

The complaint

Mr W complains that AJ Bell Management Limited trading as AJ Bell Investcentre (AJ Bell) incorrectly calculated how much of the Lifetime Allowance (LTA) had been used. Mr W says that led him to making further pension contributions resulting in a higher tax liability.

What happened

I issued a provisional decision on 31 August 2022. I've repeated here the background to the complaint and my provisional findings.

'I don't think the facts are in dispute. In the main I've adopted the summary of events set out in AJ Bell's final response letter dated 4 June 2020.

In April 2015 Mr W transferred his SIPP (self invested personal pension) to AJ Bell. The transfer value was £399,964.74 and the previous SIPP provider told AJ Bell that amount was fully crystallised on 20 February 2003 and Mr W's maximum income limit was £55,289.70.

In August 2015 AJ Bell received a SIPP benefit form from Mr W's financial adviser. Mr W wanted to crystallise the entire amount of his uncrystallised funds with AJ Bell (£53,861.19) and be paid the maximum PCLS (pension commencement lump sum) available to him. As this was Mr W's first benefit crystallisation event (BCE) following the changes introduced on 6 April 2006 (A Day) AJ Bell needed to determine how much of the LTA Mr W had used.

The LTA for the tax year 2015/2016 was £1,250,000. For Mr W's pre A Day pension, AJ Bell had to multiply the maximum taxable income available to Mr W (£55,789.70) by 25 and apply 80% of it. That was £1,105,794 which equated to 88.46% of the LTA.

AJ Bell overlooked carrying out that calculation. Instead AJ Bell paid £13,465.30 as a PCLS to Mr W on 21 September 2015 and the remaining £40,395.89 was allocated to drawdown. That used 4.30% of Mr W's remaining LTA. So he'd used 92.76% of his LTA with 7.24% remaining.

Mr W made further contributions to his SIPP. On 5 April 2016 he made a contribution of £48,000 net and on 19 April 2016 he made a further contribution of £87,000 net. On 18 May 2016 AJ Bell received a further SIPP benefit form from Mr W's advisers. Mr W wanted to crystallise the remainder of his uncrystallised funds and receive the maximum PCLS payment available.

A PCLS payment of £42,059.55 was made to Mr W on 31 May 2016 with £126,178.64 allocated to drawdown. That used 16.82% of his LTA, and 21.12% overall with AJ Bell. But Mr W only had 7.24% of his LTA remaining. The payment resulted in him being 13.88% over his LTA.

Mr W's adviser emailed AJ Bell on 20 March 2020 and queried Mr W's fund split. At that point AJ Bell identified the error and telephoned Mr W's adviser on 24 March 2020 to inform them and say that AJ Bell was investigating the matter.

Mr W's adviser said Mr W wanted a PCLS payment. AJ Bell emailed Mr W's adviser on 4 April 2020 (a Saturday) and explained how the LTA had been exceeded and that there'd been a PCLS overpayment of £23,959 55. AJ Bell outlined Mr W's options to rectify the matter and asked how he wished to proceed.

Further emails were exchanged. Mr W's advisers asked that AJ Bell make a gross income payment of £80,000 to Mr W which AJ Bell did (with the usual £25 plus VAT CHAPS transfer charge waived).

Mr W's adviser said Mr W had made decisions regarding his SIPP based on the (incorrect) information AJ Bell had provided and so AJ Bell should cover any tax liability Mr W incurred.

AJ Bell said it hadn't calculated Mr W's PCLS payment correctly in August 2015, despite AJ Bell having procedures and controls in place to prevent LTAs being exceeded. Under HM Revenue and Customs (HMRC) regulations, any payment made over the maximum allowance must be returned or it may be deemed an unauthorised payment. Where an unauthorised payment has occurred, the beneficiary will face tax charges. AJ Bell set out what it saw as Mr W's options:

- Return the £23,959 55 overpaid PCLS to the SIPP;*
- Treat the £23,959 55 as an income payment and send the tax that should have been paid at the time to HMRC;*
- Report it as an unauthorised payment – AJ Bell had detailed the tax charges for that in previous correspondence.*

AJ Bell wasn't prepared to cover any tax costs Mr W might incur as tax would be payable on the amount Mr W received in any event. AJ Bell apologised for the poor service Mr W had received and offered a payment of £250.

