

## The complaint

Mr H complains that AJ Bell Asset Management Limited made a mistake when sending a transfer instruction concerning his self-invested personal pension (SIPP). He says he's suffered a financial loss as a result.

## What happened

Mr H held a SIPP containing different accounts with a company I'll refer to as A. The SIPP contained a mixture of cash and funds/assets. Mr H had agreed a flexi drawdown arrangement in relation to one of his accounts.

Mr H wanted to move his SIPP to AJ Bell, so he submitted a transfer request, which AJ Bell received on 9 March 2022. Mr H said he wanted to arrange an 'in specie' transfer of the SIPP's full value (£1,165,240). He listed the different account numbers and confirmed that £59,922 was in drawdown and £1,105,318 wasn't.

After speaking to A, Mr H decided not to proceed with his full transfer request. He sent another transfer form, which AJ Bell received on 11 March 2022. In an email that accompanied the new transfer request, Mr H pointed out that he was only looking to complete a partial transfer from one of his accounts which contained cash and funds. He said "*please note, that this partial transfer only relates to the cash elements of the account*". He said he'd send another transfer form in respect of the remainder of his accounts at a later date. Mr H said he was completing the transfer in stages as he wanted to transfer the cash as soon as possible and he'd been told that a full transfer, including funds, would take longer to arrange. On the form itself, Mr H indicated that the transfer was to be in the form of cash only and he was looking to move £403,802.00, of which £343,880 wasn't in drawdown and £59,922.00 was. He asked AJ Bell to disregard the first transfer form it received.

AJ Bell asked Mr H if £59,922.00 represented the full value of the account, or if this was just the cash portion. Mr H said the drawdown account only consisted of cash. AJ Bell instructed a partial cash transfer of £59,922.00.

There were some difficulties in carrying out Mr H's request, initially because A said that, due to HMRC rules, it couldn't partially transfer a pension already in drawdown.

Mr H completed another transfer form on 22 March 2022. He indicated he wanted to complete a full transfer of a specific account and said that some of his fund was already in partial drawdown. He confirmed that £969,538 wasn't in drawdown and £59,922 was. From what AJ Bell later explained to Mr H, it seems A wasn't able to process a transfer for crystallised and uncrystallised funds under the same request. That apparently led to AJ Bell sending different requests under different reference numbers.

A told AJ Bell that an amount it asked to be transferred was significantly different to the amount held in Mr H's account. So, on 24 March 2022 AJ Bell asked Mr H if he wished to transfer the full balance regardless of the amount. Mr H confirmed that he wanted to transfer the full balance of his account.

AJ Bell told Mr H that A wouldn't allow the transfer 'in specie'. It asked Mr H if he was happy for the transfer to proceed in cash. According to AJ Bell, Mr H confirmed on 25 March 2022 that he wanted to transfer the cash balance of £343,880 from the uncrystallised part of one of his accounts and he said he'd arrange to complete the paperwork to transfer the remaining funds and shares across his accounts. AJ Bell confirmed it had instructed a partial cash transfer of £343,880 and would await the paperwork for the 'in specie' parts of the transfer.

However, Mr H later learned from A that it had begun selling down the funds in his account based on AJ Bell's instruction. Mr H was unhappy about that as it wasn't what he'd instructed. He spoke to AJ Bell about it.

Mr H clarified that the cash in the account was made up of two parts - £343,880 which was uncrystallised and over £59,000 that was crystallised. AJ Bell realised that although its request to A mentioned the amount to be transferred was £343,880 (it seems it had already received another amount of over £59,000), it also referred to the transfer as a 'full' transfer. And although A had pointed out that the amount requested didn't match the full account balance, in error, it still asked A to proceed with a full cash transfer. AJ Bell accepted that's what caused the problem.

There were discussions between Mr H and AJ Bell about how things could be put right. Mr H suggested that AJ Bell should compare what his portfolio would cost to repurchase on AJ Bells' platform at the point at which his account was credited (£681,954.17 was received on 12 April 2022) versus the value when it was sold down. He felt the difference in those values would represent the loss he'd suffered and was the amount he should be compensated by.

On 13 April 2022 Mr H invested £225,000 with a further £229,984.62 invested over the following four weeks.

Agreement wasn't reached, so AJ Bell later dealt with Mr H's concerns under its complaints procedure.

