

The complaint

Ms F complains that AJ Bell Management Limited (“AJB”) has failed to implement the provisions of a pension sharing order (“PSO”) arising from her divorce. She additionally complains that AJB will not provide her with historic information and valuations of her ex-husband’s pension savings so she can assess compliance with the terms of the PSO.

What happened

I issued a provisional decision on this complaint in December 2022. In that decision I explained why thought part of the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

Ms F has divorced her ex-husband (who I will call Mr X). In January 2021 a PSO was granted to Ms F that provided for her to receive 35.67% of Mr X’s pension savings. Mr X holds his pension savings within a SIPP administered by AJB.

In February 2021 AJB wrote to Ms F setting out its expectations of how it would deal with the PSO. It told her that it would need a copy of the decree absolute when it was issued, and that Ms F would need to complete a “Pension Sharing Transfer Discharge Form”. It said once it had received those documents its implementation period would start and it was required to complete the transfer of the pension credit within four months. It also set out for Ms F details of the fees that it would charge for implementing the PSO.

The decree absolute was sent to AJB in June 2021. But Ms F has so far declined to complete the discharge form. She says that the PSO is sufficient to provide AJB with the authority to transfer the pension credit and she doesn’t want to enter into any contractual arrangement with the firm. And she says that her new pension provider has advised her that other providers do not require similar forms to be completed. So AJB has said that the implementation period has not yet started, and will not do so until Ms F provides the signed discharge form.

The terms of the PSO prevented Mr X from taking any steps to reduce the value of his pension savings before the start of the implementation period. So Ms F has asked AJB to supply her with a summary of the pension investments that Mr X holds, and any trading that has occurred on those investments in the lead up to the PSO being granted, and the implementation period commencing. AJB has declined to provide that information – it says that the PSO simply requires it to provide Ms F with a pension credit equal to 35.67% of Mr X’s pension savings on the relevant date during the implementation period.

I think a reasonable starting point for my consideration of this complaint should be the information contained on the PSO. The PSO is an important document as, unlike many other financial matters in divorce, a specific court ruling is required to allow AJB to provide Ms F with the pension credit required, and to allow the transfer of part of Mr X’s pension savings to another person.

Ms F's PSO comes in two parts. There is the actual order granted by a Deputy District Judge. And accompanying that is a Pension Sharing Annex. That document, also issued by the Court, sets out the information that is needed by AJB to implement the PSO. It details the pension plan held by Mr X, the amount of those pension savings to be transferred to Ms F, and the details of the new arrangement chosen by Ms F to receive the credit. The annex also details that the costs of the PSO implementation should be shared equally between Mr X and Ms F.

The annex confirms when the PSO should be considered to come into effect – and so the start of the four-month period in which AJB must discharge its responsibilities. The Annex provides for confirmation whether, where the pension administrator has requested further information, that information has been provided. That section of the annex, which is noted to be required only where applicable, has not been completed.

AJB says that the discharge form it has requested is what the annex is referring to when it suggests additional information might be required. So it says that it is entitled to ask Ms F to complete that form. And it says that until it holds the completed form the implementation period does not start.

I've looked closely at the wording of the discharge form that AJB has asked Ms F to complete. For clarity I reproduce the two declaration paragraphs of the form in full below. It says;

I hereby request you to transfer the value of all benefits to which I am entitled under the arrangement specified above pursuant to a Pension Sharing Order and pay the transfer value to the Scheme stated in Part B of this form.

I declare that I am legally entitled to the benefits in question, which the arrangement secures. I agree that payment by you in accordance with these instructions will fully discharge A J Bell Management Limited and AJ Bell (PP) Trustees Limited from liability to provide benefits for me under the above arrangement, and I indemnify you against all claims or proceedings made against you in respect of the benefits to be transferred, and against all resulting losses and expenses, which you may incur.

