DRN-5695326

The complaint

Mr and Mrs N complain that AJ Bell Management Limited has provided insufficient information and support regarding American Depository Receipt (ADR) investments held in their general investment accounts.

What happened

Prior to March 2022, Mr and Mrs N had bought 137,651 ADRs in Gazprom. In 2022, following the invasion of Ukraine by Russia, sanctions were imposed which meant the ADRs were no longer able to be traded in the UK. The issuer of the ADRs, BNY Mellon, and Gazprom, put in place a procedure to allow the ADRs to be converted for the shares they represented. This required an account to be opened with a Russian bank, in order for the shares to be held post-conversion from ADRs. Mr and Mrs N asked AJ Bell to help facilitate this, and AJ Bell said that if Mr and Mrs N opened an account with a Russian Bank, AJ Bell would do what they could to assist with the conversion.

Mr and Mrs N raised a complaint, in summary complaining that:

- Since the sanctions were applied, they've discovered that the ADRs were much more complex than they previously realised, involving more parties in the ownership chain.
- They pointed to specific US restrictions on this type of instrument and said they shouldn't have been allowed to buy them.
- Opening an account in Russia is nor something they should reasonably be expected to do.
- As AJ Bell have appointed a company to act as the nominee for these shares, which is the registered holder of the ADRs, they and the nominee should be responsible for opening the account in Russia to allow the beneficial owners like themselves, the opportunity to convert to shares and decide when to sell their investments.
- Mr and Mrs N felt it would go against sanctions for the ADRs or shares to be put in their individual names directly as they are currently in the name of the nominee.
- They felt AJ Bell had a duty to do all they could to maintain the value of their holdings, and by not doing what has been asked, AJ Bell has caused Mr and Mrs N to lose all their money.

AJ Bell didn't uphold the complaint, explaining that ADRs were not complex investments under the rules, and so Mr and Mrs N were free to buy them if they chose to do so. They said they were not going to be opening an account in Russia. AJ Bell confirmed that if Mr and Mrs N didn’t convert the shares, then BNY Mellon has indicated that the ADRs would stay in place until the shares are able to be sold. As Mr and Mrs N remained unhappy, they brought the complaint to our service, where it was considered by an investigator.

The investigator found that as the account was an execution only one, there was no obligation on AJ Bell to provide advice to Mr and Mrs N prior to selling the ADRs. He found AJ Bell had displayed clear, fair and not-misleading information and explained that AJ Bell didn't need to explain what an ADR was, provided they made it clear that Mr and Mrs N were buying an ADR, rather than the shares themselves.

Mr and Mrs N maintained that they ought to have been told that there was a higher level of complexity and risk to this arrangement, with several more parties involved than normal share ownership. They pointed to the contract notes, which said "Each representing 2 ordinary shares", which they argued implied a very simple arrangement than has transpired. They maintained that AJ Bell were wrong to say the ADRs could be converted into shares in their own names.

As the investigator wasn't persuaded to change his mind, the complaint was passed to me for a decision.

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.

Having done so, I've reached the same conclusion as the investigator, for largely the same reasons. Before I go into my findings, I want to acknowledge that this is clearly an important subject for Mr and Mrs N, they have invested a great deal of money in the ADRs, and I understand they are very worried by the situation. I have a great deal of empathy for them and I hope my detailed reasoning helps them to understand why I've concluded AJ Bell has done nothing wrong here.

I've started with AJ Bell's obligations at the time Mr and Mrs N bought the ADRs. No one disputes that Mr and Mrs N knew they were buying ADRs, an instrument that represented ownership of underlying shares, rather than the shares themselves. The question I must consider is whether AJ Bell acted fairly and reasonably in allowing Mr and Mrs N to buy the ADRs. In my view, that requires me to consider whether this was an instrument that could be sold to Mr and Mrs N under the rules, and if so, whether AJ Bell gave Mr and Mrs N enough clear, fair and not-misleading information to make an informed decision about whether to buy the ADRs.

I understand the ADRs were bought in 2021 – the relevant rules that applied at that time still apply today and are set out in the FCA's Conduct of Business Sourcebook (COBS) in chapter 10A. In summary that chapter says that firms must obtain information about a client's knowledge and experience of the particular investment field, to ensure the investment is appropriate, unless the investment is one of a particular type of defined "financial instruments". Having reviewed the relevant rules, I'm satisfied that depository receipts fall under that definition – as do shares that are listed on an exchange. This means under the rules, AJ Bell were able to sell the ADRs to Mr and Mrs N without first checking whether they had prior knowledge or experience of this type of investment.

I've considered whether AJ Bell should have otherwise prevented Mr and Mrs N from investing, despite the rules, in the best interests of their clients. In my view, it was reasonable for AJ Bell to allow the sale, because:

- There was information available online that Mr and Mrs N could find to educate themselves about ADRs generally.
- It was standard industry practice to sell ADRs in the same way shares were sold.
- It's not a broker's role to second guess whether an investor should buy an investment.

