

The complaint

Mr H complains that AJ Bell Management Limited (AJ Bell) has sent him marketing information without his permission. He says this is an abuse of his personal data and privacy, which he wants AJ Bell to apologise for and provide compensation.

What happened

Briefly:

In January 2023, Mr H opened an online account with AJ Bell.

In May 2023, Mr H complained to AJ Bell because he said he'd received what he described as 'spam' for the second time in two weeks. He said he considered this was an abuse of his privacy. He said AJ Bell had ignored his previous request for it to stop and said he'd be reporting the matter to the information commissioner again.

On 31 May 2023, AJ Bell issued its final response to Mr H's complaint saying it didn't uphold his complaint. I will refer to what was set out here to explain what happened following Mr H's complaint.

AJ Bell said that the day after Mr H complained, it emailed him to explain that, when he opened his account, he chose to receive emails about its Shares magazine but no other marketing information. It said it did not auto-subscribe members to marketing emails and it included a screenshot in its email of Mr H's chosen preference showing he'd opted in to receive the magazine. It said the email also explained that, if Mr H wanted to change his marketing preferences, he would need to do this via his online account and it provided him with a guide how to do this.

It went on to say that, when Mr H expressed his dissatisfaction with its response, it emailed him again a few days later. It said, while it had temporarily blocked the marketing emails, Mr H would need to permanently fix things by changing his preferences in his online account. The final response concluded by saying that despite the above, it had unsubscribed Mr H from all marketing emails and he would no longer receive these – only servicing emails.

Mr H asked us to consider his complaint. One of Investigators looked at all of this and they concluded AJ Bell had done nothing wrong. They said the evidence showed Mr H had chosen to receive the marketing emails – there was nothing to indicate it had subscribed him without his consent. They said AJ Bell had told Mr H what he needed to do to opt-out of the marketing emails, but that it had gone outside of its usual process to sort things for him. They said Mr H might want to consider taking his complaint to the Information Commissioner's Office (ICO) because his complaint was generally about data and doesn't directly involve a financial product.

Mr H asked for the matter to be escalated. He said it was incorrect to say that AJ Bell did not place him on a spam list without his consent. So, the complaint was referred for a final 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, I've decided to not uphold this complaint. I'll explain why.

Firstly, and for the sake of clarity, I'm satisfied this is a complaint I can deal with. While Mr H's complaint is about the way AJ Bell has handled his personal information or data, I think in this case it is all part and parcel of AJ Bell '*carrying on*' the regulated investment activities we do cover and the service it provided Mr H with. So, I do have the power to consider this complaint.

Mr H says that AJ Bell has abused his personal data and privacy and maintains that AJ Bell has sent him marketing information without his consent. But I've seen no evidence to support what Mr H says. What evidence there is indicates that, when Mr H opened his online account, he ticked the preference box to receive AJ Bell's Share magazine marketing emails and nothing else. And Mr H has been provided with this evidence.

AJ Bell has explained that, while Mr H did not initially qualify to receive the Share magazine emails, it took the decision to send it out more widely to its customer base. This is why Mr H started to receive it. I've seen nothing to suggest that AJ Bell sent Mr H any other type of marketing information. And Mr H hasn't said it has.

So, it appears to me that Mr H did consent to the marketing information he received – i.e. the Share magazine. There is no evidence that AJ Bell has sent Mr H marketing information that he didn't agree to receive, or that it has acted unfairly and unreasonably towards him in the use of his personal data.

I'd add here that, I consider AJ Bell tried to resolve things with Mr H promptly and fairly and reasonably. In my view, it clearly explained to him what he needed to do if he didn't want to receive its marketing information. It also went further and outside of its usual practice by unsubscribing Mr H from all marketing material, which meant he didn't have to do this himself via his online account.

So, I'm satisfied AJ Bell has done nothing wrong here. I don't uphold this complaint.

My final decision

For the reasons above, I've decided to not uphold this complaint – so I make no award in Mr H's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 March 2024.

Paul Featherstone
Ombudsman