In reply, Mr W's adviser said Mr W had been misled by AJ Bell's incorrect certifications and that had resulted in a course of actions which put Mr W in breach of HMRC's rules. Mr W didn't consider that AJ Bell's response dealt with the underlying issue – the provision of incorrect information on multiple occasions. Mr W's adviser said, because of the erroneous information certified by AJ Bell as correct, Mr W had invested funds which meant he'd unknowingly exceeded the LTA and he now faced a substantial tax charge for which he held AJ Bell responsible.

AJ Bell wasn't prepared to accept responsibility for the tax charges.

Mr W referred the complaint to us. He said that rectifying the errors would cost his pension fund £60,000. The whole issue was caused by the supply of incorrect information. Even though AJ Bell accepts it gave incorrect information it refused to accept responsibility for his financial losses.

One of our investigators considered the complaint. He said, if AJ Bell had given Mr W accurate information about the LTA, Mr W wouldn't have made the withdrawals taking him over the LTA. But Mr W, having made those withdrawals, didn't want to return the overpaid tax-free cash. So he was liable for the tax charges, either as income or if he takes it as an unauthorised payment. The investigator didn't think AJ Bell should cover Mr W's tax liability.

Mr W had said he wouldn't have made the further contributions of £48,000 and £87,000 (in respect of which tax relief had been given) in 2015/16 and 2016/17 respectively. The investigator accepted that Mr W would've made other arrangements for those funds. The investigator said AJ Bell should assess if Mr W had suffered any loss, depending on where the funds were held before Mr W made the contributions to the SIPP and if the money

would've been invested elsewhere. The investigator also thought that a higher sum - £350 - more fairly reflected the distress and inconvenience Mr W had been caused.

AJ Bell agreed to the £350 but said it was unable to carry out the calculation the investigator had requested. Amongst other things, it said Mr W's adviser hadn't provided any details as to where the funds would've been invested if they hadn't been contributed to the SIPP. AJ Bell noted that Mr W's adviser had told AJ: 'It is difficult for us to indicate an alternative investment vehicle in hindsight. We advised on suitability at the time'.

Even if that information was forthcoming, AJ Bell's position was that Mr W had been financially advantaged by making the contributions to his SIPP, taking into account the tax relief that had been given. In summary:

- Mr W was an additional rate tax payer in the tax year in which the contributions were made and he'd have received 45% tax relief on the contributions (20% at source plus 25% claimed by or on behalf of Mr W from HMRC). The total tax relief paid into the pension was £33,750. Plus the additional rate tax relief of £36,750 so £70,500 in all. Immediately after the contributions had been made, Mr W would've been £70,500 better off due to the tax relief.
- From the two options given to rectify this, the highest tax charge that would be payable is £25,284.55. That would still leave £45,215.45 excess tax relief. The contributions and subsequent BCEs have not caused a financial detriment compared to if the funds had been held personally during the same period. Any growth on the fund value within the pension would have also been compounded by the additional value, due to the tax relief, compared to if the funds were held outside the pension.

AJ Bell added that if the funds were still held personally, they'd form part of Mr W's estate for Inheritance tax (IHT) purposes, charged at 40% above the nil rate band. The funds in the SIPP are held in trust and won't form part of Mr W's estate. So paying into the pension may result in a potential IHT saving for Mr W's estate of 40% of the amount contributed.

We shared AJ Bell's comments with Mr W. He said AJ Bell had acknowledged the information it supplied was incorrect. His understanding was that he should be entitled to rely on it. The tax relief on the payments in had been emphasised but not the tax payable. The potential IHT saving was a red herring as other investments were available at the time to take the amounts paid outside his estate and provide tax deferred spendable income. There was no mention of the fact that any withdrawals from the fund are subject to income tax at his marginal rate both before and after his death. In effect the fund value is reduced by 40% on withdrawal.

The investigator commented that the contributions were subject to tax relief when they were made and the growth on the investments will be on top of the tax relief. Hence AJ Bell had calculated that the LTA charge was less than the tax relief Mr W had received. Mr W would always have had to pay tax at his marginal rate when taking income and he was willing to make the contributions regardless.