This leads me to my second consideration, whether AJ Bell provided clear, fair and not misleading information for Mr and Mrs N to make an informed decision. To clarify, in saying this, I am not looking to see whether AJ Bell gave Mr and Mrs N enough information to ensure they understood the difference between shares and depository receipts. It's not AJ

Bell's responsibility to ensure that their customers have researched the different ways to hold an investment in a company – for instance the difference between shares, bonds and depository receipts - in the same way as its not AJ Bell's responsibility to ensure Mr and Mrs N had fully researched the company issuing the shares itself. There's a general expectation that in type of relationship it's the customer's responsibility to research and make their own choices about what investment to buy.

Mr and Mrs N say they knew they were buying an ADR, rather than the shares themselves. AJ Bell didn't access the Russian market, either in 2021 or now, to allow customers to buy shares directly on that market. As set out above, it wasn't AJ Bell's responsibility to educate Mr and Mrs N on the different aspects of ADRs, including the more complex ownership chains involved in ADRs compared to shares.

Mr and Mrs N's problems with the ADRs have arisen from the sanctions imposed by the UK, EU, US and by Russia itself. When implemented, the scale of the sanctions was unprecedented, and in my view, AJ Bell couldn't have predicted exactly what sanctions would be put in place in advance, or that the war would go on for such a long time. So, I'm not convinced AJ Bell could or should have reasonably warned Mr and Mrs N of this particular consequence of owning the ADRs.

Overall, I'm satisfied that AJ Bell acted fairly and reasonably in the way the ADRs were sold to Mr and Mrs N. So, I've turned to their actions from when the ADRs could no longer be sold, until the complaint was made in August 2023.

Mr and Mrs N have said that if they were to open a Russian account for the shares to be deposited in post-conversion, they feel that the exchange of registered ownership would breach the sanctions. I can see that Mr and Mrs N have pointed to an email sent by Gazprom which says "*Can we open a joint securities account? No. We recommend that you contact the issuer of the DR to clarify further possible actions in this regard, because one of the requirements for converting DR into local shares is NCBO (no transfer of ownership).*"

However, AJ Bell has said that other customers have not had problems when converting ADRs held by their nominee into shares in the customer's name. I've concluded that the information AJ Bell has given Mr and Mrs N about this is reasonable, for the following reasons:

- The way shares and depository receipts are held via a nominee is used globally and it is standard industry practice that a change in nominee does not constitute a change to the beneficial owner of the shares. For instance, if a customer transfers their shares between accounts in their own name from one broker to another, they can do so without that transfer being considered a sale – despite the change in nominee.
- This is supported by HMRC's view of conversions of depository receipts to shares, as set out in their Capital Gains Manual at CG50240 which says "*a transfer of shares by a shareholder to a depository in exchange for an issue of DRs is not a disposal of the shares for capital gains purposes because the shareholder retains beneficial ownership of the shares… if the holder of DRs converts them back into the underlying shares there is no change of ownership of those shares and so no disposal of the shares."*
- I'm not convinced that the FAQ from Gazprom is definitely referring to the beneficial ownership of the shares. It could also be referring to transferring the shares between the ownership of two people who wish to be joint account holders.

As a result, while I understand why Mr and Mrs N may be nervous given the political situation, I'm satisfied that AJ Bell has not given incorrect information about this.

Mr and Mrs N feel they shouldn't have to open a Russian account in order to have the ADRs converted to shares. I appreciate it is a more unusual and complicated process than they might want to undertake. However, I'm not convinced AJ Bell needs to do so instead, given they didn't ever agree to allow customers to trade directly on the Russia market. I also note that Mr and Mrs N have been sent a letter from AJ Bell's regulator, the FCA, confirming that in the FCA's view, it's reasonable for AJ Bell to not take the step of opening that account. I'd note that even if AJ Bell did open such an account, it wouldn't necessarily mean Mr and Mrs N could sell their investments, due to the number of sanctions that apply.

Mr and Mrs N have said they've lost their savings as a result of what has happened. As I understand it, even if they held the shares in a Russian account, selling those shares has its own difficulties due to the sanctions. I can see that in 2022 BNY Mellon said that if any ADRs weren't converted, the shares would be sold as soon as they are able to be – and any returns will be passed on to the beneficial owners of the ADRs. I understand that due to the sanctions, the shares BNY Mellon holds haven't been sold as yet.

As I understand it, the ADR program here was cancelled by Gazprom – not by BNY Mellon. Given the external factors at play here, I'm satisfied that the situation is not something AJ Bell reasonably have control over.

Overall, I've found that the way AJ Bell has acted is fair and reasonable. They've taken steps to support Mr and Mrs N and have explained their options clearly. I don't think AJ Bell could be held responsible for the fact Mr and Mrs N can't realise any of the value held in their ADRs. It's a very unfortunate situation, but for the reasons I've set out, this is not the fault of AJ Bell, nor is it something that would have been reasonably foreseeable at the time the ADRs were bought by Mr and Mrs N.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs N to accept or reject my decision before 26 August 2025.

Katie Haywood
Ombudsman