

The complaint

Mr W has complained that AJ Bell Asset Management Limited (AJ Bell) have not been able to complete the sale of an investment held within his AJ Bell self-invested personal pension (SIPP) and transfer the proceeds to his SIPP held with Interactive Investor (II).

What happened

Having decided to transfer his pension from AJ Bell to II, Mr W was informed that some of the investments held within his AJ Bell pension could not be transferred to II. These investments would need to be sold with the funds then transferred as cash. Mr W could then reinvest the cash in alternative investments within the new II SIPP.

On 11 January 2023 Mr W contacted AJ Bell over the phone to give sell instructions on the three investments that could not be transferred.

Two of these transactions were completed correctly.

However, the third investment, into Purpose Silver Bullion EFT (SBT), could not be sold. It was discovered that AJ Bell's custodian – Clearstream – could not sell the investments as they were held on the Toronto exchange and had a Canadian ISIN number. In addition, to facilitate the sale AJ Bell required a physical share certificate, something which they did not hold.

As the SBT investment could not be sold and the proceeds reinvested in his II SIPP, Mr W raised a complaint with AJ Bell.

AJ Bell issued their response to Mr W's complaint on 27 February 2023. This explained that in 2018 AJ Bell changed its custodian, and during this process an administration error meant that the share certificate for the SBT investment was not obtained as it should have been. It was explained that AJ Bell were in the process of trying to source the certificate so the investment could be sold and offered £150 to cover the stress and inconvenience caused.

Mr W did not accept the response and referred his complaint to this service the following day.

Our investigator looked into things and upheld the complaint.

Given AJ Bell had already accepted an error in not ensuring they (or their chosen custodian) had the relevant share certificate, the investigator concentrated on what redress methodology would be appropriate.

Here it was recommended that AJ Bell should calculate the sale price of the SBT investment had it been sold on 11 January 2023 as instructed. From there the cash would have been transferred to II in March 2023 and reinvested. The hypothetical value of the monies had the SBT investment been sold in January 2023 and then reinvested with II from March 2023 onwards should then be compared to the value of the SBT investment when it was actually sold. If the hypothetical value was higher than the actual value realised from the sale of the

SBT investment, then a loss had occurred, and redress would be payable to Mr W.

Mr W agreed, however AJ Bell noted that as they still could not source a share certificate the recommended redress could take considerable time to complete. As such they offered an increased amount of £650 to cover the distress caused and any potential investment loss.

This offer was rejected by Mr W as he wanted an end to the situation.

Our investigator suggested AJ Bell complete the redress based on his original recommendations, whilst the shares could not actually be sold, a current value could be sourced and used to complete the redress calculation. Any resulting payment could be made to Mr W and to solve the issue around the missing share certificate, Mr W would then sign an undertaking transferring the shares to AJ Bell. This would allow Mr W's full pension monies to be moved to II as per his wishes, with AJ Bell receiving the actual SBT sale proceeds once the certificate was sourced.

In response AJ Bell stated that due to the way in which the holdings are registered the completion of an undertaking was not an option that was available to them as a business. As such they suggested their updated offer of £650 was reconsidered.

Mr W did not agree and as no agreement could be reached, the case was passed to me. I issued a provisional decision which stated:

"As per the investigators findings the fact that AJ Bell are at fault for the missing share certificate and the delays in selling the SBT investment has already been accepted. As such I too have focussed on an appropriate way to resolve the issue.

Any redress instructions I give are intended to place the consumer into the position they would most likely now be in had a delay not occurred.

This is complicated in this case as whilst fault for the missing share certificate sits with AJ Bell, they are dependent on third parties to source this, with there being no evidence to suggest they are not making every effort to get the certificate and resolve the issue.

Overall, the redress recommendations made by our investigator are what I would normally expect to see where there has been a delay in completing a customer's transaction request.

The redress instructions account for the fact that that value of the existing SBT investment will have changed since the original sell instruction in January 2023, and for the fact alternative investments would have been made by Mr W from March 2023 onwards.

I do however appreciate that the redress instructions given by our investigator assume that an appropriate share certificate can be sourced allowing the SBT investment to be sold. This process (having already taken over nine months with no resolution) could take an extended period of time with no known timescale as to when it could be completed.

As such it is reasonable for AJ Bell to suggest an alternative to try and bring a resolution to Mr W's complaint.

Rather than seek to clarify the extent of any potential losses Mr W may face from being unable to sell and reinvest the proceeds of the SBT investment, AJ Bell's offer is for a flat amount of £650 to cover the inconvenience caused and any potential investment losses that may have been incurred.

Given the SBT investment was worth around £3,000 in January 2023, the offer does

represent a significant proportion of the value of the investment. As such, the investment would have to have suffered significant volatility to generate losses more than the offer made. That said, this offer also leaves the actual process of selling the SBT investment and transferring the cash to II unresolved for an unknown period of time.

There is no way for me to know at this stage whether the offer of £650 would provide more or less redress to Mr W than the calculations suggested by our investigator, however the issue with both the solutions suggested thus far is that they leave Mr W with an AJ Bell pension that he no longer wants.

I appreciate that AJ Bell have done all they can to resolve the situation and mitigate its impact on Mr W, with all charges on the AJ Bell pension suspended. I also appreciate that the value remaining within this pension is limited to the value of the SBT investment (whatever this may now be) with this being a small proportion of Mr W's overall pension provision. However, I do not believe it is reasonable to expect Mr W to retain this pension indefinitely because of an AJ Bell error.

