

## The complaint

The estate of Mr W complains AJ Bell Securities Limited trading as AJ Bell Investcentre ('AJ Bell') made an error, which delayed the sale of shares resulting in financial loss.

The executors of Mr W's estate are authorised in law to bring this complaint, but they've assigned their right to complain to the beneficiaries of the estate. For convenience, when referring to either the executors or beneficiaries in this decision, I will simply refer to "the estate".

## What happened

The late Mr W had a number of shareholdings with AJ Bell, which were to be sold to pay inheritance tax (IHT) due on his estate. AJ Bell had been instructed by the estate to make payment to HMRC directly by the deadline of 1 August 2024.

On 19 July 2024, AJ Bell issued documentation for the estate to complete, including an indemnity, which needed to be signed by the executors to authorise the sale. The documentation was completed and returned to AJ Bell by an intermediary on behalf of the estate on 24 July 2024.

AJ Bell processed the paperwork the same day it was received and identified it had made a mistake on the original indemnity. It contacted the intermediary by email on 24 July 2024 to request the estate complete a corrected indemnity. AJ Bell provided assurance it would prioritise the transaction as soon as it received the completed indemnity "*to ensure minimal time is lost*" to meet the IHT deadline. I understand AJ Bell separately agreed to waive its fee for preparing the indemnity in acknowledgement of its mistake.

AJ Bell received the corrected document on Monday 29 July 2024, completed the transaction the same day and arranged payment to HMRC by the deadline. However, by the time the shares were sold, the value of one of the holdings had fallen significantly due to market movements over the weekend prior to the sale.

The estate complained to AJ Bell. They said, had AJ Bell not made a mistake on the original document, the sale most likely would've completed by no later than 26 July 2024, before the share price of the relevant holding fluctuated. As a result of the delay, the sale proceeds were approximately £25,000 less than expected. After accounting for IHT, this meant a loss to the estate of around £15,000.

AJ Bell agreed it made a mistake, but didn't accept its error resulted in a delay to the transaction. It said it had a service level agreement ('SLA') to complete share sales within five working days upon receiving all the information needed to proceed. Despite requiring a new indemnity, AJ Bell was able to complete the sale within three working days of receiving the original paperwork on 24 July 2024. However, to acknowledge the inconvenience caused by its mistake, it offered to make a compensation payment of £150.

Unsatisfied with AJ Bell's answer, the estate referred the complaint to our service. One of our investigators reviewed it and didn't think AJ Bell had acted fairly. They said:

- The point to determine was whether the sale was likely to have completed earlier had there been no delay.
- They considered the average time AJ Bell took to complete similar transactions at the relevant time. Despite the sale taking place within AJ Bell's SLA, had the original indemnity been correct, they felt it was more likely than not that the sale would've completed by 26 July 2024 before the share price fell over the weekend.
- They noted AJ Bell had indicated it was looking to action the sale as soon as possible to meet the IHT deadline. Based on this, it was more likely AJ Bell would take two working days rather than three to complete the transaction.
- They recommended AJ Bell make a payment to put the estate in the position it would be in had the transactions completed on 26 July 2024.
- They also welcomed the compensation award of £150 already offered by AJ Bell to acknowledge any distress and inconvenience caused by its error.

Both parties provided additional information following the investigator's view.

AJ Bell emphasised its decision to prioritise the transaction once it received the corrected document mitigated the impact of its original mistake, as the transaction completed within its normal timescales. It also provided additional evidence to demonstrate it was actually more likely for a transaction to take three working days to complete at the relevant time than two.

AJ Bell also clarified a statement it made that it was working to action the sale "*immediately*" prior to identifying the mistake, was meant in the context of it endeavouring to meet the IHT deadline.

The estate submitted some further observations:

- Any consideration of average transaction times should relate to sales actioned by the Bereavement Support Service team who would typically be involved in transactions where HMRC deadlines are a relevant factor.
- The evidence indicated AJ Bell intended to action the sale on the day it received the original indemnity on 24 July 2024.
- It's unlikely AJ Bell would've allowed the transaction to follow its usual process and timescale given the impending HMRC deadline.

After considering the new evidence provided, the investigator issued a second opinion maintaining their initial recommendation, but addressed the new points put forward by the parties. They said:

- Evidence provided by AJ Bell indicated it was in fact more common for similar transactions to complete within three working days of receiving the relevant information than two.
- However, the time of day the paperwork was submitted was a relevant factor in determining when AJ Bell would've likely completed the sale.
- The instruction was sent to AJ Bell shortly after 9am, which would've likely been the first instruction received that day. The only other instruction placed that day that could've been received at a similar time completed on 26 July 2024. The remaining instructions were received at later times and completed on 29 July 2024. With this in mind, they were satisfied, had there been no error, due to the time the transaction was received, it would most likely have completed on 26 July 2024.

