of growth, and that he had a medium risk approach. JM Finn has explained that his funds weren't invested in a model portfolio.

On this basis, I'm in agreement with the approach detailed by our investigator. I said I appreciated Mr D's adviser feels strongly the benchmark index should be the FTSE WMA Stock Market Growth Index and so I could understand why Mr D queried the approach of using an Income Index when he seeks growth.

I explained it would be useful to clarify that the benchmark index used is one that most closely matches Mr D's investment strategy of growth whilst being willing to accept some investment risk. The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone, such as Mr D, who was prepared to take some risk to get a higher return. Although it is called income index, it's the mix and diversification provided within the index that I'm persuaded is close enough to allow me to use it as a reasonable measure of comparison given what Mr D has told this service about his circumstances and risk attitude.

Should the additional £14,000 be included within the calculation

I carefully considered the submissions made by Mr D that this additional amount should be taken into account when calculating the redress.

I looked carefully at the cash movements of the accounts Mr D held with AJ Bell.

I explained the additional amount wasn't part of the requested funds movement on 24 March 2020. It was held in Mr D's cash account prior to the previous advisers account being closed and it wasn't until 17 April 2020 that it was moved to Mr D's JM Finn account. For me to be able to include this within any redress calculation, I would need to see it was part of the delayed movement of funds. Had it been so I would have expected to see a request to move it on 7 April when the other funds were moved. Because it wasn't for a further 10 days after the access had been resolved, I said I wasn't persuaded I could fairly say this was down to AJ Bell's error. As such I didn't find it fair and reasonable to include this within the redress calculation. But Mr D said this part of his funds were also held up by the delay in AJ Bell acknowledging JM Finn as his advisers. I explained if he could provide further evidence to support this and some documentation to show why this part of his cash wasn't moved on 7 April 2020, I would consider any further submission.

Putting things right

To put matters right I said the following:

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr D as close as possible to the position he would probably now be in if AJ Bell did not cause a delay. Had the funds arrived earlier, on balance I'm persuaded Mr D would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr D's circumstances and objectives when he invested.

What should AJ Bell do?

To compensate Mr D fairly AJ Bell should:

Compare the performance of Mr D's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

It should also pay any interest set out below.

If there is a loss, it should pay into Mr D's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If AJ Bell is unable to pay the compensation into Mr D's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. So, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr D is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. But, if Mr D would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

In addition to this, AJ Bell should also pay Mr D the £300 offered for the distress and inconvenience the level of service he received had caused him.

A J Bell should provide the details of the calculation to Mr D in a clear, simple format.

Income tax may be payable on any interest paid. If AJ Bell considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Investment Name	Status	Benchmark	From (start date)	To (end date)	Additional interest
JM Finn & Co Account	Still exists	FTSE UK Private Investors Income Total Return Index	24 March 2020	Date of settlement	Not applicable

Actual value
This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark. Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if you total all those payments and deduct that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr D wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds.
- It's a fair measure for someone who was prepared to take some risk to get a higher return.

- As I've explained, although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr D's circumstances and risk attitude.

Further information

I have explained there is guidance on how to carry out calculations available on our website, which can be found by following this link:

https://www.financialombudsman.org.uk/businesses/resolvingcomplaint/understanding-compensation/compensation-investment-complaints.

Alternatively, just type 'compensation for investment complaints' into the search bar on our website:www.financial-ombudsman.org.uk.

Mr D responded to my provisional findings. He said he had spoken with his advisers at JM Finn and now understood why the additional amount of £14,000 hadn't been included within the redress calculation. He accepted my findings.

AJ Bell initially didn't respond. But, on 20 September 2022, it apologised for the delay and said it had no further submissions it wished me to consider.

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, there have been no further submissions to lead me to depart from my earlier conclusions. It follows that I have received the same outcome as that indicated in my provisional decision included within my final decision.

My final decision

For the reasons I have given I uphold this complaint and direct AJ Bell Management Limited to undertake the redress as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 October 2022.

Wendy Steele
Ombudsman