I'm not persuaded that the completion of the discharge form can fairly be described as Ms F providing additional information to AJB as intended within the meaning of that section of the PSO annex document. So I don't currently agree with AJB that Ms F's reluctance to complete the document delays the start of the implementation period as set out in the relevant legislation.

But as I explained earlier, whilst I naturally will take account of the law, I am required to decide complaints on the basis of what I consider to be fair and reasonable. So I think it right that I should give some consideration about whether it is reasonable for AJB to think it needs the additional protection it might be given by Ms F completing the discharge form.

I think the nature of the pension sharing annex – a legal document issued by the Court, and approved by a Deputy District Judge, gives AJB a very clear authority to make the transfer of part of Mr X's pension benefits to Ms F. And I don't think Ms F can reasonably determine whether AJB has correctly calculated the value of that pension credit, and so might be subject to a future claim from Mr X should it have made an error. So I understand why she might be concerned about entering into

such an agreement with AJB when she otherwise has no previous, or future, relationship with the firm.

I would not normally consider it appropriate for me to direct how a firm should generally conduct its business. But I currently think here that the demands AJB is making on Ms F are unreasonable. I think the directions that are provided by the PSO and the annexe are sufficient for AJB to legally make the pension transfer to Ms F's chosen provider since it provides the full details that are normally required, including details of the receiving scheme. So I think AJB should now consider that, as at the date it is advised of Ms F's acceptance of any final decision along these lines, the starting provisions of the PSO are satisfied, and it should conclude the transfer within the required four-month period.

Ms F has questioned how AJB intends to choose the date at which the calculation of the pension benefits, and so her share, is performed. I think AJB's approach here is reasonable. Generally it says it will use the day after the implementation date to assess the value of the pension credit it needs to provide. But should those calculations be more complex, for example if the pension investments include illiquid or bespoke assets, it might need to delay that point of calculation until fuller information is available.

I have thought carefully about whether any compensation should be paid to Ms F as a result of the delay in the implementation of the PSO. I have seen that Ms F has said that, historically, her pension investments have outperformed those of her ex-husband. So it is possible that the delay to the implementation of the PSO means that the amount of the pension credit transferred to her will be worth less than if it been transferred earlier and invested by Ms F herself.

I have no doubts that Ms F will feel that the delay in the implementation of the PSO means she has lost out. But given that Mr X isn't party to this complaint it would be unreasonable for me to even investigate how his pension investments have performed. And I cannot base a conclusion that a loss has occurred on the historical performance of the respective pension investments of Ms F and Mr X. So I do not currently intend to make any award for any possible investment losses.

But it is clear that the delay to the conclusion of this matter will have caused distress and inconvenience to Ms F. She has explained that needing to deal with this matter has caused her to spend time that she might have better used in adapting to life as a single parent. So I think a payment to reflect that inconvenience is warranted. I currently intend to direct AJB to pay Ms F £500 in recognition of the inconvenience she has been caused.

I have noted that Ms F also complains that AJB intends to charge her the full costs of its time in implementing the PSO. I'm not persuaded that is what AJB has said in its letter to Ms F, and to do so would clearly be contrary to the instructions in the PSO that said the costs should be shared equally with Mr X. The letter AJB sent explained how it would calculate its charges. I think that Ms F's concerns are premature but, when the implementation ultimately completes, if any concerns remain over whether AJB has apportioned its charges correctly and in line with the directions of the PSO, Ms F can raise that as a new complaint or if appropriate seek further assistance from the Courts.

AJB cannot value the pension credit that Ms F will receive until the implementation date calculations are completed. I note that Ms F appears concerned that assets might have been removed from the pension savings beforehand, and so in violation

of the PSO directives. If Ms F has concerns of that nature I think that is a matter initially for the Courts to decide. I think AJB might place itself in breach of its data protection obligations should it provide information to Ms F other than that directly needed to assess the value of the pension savings at the implementation date. Ms F isn't a customer of AJB – its only obligations to her are to act in accordance with the directions provided in the PSO to provide a pension credit

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Both Ms F and AJB have provided additional information. Although I am only summarising here what each of them has said, I want to reassure both Ms F and AJB that I have read, and carefully considered, their entire responses.

