

The complaint

Mr V complains that AJ Bell Securities Limited (“AJ Bell”) is responsible for several failings regarding the handling of a corporate action connected to an investment held in his self-invested personal pension (“SIPP”). He says that this caused him to suffer inconvenience and a financial loss.

What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he provided to both Mr V and AJ Bell. I don’t intend to repeat here what our investigator said but will instead provide a summary.

Mr V, a UK resident, has a SIPP provided by AJ Bell. He held shares in a pharmaceutical company (“Firm A”) which was listed on NASDAQ. Firm A specialised in developing cannabis-related medicines.

In 2021, Firm A was acquired by another pharmaceutical company (“Firm B”) which is also listed on NASDAQ – the terms of the corporate action resulted in Mr V receiving a cash payment and some shares in Firm B, both denominated in US dollars (“USD”). AJ Bell doesn’t permit USD to be held in its SIPP product and so the cash payment was converted to Sterling (“GBP”) at Mr V’s cost. His shares in Firm B were held in his SIPP in the form of CREST Depository Interests (“CDIs”). This is a UK security and designed to represent an investment listed on a stock exchange outside the UK, which in Mr V’s case was his shares in Firm B listed on NASDAQ – each CDI is intended to be the equivalent of each share in the underlying stock. CDIs are dealt online and quoted in GBP. The CREST system is owned and operated by a third party, Euroclear.

During 2022, Euroclear carried out a review of certain international securities offered in the form of CDIs. Following the review it concluded, pursuant to CREST Rule 7 ‘*Admission and removal of securities*’, that certain securities held in the form of CDIs no longer satisfied the requirements for admission to the CREST system due to their connection with cannabis and, as such, would be removed from the CREST system. This meant that Mr V was no longer able to hold CDIs in his SIPP connected to Firm B. On 5 October 2022, Euroclear issued a bulletin (2022-143) to CREST participants, including AJ Bell, confirming its decision, and stated that it would withdrawing support for relevant CDIs on 18 November 2022. After taking into account feedback from CREST participants including AJ Bell, Euroclear issued a further bulletin (2022-159) in which it extended the deadline to 3 February 2023 for impacted investors, such as Mr V, to sell or transfer their position outside of the CREST system.

AJ Bell informed Mr V about Euroclear’s decision. There followed an exchange of correspondence. The outcome was that AJ Bell instructed Mr V to sell his shares in Firm B. It said that if it didn’t receive a sell instruction by Euroclear’s deadline of 3 February 2023 that it would sell his position.

This complaint

Mr V was unhappy about AJ Bell's instruction that he sell or transfer his position in Firm B shares, particularly since he had previously held shares in Firm A, which had also been connected to the development of cannabis-related medicine, on the CREST system for several years without issue. So he complained. He suggested alternative options to AJ Bell that he believed would enable him to retain his shares in Firm B.

AJ Bell didn't uphold this complaint. It said that the decision by Euroclear to remove certain CDIs from the CREST system was outside of its control and so it couldn't be held responsible for this. It said that it had thoroughly explored all alternative and credible options but no other custodians it had access to were willing to allow Firm B's shares to be held with them as an alternative to the CREST system. As a result, following the decision by Euroclear, it was compelled to alter the permitted investment status of Mr V's CDIs related to shares in Firm B – and so would need to sell his position. It clarified that the terms and conditions of the SIPP, which Mr V agreed to when he opened the account, confirmed that it may alter the status of permitted investments at any time and without notice. It said that it had acted in Mr V's best interests throughout, but its hands were tied by Euroclear's decision.

Mr V didn't accept AJ Bell's response and referred the matter to this service. He provided a detailed explanation about why he thought AJ Bell was responsible for several failings regarding the handling of the corporate action connected to Firm A and Firm B and the impact this had on his SIPP, summarised as follows:

- **Cash payment** – AJ Bell treated him unfairly by preventing him from holding his cash payment in USD and converting this to GBP at his cost. This was in contrast to other shareholders outside the CDI format who were only permitted to receive the cash payment in USD. He said that it was unfair he was obliged to convert into GBP at a poor exchange rate and a commission charge of £85. He believed that there was a clear conflict of interest over not only the registration of the shares but in AJ Bell taking a commission on an FX transaction while providing him with its 'house rate' for converting USD to GBP;
- **Firm B shares** – AJ Bell unfairly required him to hold his shares in Firm B as CDIs when they are normally held in a nominee in the country of origin. This meant he was treated differently to other shareholders that held shares either directly or in a US nominee. In his view, the terms and conditions ("T&C") of the AJ Bell SIPP product represented an unfair contract;
- **AJ Bell's competence** - AJ Bell failed to share with him information about its systems and controls relating to the handling of US corporate actions which he interpreted as an acknowledgement it has weaknesses in this area causing likely detriment to its customers. He said at no time in connection with this matter did AJ Bell act with due skill, care and diligence and that he had already reported it to the Financial Conduct Authority ("FCA").
- **Alternative options** – based on his personal knowledge and experience of US corporate actions and CREST, he believed that AJ Bell could've offered alternative options to his benefit, such as transferring his cash payment and shares in Firm B to a US-based depository, but it had prevented him from doing so. He said that this caused him to suffer inconvenience and a financial loss, the value of which would need to be calculated taking into account various factors.