- Their opinion for how things should be put right by AJ Bell hadn't changed.

AJ Bell disagreed with the investigator's findings. In addition to reiterating previous points it made earlier in the complaint, it said:

- The investigator's recommendation effectively puts AJ Bell in a position of guaranteeing favourable market conditions, which isn't something it can do. Had the market value of the shares increased between the relevant dates, it's unlikely a complaint would've been made.
- The outcome suggests SLAs can be disregarded based on retrospective assumptions on the speed at which an individual transaction might have completed.

The estate also raised further points:

- The investigator didn't reference AJ Bell's Order Execution Policy, which says orders will be executed as soon as possible unless postponing is believed to be in the customer's best interests. Given the HMRC deadline, there was no basis to postpone execution.
- The fact the instruction was placed through the Bereavement Support Service is of crucial importance to determining what likely would've happened. The risk of incurring penalties for late payment to HMRC meant this team would've expedited all transactions.

As matters remained unresolved, the complaint was passed to me to decide.

#### What I said in my provisional decision

After careful consideration of the information provided by the parties, I decided to issue a provisional decision to give both parties an opportunity to respond. I said I had reached a different outcome to the investigator and set out my reasons to explain why.

In my provisional decision, I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reached a different conclusion to the investigator. While I understand this will disappoint the complainants, I'm not intending to uphold this complaint.*

*It's not in dispute that AJ Bell made an error on the original indemnity, but there's disagreement over when the transaction was likely to have completed had there been no mistake. I've considered the information that's been provided by the parties to determine when the transaction most likely would've completed had the original indemnity been correct. I've also thought about whether the circumstances presented an opportunity for the delay that occurred to be mitigated and how this may have impacted the estate's position.*

#### When would the transaction have likely completed?

*The estate has referenced AJ Bell's order execution policy, which indicates AJ Bell will endeavour to complete sales as soon as possible. AJ Bell has pointed to its SLA of five working days to complete sales, but provided evidence to demonstrate the average timescale for its Bereavement Support Service team at the relevant time was three working days.*

*The data supplied by AJ Bell showed the majority of instructions took three working days, but some only took two. I note the investigator considered the time of day instructions were received to be a relevant factor here, and was of the view instructions received earlier in the morning were more likely to take two working days to complete. However, one entry in the data supplied by AJ Bell was received shortly after 9am and took three working days, so I don't think the data shows enough of a positive correlation to also reach this finding.*

*I think there are likely other influencing factors at play that contribute to the average time taken to complete execution, such as fluctuations in workload, complexity of individual transactions and other daily operational variances that impact the amount of time colleagues have available to action the queue on any given day.*

*That said, I'm persuaded the evidence in this case indicates AJ Bell wasn't treating the estate's instruction as a 'business as usual' case. Based on what it said in its email communication, which I'll set out below, it's my view that AJ Bell was intending to action the estate's instruction as soon as possible due to the impending IHT deadline.*

*AJ Bell told us its usual process is for instructions received by the Bereavement Support Team to be added to a queue to be worked within its five working day SLA. AJ Bell received the estate's sale instruction at 09:13 on 24 July 2024. At 14:35 the same day, it emailed the estate's intermediary to explain it had identified the error within the original indemnity.*

*The fact AJ Bell was able to spot the mistake within the document, suggests the sale was being actively worked rather than being placed in a queue. This is supported by the content of AJ Bell's email to the intermediary, which said:*

*"We've looked to action the sales immediately to give us as strong a chance as possible to meet the IHT deadline."*

*It goes on to explain the share sales would be prioritised upon receipt of a corrected indemnity, which "have already been prepared, so we'll proceed immediately on receipt of the updated signed indemnity".*

*AJ Bell has said its reference to actioning the sales "immediately" refers to its acknowledgement of the IHT deadline of 1 August 2024. However, I think the content of this email makes it clear AJ Bell was already prioritising the sale ahead of other instructions in the queue that didn't have the same pressing IHT deadline. On balance, it's my view that from the start, AJ Bell intended to prioritise the estate's instruction. It therefore seems more likely than not, had the indemnity been correct in the first instance, the sale would've been processed on 24 July 2024.*

#### *Were there any mitigating factors?*

*While it's my view the evidence supports a finding that had there been no mistake, the sale would most likely have completed prior to the weekend when the relevant share price fell – I don't agree this automatically means it's reasonable to direct AJ Bell to carry out a calculation and reimburse any loss to the estate.*

