

The complaint

Mr M believes Johnston Campbell Ltd trading as Amber River NI was at fault when it instructed a pension withdrawal following contact from someone impersonating Mr M. £250,000 was fraudulently withdrawn from Mr M's Self-Invested Personal Pension (SIPP), more than half of this money was recovered but Mr M has still suffered a significant loss.

What happened

I previously issued a provisional decision, which I've set out below and forms part of this decision:

Timeline of what has happened.

- *8-9 May 2023, Mr M exchanged emails with Amber River regarding drawing down a pension lump sum of £250,000 from his AJ Bell SIPP.*
- *12 May 2023, Amber River received a signed and completed AJ Bell benefit form. It appears Mr M's work email was compromised around this time, the benefit form wasn't completed by Mr M.*
- *17 May 2023, Amber River forwarded the benefit form to AJ Bell.*
- *17 May 2023, AJ Bell wrote to Amber River and Mr M to explain they have to verify electronically that the bank details provided matches Mr M's name and address. They were unable to verify this, and so they requested a copy of a bank statement.*
- *18 May 2023, AJ Bell received a copy of the bank statement from Mr M's work email address. Also copied in was Amber River. Amber River also forwarded a copy of the bank statement to AJ Bell.*
- *21 May 2023, AJ Bell informed Amber River that they were unable to make payment to a business bank account. Alternative bank details were requested, and they were unable to proceed with the request until they were received.*
- *22 May 2023, Amber River sent an email to Mr M's work email address requesting personal bank account details. This was received on the same day alongside a Metro bank statement in Mr M's name. These were forwarded to AJ Bell.*
- *23 May 2023, AJ Bell wrote to Mr M's home address thanking him for providing the requested bank account details.*
- *24 May 2023, AJ Bell made payment of the pension lump sum in the amount of £250,000 to a Metro bank account supposedly in Mr M's name.*
- *25 May 2023, Amber River contacted Mr M via telephone to check if the funds had been received in his bank account. At this point, it came to light the monies may have been paid to a fraudulent account.*

- 25 May 2023, the fraud was communicated to AJ Bell, who in turn, reported the case to their Internal Financial Crime Team to conduct a full investigation. They informed their bank, who got in touch with the receiving bank Metro.
- 19 June 2023, Metro bank recovered £130,027.23, and on the 28 June 2023 a further £11,176.86 was recovered. Both of which had been credited back to Mr M's SIPP. No further payments have since been recovered.

In their final response dated 15 November 2023, Amber River explained they felt that AJ Bell were mainly at fault for what happened because in their view, they don't believe they investigated the complaint thoroughly, nor have they followed the complaints procedure outlined by the regulator The Financial Conduct Authority (FCA).

Amber River also believe Metro Bank should not have allowed a bank account to be opened without following proper verification checks. They also believe that Mr M's employers IT provider must hold some accountability for allowing his corporate email account to be compromised.

Mr M then referred the complaint to our service for an independent review. He said he's been a customer of Amber River for a number of years, and he regularly visits their office, so he's known to them.

Mr M says he explained to the Financial Advisor (FA) during discussions of the drawdown, prior to the fraud taking place, that there was extensive due diligence being undertaken by his professional team relating to a house purchase. And that this needed to be completed satisfactorily before he would request funds.

Furthermore, Mr M believes Amber River should've contacted him via telephone to discuss matters as they arose or keep in contact to get an update on the due diligence which his professional team were undertaking.

Our investigator looked into matters, he separately also considered a complaint against AJ Bell (which he didn't uphold). He found that Amber River was at fault for Mr M's loss. He explained that Amber River was required by the regulator to have and maintain adequate procedures to counter the risk of financial crime. He said that Amber River's procedures (which it had sent us) said that on an email request for a withdrawal it should call the customer to verify it was genuine. And here it had not done this. And he considered had it done so the loss wouldn't have occurred and therefore Amber River should compensate Mr M for its error.

The investigator said Amber River should pay Mr M the outstanding loss with 8% simple interest added. And he also said that Amber River should pay Mr M £1,000 for the distress and inconvenience caused and took into account the loss of enjoyment Mr M had suffered due to the disruption to his retirement plans and purchasing a retirement property.

Amber River responded to say that its procedures it had sent the investigator, were its current procedures which it amended as a result of the incident involving Mr M. And they therefore had followed their procedures at the time. Mr M agreed with the investigator's outcome but felt the £1,000 distress and inconvenience payment was too low.