AJ Bell appeared to acknowledge that typically, the right way to calculate financial loss was to make a direct comparison of the assets sold compared with those later purchased - assuming there was a consistent investment strategy. But it didn't think that was appropriate in Mr H's case due to the change in his investment strategy. Instead, it felt it was fairer to consider potential losses using a benchmark of the FTSE250 index. Having worked out the potential loss, AJ Bell initially offered Mr H compensation of £303.20 in respect of the financial loss it thought he'd suffered together with a compensation payment of £100 in respect of the distress and inconvenience caused.

Mr H wasn't happy with AJ Bell's response, so he complained to our Service. Amongst other things, he explained to our Investigator that following AJ Bell's mistake, the market for the shares had risen by the time the cash was in his account to reinvest. Whilst Noting AJ Bell's argument that Mr H hadn't reinvested straight away (so it felt that reduced the extent of any loss incurred) Mr H's point was that the cash was insufficient to repurchase the shares. And he felt the fact he didn't immediately reinvest was immaterial. So, Mr H remained of the view that any difference in the price his shares were sold at versus their price when the cash was in his account should be met by AJ Bell.

Our Investigator upheld the complaint. She didn't think AJ Bell's proposed method of redress was fair. The Investigator concluded that had it not been for the error, Mr H's funds would have remained invested as they were until such time as he opted to switch. So, the Investigator didn't agree that AJ Bell's proposal would put Mr H back into the position he'd have been in had it not been for its error. To put things right, the Investigator recommended

that AJ Bell should complete a loss assessment based on the notional value of Mr H's fund also allowing for the fund switches that Mr H later completed. She suggested that if there was a loss, that amount should be paid into Mr H's pension where possible. She also recommended that AJ Bell pay Mr H £250 for any upset and inconvenience caused.

Although AJ Bell didn't necessarily disagree with the Investigator's opinion, it nevertheless asked for clarification about how to calculate the proposed redress. There were several exchanges between AJ Bell and our Investigator in terms of how that calculation should be performed.

AJ Bell updated its loss calculation. It thought Mr H had suffered a loss of £1,413.04. So together with the compensation payment of £250 that our Investigator recommended, it said it was willing to make a payment of £1,663.04 to Mr H. It gave a rationale for its calculation, which was:

- It calculated an initial loss of £3,256.87 taking account of the total assets disinvested in error and the amount Mr H would likely have disinvested at a later date in line with the change in his investment strategy. It said the assets disinvested in error between 25 and 28 March 2022 were worth £627,697.67. It thought that had Mr H disinvested over 11 and 12 April 2022 instead (given the investments he made from 13 April 2022 onwards), the market movements would have resulted in Mr H receiving an extra £3,256.87.
- It also took account of the fact that Mr H changed his investment strategy from about 13 April 2022 and then traded daily between then and about 21 April 2022. He traded again on 10 May 2022 about three weeks following his last trade. And he decided to leave £286,990 uninvested.

AJ Bell felt its proposed payment also recognised that Mr H would have sold shares at a higher price in the disinvestment phase whilst also buying assets at a higher price.

Our Investigator put AJ Bell's offer to Mr H noting that it seemed to be in line with what she'd recommended.

Mr H said the amount offered was only equivalent to about half of the loss he incurred when factoring in the difference between the value of his assets at the time of the (incorrect) disinvestment and the cost to repurchase the same assets when the cash became available to reinvest. He appreciated that represented a theoretical loss as opposed to an actual one and wasn't necessarily an industry method for calculating financial loss. But he made the point that, had he immediately reinvested back into the same funds as before, AJ Bell would have been required to pay him a larger sum in compensation.

Mr H also felt that when asking him what he expected AJ Bell to do to put things right, it should have told him of the need to crystallise any losses by immediately reinvesting in the same funds. Mr H says he'd unquestionably have done this. So, he felt that AJ Bell's initial error and failure to explain things in these terms had left him significantly out of pocket. Our Investigator explained that we have to consider the position Mr H would likely be in, had it not been for AJ Bell's error. As no agreement could be reached, Mr H asked for his complaint to be referred to an Ombudsman. It's been passed to me to decide.