*It's important that I consider all relevant factors to this complaint, which includes how promptly AJ Bell reacted to the error and whether there were any other circumstances which meant there was an opportunity to mitigate loss.*

*I think a key question in determining the outcome of this complaint is whether AJ Bell caused an unreasonable delay in processing the sale. It's not in dispute that AJ Bell made a mistake on the original document, which was unfortunate. But I've considered the action it took in order to rectify the error and note that within a number of hours it had identified and attempted to resolve the problem by issuing a corrected indemnity the same day the instruction was received. AJ Bell also provided assurance it had already completed preparation work for the sales and would immediately process the transactions upon receipt of the newly signed document.*

*The corrected indemnity was sent out at 14:35 on 24 July 2024. Had it been possible for the estate to return it straightaway, I think it's likely AJ Bell would've actioned the sale immediately resulting in no delay.*

*The executors of Mr W's estate were named solicitors of a law firm. It's been noted one of them was unable to sign the corrected indemnity straightaway due to being on leave. AJ Bell and the estate were in active communication about the form on 25 July 2024. AJ Bell confirmed an alternative signatory would be accepted and the law firm noted it was arranging for the new form to be signed.*

*The corrected indemnity was emailed to AJ Bell on Monday 29 July 2024. The email said the indemnity "was also posted by next day guaranteed delivery directly on Friday." It therefore appears the new indemnity was completed by Friday 26 July 2024. It's not clear why a copy wasn't provided to AJ Bell by email on this date.*

*Having carefully considered this email communication, I think the law firm ought to have been able to arrange for the new indemnity to be signed and returned prior to the share price falling over the weekend. It's clear from earlier communication that they were conscious of the IHT deadline, and I think there was a missed opportunity to get the completed document to AJ Bell sooner.*

*Based on what I've seen, had it received the corrected indemnity prior to the weekend, I'm satisfied AJ Bell would've actioned the sale as soon as possible, likely avoiding the impact of the share price movement.*

#### *In conclusion*

*I'm satisfied the evidence indicates had there been no mistake, the transaction likely would've completed earlier than it did. However, I must consider all the circumstances of the case, including how AJ Bell acted to attempt to mitigate the impact of its error, and whether third parties to the transaction could have reduced the time taken to return the corrected indemnity.*

*It's unfortunate that AJ Bell made the initial mistake, but I'm satisfied it took prompt and proactive action to ensure the issue could be resolved without delaying the transaction. For the reasons I've explained, I don't think the reason why the sale failed to complete prior to the relevant share price falling was ultimately AJ Bell's fault.*

*Overall, I'm not persuaded AJ Bell's mistake resulted in an unreasonable delay. There was a reasonable opportunity for the sale to complete prior to the share price movement had the estate provided the corrected indemnity more quickly.*

*It's unfortunate the share price for one of the holdings moved in an unfavourable direction during the relevant time, but in my view, AJ Bell took swift action to mitigate*

*the impact of its mistake. I also note AJ Bell's decision to waive the fee for drafting the indemnity, which I think was a reasonable gesture to acknowledge its error. For the reasons I've outlined above, I'm not intending to direct AJ Bell to take any action.*

*Lastly, I note AJ Bell offered the beneficiaries of the estate of Mr W £150 for the inconvenience caused by its error. As the beneficiaries are not the eligible complainants in this case under the rules that apply to this service, I'm unable to comment on the fairness of the offer AJ Bell made. It would be then for the parties to arrange payment of that offer if it is still in place and hasn't been paid."*

#### Further information provided in response to my provisional decision

While AJ Bell did not respond to my provisional decision, the estate of Mr W provided further comments requesting I reconsider my findings. They set out the timeline of events from their perspective and made the following points:

- There had been some internal debate around the nature of the initial indemnity and inclusion of an undertaking.
- After the initial indemnity was signed, one of the executors went on holiday.
- The revised indemnity was posted to the executor on holiday for his signature. He received it on Friday 26 July 2024, signed and posted it to AJ Bell directly. The firm then emailed a copy of it to AJ Bell the following Monday – 29 July 2024.
- Had an alternative signatory signed the revised indemnity on 25 July 2024 and returned it to AJ Bell the same day, it would likely have been too late for AJ Bell to complete the share sale that day.
- Any contributory role the solicitors played in adding to the delay was less than that caused by AJ Bell, who by virtue of issuing an incorrect indemnity in the first place, caused delays between 19 July to 25 July 2024.
- The chain of causation between AJ Bell's initial error and the solicitor's actions in response to receiving the revised indemnity was not broken in their view. It would therefore be unfair to suggest the solicitors were responsible for the delay.