The investigator's view was unchanged, he said that whilst he accepted Amber River had taken steps to update their procedures following the fraudulent activity, they were required to have adequate procedures in place at the time. And email intercept fraud was well known in the financial services industry at the time this occurred yet it had nothing in its procedures to counter-act this.

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.

Having done so I agree broadly with the investigator's reasons for upholding the complaint. Whilst Amber River has clarified its procedures at the time, as the investigator set out, I don't think they were adequate and in line with good practice at the time. As I agree with the investigator's reasoning which has already been set out to both parties, I won't repeat this in detail, rather I'll summarise the key reasoning behind my provisional decision to uphold this complaint. The rest of the decision will focus on how to put things right as this is where the provisional decision differs from the investigator's view.

Summary of Reasoning

The legislation relevant to what Amber River was required to do was set out by the regulator in its Senior Management Arrangements, Systems and Controls sourcebook (SYSC), this said:

'SYSC 6.1.1 R

A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

SYSC 3.2.6 R

A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime.'

As part of the fraudulent withdrawal process, Amber River was emailed two sets of bank details by what we now know was the individual impersonating Mr M. The first account was initially rejected by the SIPP provider, as they couldn't verify it. And later they said it couldn't be paid to a business account when it was confirmed that it was a business account. The account name shown on the initial benefit form (and the statement later sent as proof of account) seen by Amber River was a business unrelated to Mr M. Mr M said he was a customer of it for 20 years previous and it ought to have known this wasn't his account. When the SIPP provider said the details couldn't be verified, I think this ought to have prompted it to make further investigation. I'd expect as a minimum for it to have taken a closer look at the details provided and double check the account against the details it held for Mr M – when it saw this didn't match, this would surely have sent alarm bells ringing. But it appears this wasn't carried out and it just continued to contact Mr M through the email address we now know was compromised.

I appreciate it has since changed its procedures to include making a phone call to verify bank details upon receiving email requests for withdrawals. However, given this happened fairly recently in May 2023 at a time when scams of this sort were in the public consciousness (and an established problem in financial services), I think that this wasn't in place at the time is evidence that Amber Rivers procedures weren't adequate then. And I'd go as far to say that regardless of its procedures, acting reasonably and in the best interests of their client, who they knew and were required to know, it ought to have taken steps to be sure the account details were genuine given the clear warning signs visible at the time and the amount of money at stake here. Unfortunately these warning signs were overlooked. And

I'm satisfied had Amber River taken the appropriate steps or had adequate procedures in place, such as verifying the request through telephone contact, the loss wouldn't have occurred.

I therefore agree with the investigator that the complaint should be upheld in full against Amber River.

Fair Redress

After considering this case I'm of the view that the redress as it stands isn't quite right. Our role when we consider something has gone wrong is to put the customer into as close as a position as possible and to be fair to both parties. Mr M cannot be put back into the closest position, i.e the money back into his pension and then enabling him to withdraw the tax-free cash when he needs it, because of the likely contribution allowance limitations. And in any event Mr M was looking to withdraw money from his pension.

Mr M wished to withdraw only the tax-free cash from his pension, so he wouldn't have paid tax on it. However, some money has been recovered and put back into his SIPP, at this point I don't know how the SIPP provider will allow him to withdraw this money. We will find out this information from the SIPP provider before resolving this case. If the money withdrawn counts as Mr M's 25% tax-free cash entitlement from the SIPP, even though it wasn't him making the withdrawal, then no reduction for tax needs to be made on the redress. I think this is the most likely scenario.

We'll also need to ask about how it will treat the recovered money, I'm assuming it is sitting in an account waiting for Mr M to make the withdrawal and it will still be part of his tax-free entitlement. If the SIPP provider says Mr M's entitlement to the 25% tax-free cash is unaffected by the withdrawal, then I will need to apply a reduction for tax as this money will have formed the taxable part of his SIPP income. That reduction will be made at the level I assume he'll be taxed at in retirement, 20% for 75% of the pension and the remaining 25% will be untaxed as it would form part of his tax-free entitlement. So overall a 15% reduction.

I also have to take into account that whilst Amber River did do something wrong as a professional party, which is why the complaint is being upheld, they've also been a victim of the criminal activity that predominantly caused Mr M's loss. I appreciate what has happened has been very upsetting and stressful for Mr M – and I've read about the impact this has had on his retirement planning. But I think the 8% simple interest which has been awarded, which is on a not-unsubstantial amount of money, sufficiently compensates Mr M for Amber River's error and for the loss of use of this money. The investigator has awarded £1,000 on top of this for the distress and inconvenience caused by Amber River but I don't think in the circumstances this is fair. This distress and inconvenience has been caused by the criminal party, I appreciate Amber River were culpable in this but for this mistake it is going to reimburse Mr M and with 8% simple interest added. I appreciate Mr M believes it should've handled the aftermath better, but Mr M would've suffered distress and inconvenience regardless of what happened afterwards.