Since our investigator issued their assessment on the complaint (and before my provisional decision was issued), the matter has been returned to the Courts. Unfortunately that wasn't something we were made aware of by either party. As a result of that Court hearing Ms F agreed to sign an altered version of AJB's discharge form (omitting the section regarding the provision of an indemnity). And as a result the Court ordered that AJB should complete the provisions of the PSO. The required transfer was paid to Ms F in September 2022.

Ms F notes that the value of the pension savings had not grown at a similar rate to those she held in her own name. So she repeated her complaint that the delays caused by AJB in completing the PSO meant she had lost out on investment returns. Ms F also remained unhappy that AJB had failed to provide her with a transaction history relating to her ex-husband's pension savings. She considers that she has clear evidence that monies have been removed from the pension savings in violation of the PSO terms. But she notes that the Court refused to order any additional disclosure by AJB.

So Ms F says that she thinks the payment I suggested for her inconvenience is fair. But she asks that I direct AJB to provide her with an affidavit covering a number of matters relating to the operation of her ex-husbands pension savings between 2018 and 2022. She says that is information she is entitled to receive based on permissions given by Mr X to AJB.

AJB says that it thinks Ms F's concerns all along have related to the information she requested about the pension savings rather than any concerns about its discharge form. It says that the wording required by the Court on the revised form supports its conclusion that it was reasonable additional information as noted by the PSO. AJB has confirmed that, in accordance with the terms of the PSO, its charges were shared equally by both parties. It says that whilst it regrets any inconvenience that Ms F has suffered, it thinks that has arisen due to a contentious divorce settlement rather than any unreasonable acts or omissions of AJB.

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.

It is disappointing that neither party chose to inform us that aspects of this complaint had been further considered by the Courts. As both parties should be aware it isn't appropriate for me to deal with matters that have been, or are being, considered by the Courts. But I am satisfied that the content of my provisional decision wasn't out of line with the Court's additional findings.

But some of the matters that Ms F has asked me to reconsider have been subject to the scrutiny of the Court, such as the nature of any transactions made on the pension account in

the lead up to the PSO being granted and implemented. In my provisional decision I explained that I thought any concerns about unauthorised withdrawals from the pension plan were a matter for the Courts – and not for me to decide. Now those matters have again been considered by the Courts I am even more of that opinion. So I won't be asking AJB to provide any additional information to Ms F about the operation of the pension plan in earlier years.

But I cannot share AJB's conclusion that the directions of the Court support its requirement to ask Ms F to complete its discharge paperwork. Whilst, as a pragmatic approach, the Court did ask Ms F to complete part of that paperwork it agreed to the deletion of the section that Ms F found most problematic – the giving of an indemnity to the firm against all claims or proceedings made against it in respect of the benefits to be transferred, and against all resulting losses and expenses, which it may incur.

I remain satisfied that the PSO in itself was sufficient authority for AJB to implement its terms. I am still of the opinion that, had AJB not required the completion of that additional paperwork, the PSO could have been completed without the further direction of the Courts. So I still think that a payment to Ms F for the inconvenience she has been caused is warranted here.

I have thought again about whether Ms F should receive any compensation for any differences in the investment performance of her own pension savings, and those awaiting transfer from Mr X. I remain of the opinion that such compensation wouldn't be appropriate for the same reasons I provided in my provisional decision.

Putting things right

AJB should pay to Ms F the sum of £500 to reflect the inconvenience she has been caused through the delays in the implementation of the PSO.

My final decision

My final decision, for the reasons given in this and my provisional decision, is that I uphold a part of Ms F's complaint and direct AJ Bell Management Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 8 February 2023.

Paul Reilly
Ombudsman