Mr W said that AJ Bell's calculations had taken too long to produce and were one sided. And ignored the fact that as the contributions were now in his pension fund he'd pay 40% tax on any withdrawals. He asked if he should ask a consultant actuary to assess his position

In reply, the investigator maintained the contributions were subject to tax relief when they were made and the growth on the investments was on top of that. AJ Bell had calculated that the LTA charge is less than the tax relief Mr W had received. He'd always have had to pay tax at his marginal rate when taking income and he was willing to make the contributions anyway. Although we wouldn't expect Mr W to get his own calculations done he could do so

if he wished. We wouldn't ask AJ Bell to cover the cost unless we felt it appropriate if AJ Bell's calculations were incorrect.

The investigator said as Mr W didn't agree with AJ Bell's loss calculation the matter would be referred to an ombudsman.

What I've provisionally 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.

AJ Bell accepts that it has made errors. It didn't take into account Mr W's pre A Day pension when it calculated how much of the LTA Mr W had used when it paid benefits to Mr W in 2015 and 2016. And the mistake didn't come to light until 2020.

Mr W did have an adviser in place throughout. Arguably the adviser should've been aware as to the history of Mr W's pension arrangements and that he'd taken benefits pre A Day and the calculations that needed to be undertaken for subsequent BCEs. But equally it was up to AJ Bell to pay benefits in accordance with the prevailing tax regime and to carry out any LTA calculations correctly.

Initially Mr W's adviser said that AJ Bell should meet the tax charges resulting from the overpaid PCLS. I don't think that would be fair. Where a mistake has been made, we'd usually expect the consumer to take any reasonable steps open to them to help sort things out. Here I haven't seen anything to suggest that Mr W couldn't have returned the overpaid PCLS. Or elected to have it treated as an income payment and paid the tax on it. As I understand it, Mr W didn't want to do either. I don't think AJ Bell is responsible for any tax liability that Mr W has incurred.

Mr W's position is that he should be able to rely on the information which AJ Bell supplied. I don't disagree with that. Mr W has explained that he relied on the incorrect information by making two further pension contributions (£48,000 and £87,000) which he wouldn't have made if he'd been given the correct information.

I accept what Mr W says – that he wouldn't have made those two contributions. Mr W says he's now worse off financially than if he hadn't made those contributions. I think that's the issue – whether Mr W relied on the incorrect information to his financial detriment.

AJ Bell doesn't agree that Mr W has suffered a financial loss, taking into account the tax relief, plus any investment growth (which, as the contributions are held inside a pension wrapper, is tax free.) Mr W says that it isn't just about the tax treatment of the money when it's paid in but also what happens when the money is paid out – he's pointed to the tax that he'll have to pay if he withdraws the money that he wouldn't otherwise have paid into the SIPP. I understand Mr W's position. But I think both aspects have to be considered. Mr W has more money in his SIPP than he would have had, if he hadn't made the further contributions. And he'll have to pay tax at his marginal rate if he withdraws it as income from his SIPP. But I don't see that's a financial loss as such – Mr W was always going to have to pay income tax on any income withdrawals from his SIPP. And the benefit of the tax relief on the contributions outweighs the tax he'll suffer.

From the calculations that AJ Bell has undertaken, Mr W isn't financially worse off. Mr W has mentioned a loss to his pension fund of £60,000 but I'm not sure how that's been calculated. In any event, it seems that the benefit to him in terms of tax relief is more – some £70,500.

If Mr W maintains he is worse off, he and/or his adviser will need to explain why that's the

case with calculations in support together with, if appropriate, details of what Mr W would've done differently if AJ Bell had provided correct information. As the investigator has explained, it's unlikely that we'd award the costs of any advice Mr W has to take unless it is instrumental in showing that AJ Bell's calculations are wrong and Mr W's overall financial position has been adversely affected by AJ Bell's admitted errors.

As things stand, I don't think Mr W has suffered any financial loss. I agree he's suffered distress and inconvenience. I think the £350 the investigator suggested and which AJ Bell is prepared to pay is fair and reasonable.'

In response to my provisional decision Mr W said he was very disappointed but he didn't offer any further comments. We haven't received any further comments from AJ Bell.

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.

I've set out in full above my provisional findings and these form part of this decision. In the absence of any further comments, arguments, evidence or information, my views remain as set out in my provisional decision.

From what I've seen, I don't think Mr W has suffered any financial loss as a result of AJ Bell's error. Mr W has suffered distress and inconvenience and AJ Bell has agreed to pay him £350 for that.

My final decision

I uphold the complaint in part. AJ Bell Management Limited trading as AJ Bell Investcentre must pay Mr W £350 as compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 October 2022.

Lesley Stead
Ombudsman