#### **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 carefully considered the estate's additional submissions, I've not seen a reason to depart from the outcome I reached in my provisional decision. I'll explain why.

As the estate's response to my provisional decision related solely to my finding on mitigating factors, my comments below will focus on the key points raised surrounding this issue. For clarity, the contents of my provisional decision set out above form part of my final decision, in addition to what I've said below.

#### Mitigation of loss

The estate has provided additional context to explain the revised indemnity was posted on 25 July 2024 for the executor on leave to sign while on holiday. I understand he received it on 26 July 2024, signed and posted it to AJ Bell the same day.

AJ Bell provided confirmation by email on 25 July 2024 that it could accept an alternative signatory meaning the executor on holiday wasn't required to sign the revised indemnity. I

note the estate's earlier email providing the first signed indemnity highlighted the IHT deadline and asked AJ Bell to expedite the sale. With the impending HMRC deadline in mind, I think it's likely the estate was of the view the transaction should complete as a matter of urgency. By suggesting it would accept an alternative signatory, I'm satisfied AJ Bell offered a suitable workaround to allow the revised indemnity to be returned immediately for the sale to be processed. With an option presented for the solicitors to take up, I can't fairly say AJ Bell continued to cause the delay in the provision of the indemnity after 25 July 2024.

I've considered the estate's view that even if it had arranged for an alternative signatory to sign the indemnity on 25 July 2024, it was unlikely AJ Bell would've been able to complete the share sale the same day. I remain of the view reached in my provisional decision that, based on its actions and communication, I'm satisfied AJ Bell was intending to prioritise the share sale. When providing notice of the requirement for a revised indemnity, it confirmed preparatory work had already been completed, indicating it would be able to proceed with the sale as soon as it received the updated paperwork. It's therefore my view that had the solicitors provided the revised indemnity signed by an alternative signatory to AJ Bell during normal working hours, I think it's likely AJ Bell would've endeavoured to complete the sale the same day. If that was not possible, for example due to it being sent late in the day, or outside normal working hours, I think it's more likely than not the sale would've completed the following day – Friday 26 July 2024, avoiding the impact of the share price movement.

That said, I think there was a further missed opportunity for the sale to be completed earlier. I understand the executor, who was on holiday, posted the document directly to AJ Bell after signing it on 26 July 2024. In my provisional findings, I explained it was unclear to me why a copy wasn't also emailed to AJ Bell at the same time. As previously explained, I'm of the view the solicitors were very conscious of the IHT deadline. I therefore think it would've been reasonable for the revised indemnity to have been emailed to AJ Bell as soon as it was signed to provide the best opportunity for HMRC's deadline to be met. This also reinforces my view that whatever issues AJ Bell did cause, that after its email of 25 July 2024, I can no longer fairly say that it was a result of AJ Bell that the indemnity hadn't been completed sooner. In other words, the ball was in the solicitors' court. And as I've set out above, I'm satisfied AJ Bell would have expedited processing the sale immediately upon receipt of the revised indemnity, as it did when it actually received the updated document on 29 July 2024.

I've also considered the estate's submission that regardless of any contributory delay the solicitors may be accountable for, AJ Bell was responsible for a larger proportion of the delay and causing the chain of events in the first place. The estate believes the chain of causation between AJ Bell's initial error and the resulting loss due to the share price movement was not sufficiently severed by its actions. I've thought about this carefully and while I agree the relevant events would not have occurred but for AJ Bell's initial mistake – in order to uphold the estate's complaint, I would need to be satisfied that this mistake caused the resulting loss. It's a fundamental principle that an injured party must take reasonable steps to mitigate further loss flowing from a mistake. For the reasons I've set out above, I'm satisfied that had the solicitors taken what I consider to be reasonable steps (arranging an alternative signatory or emailing the revised indemnity immediately upon signing), then additional losses – specifically the loss being claimed here – the impact of a share price movement between 26 and 29 July 2024, could have been avoided. For that reason, I can't fairly say AJ Bell caused the resulting loss due to the share price movement, or that it would be fair for me to require AJ Bell to reimburse the estate.

I appreciate the change in share price between 26 and 29 July 2024 wouldn't have been anticipated by either party prior to it occurring. However, as I've explained, I'm persuaded the IHT deadline was a pressing factor here, meaning the estate wanted the sale to proceed as quickly as possible. Ultimately, I'm satisfied the loss could have reasonably been avoided

by the solicitors returning the revised indemnity sooner. I'm sorry to disappoint the complainants, but my decision is that AJ Bell is not required to take any action.

### **My final decision**

My final decision is that I don't uphold the estate of Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 2 March 2026.

Rebecca Faiers  
**Ombudsman**