

The complaint

Mr V has complained that AJ Bell Management Limited was responsible for delays in completing the transfer of his SIPP. Mr V says that he has suffered a financial loss due to these delays.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision, which I issued in September 2023.

My provisional decision said:

What happened

Mr V held a self-invested personal pension plan (SIPP). I will refer to the pension provider that Mr V held his SIPP with as Firm A.

In June 2020 Mr V decided, on advice from his Financial Adviser, to change his SIPP provider and completed paperwork to transfer his SIPP from Firm A to AJ Bell.

On 6 July 2020 AJ Bell received the SIPP transfer and discharge form from Firm A. This explained that the investments in Mr V's Firm A SIPP were being transferred "in specie".

AJ Bell emailed Mr V on 8 July 2020 to ask if the investment platform provider named in the transfer paperwork was a new provider or if they were the existing platform provider used within Mr V's Firm A SIPP. Mr V replied to AJ Bell the same day to say that they were a new investment platform provider.

On 13 July 2020 AJ Bell emailed Mr V's new investment platform provider to say that Mr V's SIPP investments were being transferred "in specie" from Firm A. On 17 August 2020 AJ Bell emailed Mr V's new investment platform provider again to tell them to liaise directly with Firm A over the "in specie" transfer of Mr V's SIPP investments.

On 2 September 2020 AJ Bell noted that they hadn't completed their section of Firm A's SIPP transfer and discharge form, which they'd received on 6 July 2020. AJ Bell then completed their section of the transfer and discharge form and emailed the completed form to Firm A.

On 2 October 2020 Mr V complained to AJ Bell about delays in completing the transfer of his SIPP. Mr V said that he wanted to rebalance his SIPP portfolio once the transfer had been completed, but because of the delays in completing the transfer Mr V said that he hadn't been able to complete the rebalance. Mr V said that he'd suffered a financial loss as a result.

On 27 November 2020 AJ Bell responded to Mr V's complaint. They apologised for the delay in sending the completed transfer and discharge form to Firm A and offered Mr V an "ex gratia" payment of £150. AJ Bell also said that as they had instructed for the transfer to proceed on 2 September 2020, when they had returned the completed transfer and discharge form, then they were not responsible for any other delays in completing the transfer of Mr V's SIPP after 2 September 2020.

Mr V wasn't happy with AJ Bell's response, so he referred his complaint to the Financial Ombudsman Service, where an Investigator reviewed Mr V's complaint. Mr V claimed that his SIPP transfer was delayed by both AJ Bell and the investment platform provider that he had used under his Firm A SIPP, so the Investigator considered these complaints together.

The Investigator's view was that both AJ Bell and his Firm A investment platform provider were responsible for delays in completing the transfer of Mr V's SIPP. The Investigator therefore upheld Mr V's complaint against AJ Bell and concluded that AJ Bell should compensate Mr V for any loss that they were responsible for. In the same view the Investigator also upheld Mr V's complaint against the investment platform provider and concluded that the investment platform provider should also compensate Mr V for delays that they were responsible for.

Within their view the Investigator set out details on how both AJ Bell and the investment platform provider should calculate the share of compensation that each party was responsible for. AJ Bell accepted the Investigator's view and completed their calculations. However, the investment platform provider didn't agree with the Investigator's view. Mr V's complaint has therefore been referred to be considered by 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 have admitted that they delayed the transfer of Mr V's pension portfolio from Firm A. This was because they didn't identify until 2 September 2020 that they hadn't completed their section of the transfer and discharge form sent to them by Firm A on 6 July 2020.

In their view, the Investigator said that a turnaround time of two working days would have been a reasonable time period for AJ Bell to have completed their section of the transfer and discharge form and email it to Firm A.

When AJ Bell noted that they hadn't completed the discharge and transfer form on 2 September 2020 they were able to complete and email the form back to Firm A on the same day. I therefore think that the two working day turnaround time identified by the Investigator is reasonable.

If AJ Bell had returned the completed transfer and discharge form to Firm A in two working days from the date of receipt, then they would have returned the form to Firm A on 8 July 2020. As AJ Bell didn't return the form to Firm A until 2 September 2020 then I think that (allowing for the August bank holiday) due to their error AJ Bell were responsible for delaying the completion of Mr V's SIPP transfer by 39 working days.