### **My provisional decision**

I sent Mr H and AJ Bell my provisional decision on 1 June 2023. I've included the relevant extracts below:

*“There’s general agreement between Mr H and AJ Bell that it made a mistake when instructing a transfer on Mr H’s SIPP. So, I don’t think it’s necessary for me to go into too much detail about what led to that. I think the background events I’ve included earlier in this decision provide relevant context.*

*But as far as a settlement of this complaint is concerned, Mr H and AJ Bell clearly have different views about what should happen.*

*AJ Bell thinks its revised compensation offer is fair, but also takes into account that Mr H changed his investment strategy. Whereas Mr H is of the opinion that AJ Bell should base any financial loss payment on the theoretical losses he suffered as opposed to the actual losses. Specifically, he thinks that AJ’s Bell’s calculations should compare what it would have cost him to purchase exactly the same funds, versus their value when incorrectly sold, regardless of the fact that he chose to invest in a different way.*

*I’ve thought very carefully about this. And for the reasons I’ll set out, I’m intending to reach a slightly different opinion to our Investigator. My proposed method of redress will be different too. It may result in a higher or lower amount of compensation than previously calculated. So, I’m giving Mr H and AJ Bell an opportunity to comment first.*

*My role here is to reach a fair and reasonable outcome that puts Mr H back in the position he would have been in, or as close to that position as possible, had it not been for AJ Bell’s mistake.*

*I agree with our Investigator to the extent that it was certainly Mr H’s intention at the outset to complete an ‘in specie’ transfer concerning all of the investments he held with A. But I don’t think it’s fair to say that didn’t happen as a result of an error on AJ Bell’s part (I’m satisfied AJ Bell’s error related to something else). Rather, there were clearly various complications and the time it would likely take to complete an ‘in specie’ transfer was a factor for Mr H. So, he instead instructed AJ Bell to make a partial cash transfer of £403,802.00, of which £343,880 wasn’t in drawdown and £59,922.00 was.*

*I think Mr H’s revised instructions to AJ Bell were clear about what he expected to happen. And, had all things gone as per his instruction, Mr H should have expected to transfer this amount in cash with the funds in his account remaining invested until such time as he completed another instruction. Had things happened in the way Mr H expected, it seems likely a total of £403,802.00 would have been in his AJ Bell account on or around 12 April 2022, if not sooner. Instead, Mr H’s portfolio was sold down in error. According to AJ Bell’s calculations, £627,697.67 was disinvested in error between about 25 and 28 March 2022.*

*I do have to keep in mind though that once the funds were sold down and the cash value credited to Mr H’s account, he decided to adopt a different investment strategy. That’s relevant to the method of redress I’m proposing.*

*I appreciate Mr H’s point that even if he’d wanted to invest in exactly the same way, the funds in his AJ Bell account wouldn’t have been enough to enable him to buy exactly the same investments again as their price had increased in value. But it seems likely that Mr H could, at least, have invested in a similar way, even if not in exactly the same funds. That might have reduced the extent of the investment losses he’s potentially suffered now. He’s also made the point that he’d likely have reinvested the remaining funds straight away had he known that the amount of compensation he’d potentially receive would be affected. And he thinks this is something that AJ Bell should have explained to him too. Again, whilst I appreciate the point that Mr H makes, I’m not persuaded AJ Bell ought to have told him that he’d need to reinvest immediately in order to secure a potentially greater amount of compensation. That said, I can appreciate why Mr H is unhappy with the resolution AJ Bell*

*offered, especially when it asked him what it would take to resolve his complaint.*

*The fact is though, for whatever the reason, Mr H did decide to do things differently. And that included leaving some of the transferred fund disinvested for a period. So, I think the redress methodology I propose needs to reflect that. That's because I don't think it would be fair or reasonable for AJ Bell to calculate a loss reflective of the whole amount disinvested in error when Mr H himself decided to leave some of those funds disinvested. In these specific circumstances, I'm satisfied that it's reasonable for AJ Bell to factor in the changing investment strategy when calculating the actual financial loss that Mr H is likely to have suffered.*

*To put things right now, I'm intending to say that it's fair and reasonable for AJ Bell to:*