One of our investigators contacted Mr V to obtain more information about this complaint. Their followed an exchange of correspondence which led to Mr V stating that he had decided to withhold some evidence until after he had received our investigator's assessment. Our investigator encouraged Mr V to be open and provide all the evidence that he wanted this service to consider but he declined. Notwithstanding this, our investigator was satisfied that he had sufficient information to progress to assessment. Based on the available evidence, he didn't recommend that this complaint be upheld. This was mainly because the decision by Euroclear to remove certain CDIs from the CREST system – and the impact this had on Mr V's holding in Firm B shares – was outside of AJ Bell's control. Our investigator was satisfied that that AJ Bell had managed Mr V's SIPP in line with the agreed T&C. In conclusion, he didn't think that AJ Bell had made an error or had treated Mr V unfairly. And so he didn't think it needed to take any further action in response to Mr V's complaint.

Mr V didn't accept our investigator's assessment and provided additional comments in response. Our investigator considered Mr V's additional comments but wasn't persuaded to change his view. Since agreement couldn't be reached, this complaint has been referred to me, an ombudsman, to review and decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules, guidance and good industry practice at the time. I've also carefully considered the submissions made by Mr V and AJ Bell. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words I've 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.

Scope of this final decision

I think it's necessary to clarify the issues upon which I can decide under this final decision. This complaint is about AJ Bell. Therefore, in deciding this complaint, I can only consider the acts and/or omissions of AJ Bell in relation to the specific corporate action that Mr V has complained about. I want to be clear that I cannot consider the acts and/or omissions of any other third party or award any compensation in connection with this.

I'd also like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by Mr V and AJ Bell. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Evidence

Mr V first contacted this service in 2022 regarding this complaint. He subsequently provided evidence for our investigator to consider. He told our investigator that he had additional evidence to provide but, surprisingly, decided to withhold it until after he received our investigator's assessment. Our investigator encouraged Mr V to provide whatever additional evidence he had but he declined. When agreement couldn't be reached, Mr V was told that this complaint would be referred to an ombudsman and was asked to provide any further points or information he'd like the ombudsman to consider. No new evidence has been received from Mr V. I'm satisfied that Mr V has been provided sufficient time to provide any evidence he wants me to consider in reaching my decision. My findings below are based on the available evidence.

Terms and conditions of the AJ Bell SIPP product

When Mr V opened his account with AJ Bell he accepted the T&C in connection with its SIPP product. This document sets out the framework of the relationship between AJ Bell and Mr V and is relevant in deciding this complaint. I think the relevant sections are:

- Section 1.1 confirmed, *“Our Services enable You to select Products and open Accounts in order to invest on an execution only basis. We do not provide financial, investment or tax advice as part of the Services. Neither We nor Our Associates give, nor is anything on the Website or any linked website to be construed as personal investment recommendations, financial, or tax advice of any kind. You are responsible for selecting the Product and any investments”.*
- Sections 5.1 and 5.2 confirmed, *“You may only place Orders for Permitted investments”* and *“We may alter the Permitted investments range at any time without notice and require the sale (or at Our discretion if the related Regulatory Requirements permit, Transfer Out or Withdrawal) of investments removed from it, but will only normally do so if, for example, purchasing or holding the investment might result in a breach of any Regulatory Requirement or if it could result in Us incurring liability in excess of the value of the investment or if We consider that the investment is too complex or costly to administer”.*
- Section 5.15 confirmed, *“As We only maintain Cash in Your Account in pounds sterling, if We have to execute an Order or receive a dividend or other Corporate Action event payment in relation to a Permitted investment in another currency, We will carry out a foreign exchange transaction to convert the consideration or dividend or other payment to or from pounds sterling, as the circumstances require. Please refer to the Charges and Rates Page for details of the related currency conversion charges”.*

My findings

I've considered all the evidence afresh. Having done so, I've reached the same conclusion as our investigator for these reasons:

- The corporate action between Firm A and Firm B resulted in Mr V receiving a cash payment. He said that AJ Bell treated him unfairly by preventing him from holding the cash payment in USD and converting this to GBP at his cost. I don't agree. Section 5.15 of the T&C confirmed that AJ Bell only permits cash in GBP to be held in its SIPP product and that any foreign exchange transaction will be at the client's cost. I'm satisfied that AJ Bell acted in accordance with the agreed terms when it converted the cash payment from USD to GBP and at Mr V's cost in line with the agreed tariff.
- Mr V believes that AJ Bell could've allowed him to hold his shares in Firm B directly and in USD or quote his CDIs in USD. I don't agree. International shares cannot be handled in CREST. This led to the creation of CDIs which is currently the main method of foreign dealing by UK-based stockbrokers including AJ Bell. CDIs are dealt online and denominated in GBP. They allow UK-based investors to hold and trade international shares listed on a stock exchange overseas – in Mr V's case, CREST issued the CDIs which were then held in his SIPP and designed to represent his shares in Firm B. In my view, AJ Bell didn't act incorrectly or treat Mr V unfairly by not allowing him to hold his shares in Firm B directly in his SIPP and denominated in USD. This outcome wasn't permissible under the CREST system or the agreed T&C.

- Mr V has commented that he previously held shares in Firm A, which had also been connected to the development of cannabis-related medicine, without issue. While that might be the case, it's essentially irrelevant in deciding this complaint. This is because the decision by Euroclear in October 2022 that certain securities held in the form of CDIs no longer satisfied the requirements for admission to the CREST system was outside of AJ Bell's control. Once Euroclear had made that decision and communicated it to relevant CREST participants, AJ Bell was compelled to alter the permitted investment status of Mr V's CDIs related to Firm B shares. I cannot direct AJ Bell to disregard Euroclear's decision and take a different course of action. Furthermore, I don't agree that AJ Bell is responsible for any financial loss Mr V has suffered on disposal of his shares in Firm B as the result of a decision taken by a third party.
- Mr V believes AJ Bell's T&C amount to an unfair contract. But he hasn't provided any evidence to support his position. He essentially wants me to disregard the T&C that he accepted at the outset when he opened the SIPP account and direct AJ Bell to take a different course of action. I'm unable to do this. In conclusion, on the specific points in question, I'm satisfied that AJ Bell's T&C to be transparent in terms of converting foreign currencies to GBP and the treatment of permitted investments.
- As an execution only client, it was for Mr V to decide how best to manage his SIPP and underlying investments. He was informed in October 2022 of Euroclear's decision regarding certain CDIs, as set out in bulletins 2022-143 and 2022-159, and that he was required to sell or transfer his position outside of the CREST system. He was initially given until 13 October 2022 but this was extended to 3 February 2023 to take any appropriate action. Under the T&C, AJ Bell could, at any time and without notice, change the permitted status of any investment held within its SIPP product. Bearing this point in mind, I think Mr V was given a reasonable amount of time between October 2022 and February 2023 to make a decision to either sell his position or explore other options. Based on the nature of their relationship, it wasn't AJ Bell's role or responsibility to advise Mr V what to do or explore alternative options on his behalf.
- Mr V believes that AJ Bell has inadequate systems and controls relating to the handling of US corporate actions. He says that AJ Bell refused to provide him with information in connection with this and thinks it should be investigated further by this service. I understand why he wants me to do this but we're not the financial services regulator. We don't police the industry or ensure that financial businesses adhere to the relevant rules and regulations. That is the role of the FCA. Any concerns Mr V has regarding how AJ Bell runs its business, including the adequacy of its systems and controls framework relating to the handling of US corporate actions, should be raised with the FCA.
- This service's role is to consider individual complaints and, in essence, to decide whether or not the financial business made an error or treated the consumer unfairly. Our aim in resolving the problem is to place the consumer, as close as possible, into the correct financial position had the error or unfair treatment not happened. I understand why Mr V was frustrated and upset by the situation that led to AJ Bell converting the cash payment from USD to GBP and altering the permitted investment status of his CDIs related to Firm B shares. But I haven't seen any evidence AJ Bell breached its contract with Mr V, made an error or treated him unfairly for the reasons explained. Therefore, I don't consider it would be fair or reasonable in these circumstances for me to direct AJ Bell to pay compensation to Mr V – or to take any further action in response to this complaint.

My final decision

For the reasons given above, I don't uphold this complaint or make any award against AJ Bell Securities Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 22 June 2023.

Clint Penfold

Ombudsman