Mr V's SIPP transfer from Firm A to AJ Bell wasn't fully completed until February 2021. This was when the final "in specie" transfer of Mr V's SIPP investments was made. Mr V has said that by then his circumstances had changed as he then had a new Financial Adviser and had decided to retire and draw from his pension.

As I've said above, on 17 August 2020 AJ Bell told Mr V's new investment platform provider to liaise directly with Firm A to deal with the "in specie" transfer of Mr V's SIPP investment portfolio. AJ Bell returned their completed transfer and discharge form to Firm A on 2 September 2020.

Mr V has raised a separate complaint against the investment platform provider under his Firm A SIPP. Mr V has said that the investment platform provider was also responsible for delays in completing his SIPP transfer.

I have also considered Mr V's separate complaint against the investment platform provider under his Firm A SIPP and my conclusion is that they were responsible for delays. But these delays happened after AJ Bell had completed what they needed to do for the SIPP transfer to progress. I therefore don't think that AJ Bell were reasonably responsible for any delays in completing the transfer of Mr V's SIPP that occurred after 2 September 2020.

Having determined the delay caused by AJ Bell's errors, I will now consider whether I think that Mr V potentially suffered a financial loss due to of these delays.

Mr V has said that he planned to re-balance his SIPP investment portfolio once his SIPP transfer had been fully completed. He had planned to complete his investment changes in the last quarter of 2020.

Mr V's investment transfers were made "in specie". I think that this would've meant that Mr V remained invested during the period of transfer and wasn't "out of the market" as a result.

However, I don't think that this would mean that Mr V didn't potentially suffer a financial loss. Mr V has said that he didn't want to retain the same portfolio in his SIPP once the transfer had been completed. Mr V has also said that it was his intention to complete his fund changes in the final quarter of 2020, which meant that he remained invested in the funds that were being transferred for a longer period than he wanted.

I think that on balance Mr V did want to make changes to his funds once the transfer was completed. I therefore don't think it unreasonable that because the SIPP transfer wasn't completed until February 2021, and by then his circumstances had changed, that the delays in completing Mr V's SIPP transfer prevented him from completing his original plans when he wanted.

I think this means that Mr V has potentially missed out on investment returns and therefore AJ Bell should compensate Mr V if he did suffer any losses.

I've said above that I think that AJ Bell were responsible for delaying the completion of Mr V's SIPP transfer by 39 working days. I've also said above that Mr V's SIPP transfer wasn't completed until February 2021. But I've also said that I don't think that AJ Bell were responsible for the whole delay in completing Mr V's SIPP transfer.

On examining Mr V's separate complaint against the investment platform provider under Mr V's Firm A SIPP, I've identified that if it hadn't been for the delays that the investment platform provider caused, then Mr V's SIPP transfer should have completed on 4 November 2020.

I therefore think it reasonable that if it hadn't been for AJ Bell's errors, Mr V's SIPP transfer would've completed 39 working days before 4 November 2020. This would mean that Mr V's SIPP transfer would have completed on 10 September 2020.

I also think that had the transfer completed then, Mr V would have been able to complete his SIPP portfolio re-balance, as he would've had time to do so before the end of 2020.

I also think that Mr V has suffered distress and inconvenience due to AJ Bell's errors. AJ Bell have already offered Mr V an "ex gratia" payment of £150. I appreciate that AJ Bell have said that this award was "ex gratia" but given that AJ Bell admitted that they had caused a delay in the completion of Mr V's SIPP transfer, I've taken the view that this payment was offered for distress and inconvenience. I think that AJ Bell's offer of £150 is reasonable.

I therefore think that AJ Bell should now compensate Mr V for any financial loss that he suffered by not being able to complete his portfolio re-balance, in addition to paying him £150 in compensation for the distress and inconvenience that he suffered.

Putting things right

I now turn to how AJ Bell should compensate Mr V for the delays identified above.

For the reasons given above, I'm satisfied that Mr V would've re-balanced his portfolio if his SIPP transfer hadn't been delayed. I therefore think that a reasonable approach would be for AJ Bell to put Mr V back in the position he would have been in, as far as is reasonably possible, had it not been for their failings.