Overall, I have concluded that the redress recommendations put forward by our investigator are the fairest way of returning the value of Mr W's pension to what it would otherwise have been. I am however making one addition to the redress proposed by our investigator.

The SBT investment is unable to be sold due to the unavailable share certificate, with AJ Bell accepting that this is their fault. Whilst the SBT investment does have a current value to those investors with all the relevant documentation, its effective value to Mr W without this documentation is zero. As such if the share certificate cannot be sourced within a reasonable timeframe, I have concluded the sale value of the SBT investment should be considered as nil within the redress calculation laid out by our investigator.

I have considered carefully that this will increase the cost of the redress to AJ Bell (although leave the end value to Mr W unaffected) as AJ Bell will in effect have to fund the current value of the unsaleable SBT investment. However, as above I do not consider it reasonable that Mr W be left holding the unwanted SIPP / investment indefinitely.

Additionally, to try and mitigate the end cost to AJ Bell our investigator has already recommended an undertaking be completed by Mr W which would transfer the SBT investment to AJ Bell. This would allow them to realise the sale value of the investment when such a sale becomes possible, offsetting some of the redress costs incurred. AJ Bell have already confirmed that this is not possible in this instance, however, again I do not consider it reasonable that this AJ Bell issue result in Mr W being left with an unwanted pension indefinitely.

However, in order to be fair to AJ Bell, I have concluded an additional amount of time should be allowed so the efforts to source the share certificate and sell the investment can continue.

I have concluded that an additional three months should be allowed for AJ Bell to try and source the documentation required. This additional three months would mean that AJ Bell would have been trying to rectify the issue and sell the SBT investment for over a year without success. If the sale cannot be completed within that timeframe, I consider Mr W will have waited long enough and the investment should be considered illiquid and of zero value at that time.

I appreciate that this does leave Mr W with an unwanted pension for a further period of time however do not believe that is unreasonable given the potential additional costs which AJ Bell may incur should the relevant paperwork not be sourced.

Finally, I would note here that this outcome may not be what either party want at this time.

The above redress leaves the possibility of increased redress costs for AJ Bell and leave the situation unresolved for Mr W for another period of time.

However, I am of the opinion that it remains the fairest way to resolve the situation. Whilst Mr W must potentially wait another three months for a resolution, it ensures his pension will be returned to the correct value and whilst AJ Bell may face increased redress costs, the above solution allows them sufficient additional time to source the required paperwork to try and avoid such costs."

In addition to the above I asked both parties to provide any additional information they wanted me to consider by 21 November 2023.

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.

In response to the provisional decision above, both Mr W and AJ Bell have confirmed they accept the outcome reached. As such I am not making any changes to the provisional decision above.

The redress instructions below remain unchanged from those included in the provisional decision.

Putting things right

My aim is that Mr W should be put as closely as possible into the position he would probably now be in had the SBT investment been sold as requested.

It's not possible to say precisely what Mr W would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

What must AJ Bell do?

To compensate Mr W fairly, AJ Bell Asset Management Limited must:

- Compare the actual value of the SBT investment when it is sold, with the notional value if it had been sold on 11 January 2023, and the cash transferred and reinvested in line with the assets held within the II SIPP. If the actual value is greater than the notional value, no compensation is payable.
- If the fair value is greater than the actual value, there is a loss and compensation is payable.
- If there is a loss, AJ Bell should pay into Mr W'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 W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided 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 W won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr W 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 15%.
- If either AJ Bell or Mr W dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr W receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.
- Pay Mr W £150 to cover the distress and inconvenience this issue has caused.

Income tax may be payable on any interest paid. If AJ Bell deducts income tax from the interest, it should tell Mr W how much has been taken off. AJ Bell should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SBT	Still exists and liquid (although should be considered illiquid if the share certificate cannot be sourced)	Notional performance of Mr W's II SIPP.	The date the cash element of the AJ Bell SIPP was transferred to II	Date of settlement – to be determined based on when the SBT investment can be sold, or three months after the date of my final decision at which point the SBT investment should be considered of nil value.	n/a

Actual value

This means the actual amount payable from the SBT investment at the end date. If the relevant documentation cannot be sourced in line with the timescales noted above, then this should be set as nil value for the purposes of the redress calculation detailed.

Fair value

This is the value of Mr W's investment had it been sold on 11 January 2023, with the proceeds transferred and reinvested in the II SIPP until the end date. AJ Bell should request that II calculate this value.

Any additional sum that Mr W paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if AJ Bell totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

I don't see any reason why II won't be able to calculate a notional value, but if that turns out to be the case, AJ Bell will need to determine a fair value for Mr W's investment instead, using this benchmark: FTSE UK Private Investor Growth Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr W wanted Capital growth and was willing to accept some investment risk.
- If II is unable to calculate a notional value, then I consider the measure below is appropriate.
- 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.
- The above redress methodology ensures Mr W's pension is put as closely as possible into the position it would most likely have been in had the SBT investment been sellable when the original request was made, whilst still allowing AJ Bell additional time to source the missing paperwork that would allow the investment to be sold.

My final decision

I am upholding this complaint and require AJ Bell Asset Management Limited to complete the redress calculations as instructed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 January 2024.

John Rogowski
Ombudsman