Following my provisional decision, we got in touch with AJ Bell the SIPP provider as did Mr M and it told us that the recovered money could be paid out as tax-free cash.

After this we clarified with Mr M what I now intended to do:

'AJ Bell indicated to us that it would be able to put the funds back to the pre-withdrawal stage and allow you to withdraw your tax-free cash. But in their response to your advisers there appears to be a little bit of doubt about that. However, AJ Bell have confirmed it will treat the recovered monies as tax-free cash available to withdraw. They have also told us

any investment loss/interest awarded will need to be paid directly to you and can't go into the SIPP. With all this in mind, we think the fairest and most sensible solution is to direct the payment to be made to you without any deduction for tax – the remaining tax-free cash can be withdrawn and therefore you will not have lost out on tax-free cash.'

Mr M also responded to say he still felt that Amber River should make a payment for the distress and inconvenience he suffered.

Amber River did not respond to the PD.

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.

And having done so, I see no reason to depart from the findings I made in my provisional decision, as set out above.

There is now more clarity on how to put things right, so I will set the redress section out afresh, in line with this. And further to what I set out above to Mr M about the position of the AJ Bell SIPP, if he together with AJ Bell do decide to reconstruct the SIPP to its position pre-withdrawal he can still arrange for this to happen after payment is made direct to him.

With regards to Mr M's belief that Amber River should pay him a sum for the distress and inconvenience it caused him. As I've explained, whilst I understand he will have suffered a lot of distress and inconvenience due to this matter, the primary cause of the distress and inconvenience here was the criminal party. Amber River could have done more to prevent it, but it wasn't the direct cause of it and I think that distinction is important. Therefore, I won't be awarding a distress and inconvenience payment.

Putting things right

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if the fraudulent withdrawal hadn't occurred.

Mr M was looking to withdraw £250k but in reality this withdrawal was intercepted and paid to another individual on 24 May 2023. Amber River's error in not having proper controls in place, meant that Mr M suffered a loss and has lost the use of this money. Although approximately £150k has been recovered, to put Mr M back in the position he would've been in, Amber River should refund the remaining balance between the £250k withdrawal and the recovered money. It should also add 8% simple interest to the sum withdrawn from the date of 24 May 2023 until the date of my final decision. Amber River can reduce the sum the 8% interest is accruing from by the amounts recovered to the SIPP at those specific dates (it may need to contact AJ Bell or Mr M to get confirmation of the recovered money and the dates recovered – Mr M should assist them in doing so if required). So at the date of recovery, the sum accruing interest can be reduced from the initial £250k withdrawal, to the amount still outstanding after the funds were recovered into the SIPP.

What must Amber River do?

To compensate Mr M fairly, Amber River must:

Refund the remaining money that Mr M has lost after subtracting the recovered money from the amount initially withdrawn (£250,000).

To account for the loss of use of that money Mr M has suffered, from 24 May 2023 apply 8% simple interest to the £250,000 withdrawal until the date it is notified of Mr M's acceptance of my decision. The figure accruing 8% can be reduced by the amount recovered on the dates that money was recovered.

- Amber River should pay the loss direct to Mr M. The sum that covers the difference between the withdrawal and the recovered money formed part of Mr M's tax-free cash entitlement, so there is no notional tax amendment required.
- Amber River should also add any interest set out below to the compensation payable.
- Income tax may be payable on any interest paid. If Amber River deducts income tax from the interest, it should tell Mr M how much has been taken off. Amber River should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Below is a table setting out how the 8% interest simple should be calculated. This will produce a figure to be paid on top of the loss calculated between the initial withdrawal of £250k and the money recovered (please note the additional interest applies to both parts of the loss calculation).

Funds subject to calculation	Additional steps	Benchmark	From ("start date")	To ("end date")	Additional interest (this step also applies to the initial calculation to work out the loss)
£250k withdrawal	Sum can be reduced by the amounts recovered to the SIPP on the specific date recovered.	8% simple interest	Date of withdrawal 24 May 2023	Date of my final decision	8% simple per year from date notified of Mr M's acceptance to the settlement date (if not settled within 28 days of the business receiving the complainant's acceptance).

My final decision

For the reasons explained, I am upholding this complaint and direct Johnston Campbell Ltd trading as Amber River NI to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 March 2025.

Simon Hollingshead
Ombudsman