- Work out what Mr H's (disinvested) funds would have been worth had they remained invested between around 25 March 2022 when they were sold down in error and 12 April 2022 when the funds were credited to his account.*
- If the value of the funds would have been more on 12 April 2022 compared to what they were worth when sold, that's the loss that Mr H likely suffered at that point in time and is the compensation amount.*
- I think it's reasonable to cap Mr H's potential loss at 13 April 2022, as that's the point at which he could have followed a similar investment strategy but chose not to.*
- However, if Mr H had the compensation amount (calculated as above) available to him, it seems likely he'd have invested that in some way. Whilst I can't say precisely how he would have invested it, I think a reasonable approach would be for AJ Bell to use a benchmark of the FTSE UK Private Investors Income Total Return Index to bring that loss up to the date of my final decision. This fairly takes account of the fact that Mr H would likely have taken some risk with his investment and represents the total compensation amount.*

*AJ Bell should if possible, pay the total compensation amount into Mr H's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.*

*If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr H as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.*

*I'm intending to say that AJ Bell should complete this calculation within 28 days of my final decision being accepted, otherwise 8% simple interest should be added to the loss for any days it takes in excess of 28 days.*

*AJ Bell should give Mr H a copy of its calculation in a clear and simple format.*

*I think the £250 compensation recommended by our Investigator fairly reflects the inconvenience that this matter has clearly caused Mr H. So, I'm also intending to say that's the amount it should pay him if it hasn't already done so".*

## Responses to my provisional decision

AJ Bell hasn't provided any further comments or information.

Mr H said the following:

- He appreciated my thorough review of the case and accepted its conclusions with the exception of one point. The measure/proxy used to adjust the compensation amount for the period 12 April 2022 (when the funds were deposited to Mr H's account) to 1 June 2023 (the date of my provisional decision). Mr H said that the chart he was directed to showed a loss for that period when using the FTSE Private Investors Income Total Return Index. And whilst he thought it was hard to identify exactly what the loss would be, indications showed it was in the region of 2-3%. Mr H acknowledged that this was a measure commonly used to estimate losses in such situations, but didn't think it applied in his particular case because:
  - It factored in an allowance for government bonds (which had performed badly of late). Mr H said he'd never knowingly invested in bonds.
  - Mr H provided a copy of his portfolio showing the way he'd invested during the period in question, so he thought that was the best means of calculating how the stated compensation sum would have performed should it have been reinvested".

## 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 particular, I've taken careful account of the comments that Mr H made in response to my provisional decision. But, for the reasons I'll set out, I'm not minded to change what I said in my provisional decision.

As I've previously indicated, where I identify that a business such as AJ Bell has done something wrong, it's my role to try to put the consumer back into the position they would have been in – or as close to that position as possible - had it not been for the business' mistake.

I note Mr H's point that he'd never knowingly invested in government bonds. I have no reason to doubt Mr H on that point. I think it's probably also worth saying that when directing a method of calculating redress, in many cases we're not able to say what precise investment choices an investor would have made *at the time* – and we can't simply look back with the benefit of hindsight. So, we consider that using a benchmark of investments reflective of the consumer's attitude to risk represents a fair way *overall* of calculating the returns a consumer with that attitude to risk could likely achieve over the period in question.

I'm grateful to Mr H for providing a portfolio valuation from AJ Bell for the period 12 April 2022 to 1 June 2023 and I agree that it shows the *actual* investments he made during that time. Those investments happened over a period as opposed to all at once. And they weren't for the whole amount that was disinvested. That's relevant.

I say that because regardless of what the portfolio valuation shows for the *whole* of the period in question, it's simply not possible to say whether Mr H would have invested an additional sum (had it been available to him) in all of the same funds - whether in full or part.

Or, given the staggered investments, when that would have happened. It's equally possible that he'd have left some of the additional amount uninvested in cash.

In these circumstances, taking account of the factors I've referred to above, I think a fair and reasonable settlement to this specific complaint is for AJ Bell to calculate the financial loss Mr H may have suffered by using the benchmark I referred to in my provisional decision. That's because it *broadly* reflects the way a person with a similar risk attitude to Mr H would have invested rather than it directly replicating some of the investment decisions Mr H made.

### **Putting things right**

AJ Bell Asset Management Limited should now calculate redress in line with the steps set out in my provisional decision.

### **My final decision**

I uphold this complaint. AJ Bell Asset Management Limited now needs to take the steps I've referred to above and as detailed in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 July 2023.

Amanda Scott  
**Ombudsman**