AJ Bell should therefore make an assessment to consider what, if any, losses Mr V suffered due to the delay in the transfer. AJ Bell should:

- Calculate the value of Mr V's pension portfolio on the date the transfer would've completed had it not been for delays caused by Mr V's existing investment platform provider, which was 4 November 2020 (which I will call the "end date"). This is figure "X".*
- Calculate the value of Mr V's pension portfolio on the date the transfer would've completed had it not been for delays caused by AJ Bell, which was 10 September 2020, and then calculate the notional value of Mr V's pension at the end date assuming that Mr V's pension portfolio had been invested from 10 September 2020 to the end date in line with the following benchmark: the FTSE UK Private Investors Income Total Return index. This is figure "Y".*
- The notional value ("Y") should be compared with the actual value ("X") of Mr V's pension as at the end date. If the actual value ("X") is greater than the notional value ("Y"), no compensation is payable. If the notional value ("Y") is greater than the actual value ("X"), there is a loss and compensation is payable.*

If, having completed their calculations, AJ Bell identify a loss they should also pay interest on this loss, calculated from the end date to the date of settlement at 8% simple.

If there is a loss, AJ Bell should pay into Mr V's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

Compensation should not be paid 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 V's pension

plan, it should pay that amount directly to him. However, had it been possible to pay into the plan, it would have provided Mr V with a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

This is an adjustment to ensure the compensation is a fair amount, it isn't a payment of tax to HMRC, so Mr V won't be able to reclaim any of the reduction after compensation is paid. The notional allowance should be calculated using Mr V's actual or expected marginal rate of tax at his selected retirement age. Mr V has said that he is a higher rate income tax-payer so the reduction would equal 40%.

However, if Mr V would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 30%.

AJ Bell also need to pay Mr V £150 for the distress and inconvenience he has suffered due to the delays, have they not already done so.

Why is this remedy suitable?

I've chosen this method of compensation because I think that trying to replicate how Mr V would have changed his SIPP portfolio in 2020 isn't feasible in this particular case.

Mr V was investing his SIPP across different funds when the "in specie" transfers were completed. These funds invested across equities, bonds and property, as well as commodities and absolute return investments.

However, Mr V was approaching his retirement and his portfolio was ultimately encashed and used to provide him with retirement benefits. I therefore don't think that it would be reasonable to use an index designed to replicate the portfolio held by Mr V at the time of transfer, as a proxy when determining any losses suffered.

With this in mind, I consider that using the FTSE UK Private Investors Income Total Return index as a proxy for the returns Mr V would have achieved is fair and reasonable.

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.

I think that it's reasonable to assume that this is likely to be a fair description of Mr V, after he had completed the changes that he wanted to make to his portfolio and ahead of his retirement.

My provisional decision

For the reasons I've set out above, my provisional decision is that I plan to uphold Mr V's complaint against AJ Bell Management Limited.

I intend to direct AJ Bell Management Limited to compensate Mr V as detailed above.

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.

Both Mr V and AJ Bell have responded to my provisional decision.

Mr V has said that he has nothing to add to my provisional decision but has asked if an independent third party would complete the above loss calculations. We would not ask a third party to complete the calculations, the calculations would be completed by AJ Bell. However, I think it reasonable that AJ Bell should provide Mr V with a straightforward breakdown of their calculations, once completed.

AJ Bell has asked whether Mr V would've been able to take a tax free lump sum from his pension. Mr V has confirmed that he would've been able to take a lump sum but hasn't done so.

AJ Bell has also asked if in completing any calculation the value of Mr V's pension portfolio should incorporate the cash element of the portfolio. AJ Bell have said that this represents over 5% of Mr V's portfolio.

I think that as the FTSE UK Private Investor Income Total Return Index includes an asset allocation for cash it would be reasonable for the above compensation calculation to be completed using the whole value of Mr V's pension portfolio, including any cash element.

AJ Bell have otherwise said that otherwise they have no comments to add to my provisional decision.

Therefore, as both parties have responded to my provisional decision and no new information or evidence has been presented to me, my decision remains the same.

Putting things right

AJ Bell should compensate Mr V as I've set out above in my provisional decision. AJ Bell should also provide Mr V with a straightforward breakdown of their calculations.

My final decision

My final decision is that I uphold Mr V's complaint against AJ Bell Management Limited and AJ Bell Management Limited should compensate Mr V as I had detailed in my provisional decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr v to accept or reject my decision before 29 November 2023.

Ian Barton
Ombudsman