

The complaint

Mr L complains about AJ Bell Management Limited (“AJ Bell”). He’s unhappy with how it’s sought to put things right after delaying funds being transferred to his Self-Invested Personal Pension (SIPP) with another provider.

What happened

I issued a provisional decision on 1 March 2024. I’ve recapped the background below:

Mr L had a SIPP with AJ Bell. After making a pension contribution, Mr L decided to transfer the proceeds of his SIPP to another provider I’ll refer to as “Provider N”.

While most of Mr L’s funds were successfully transferred to his new SIPP, he noticed that tax relief due on his last pension contribution hadn’t been received. Mr L contacted AJ Bell to query the matter. AJ Bell explained that it was still waiting to receive the tax relief, which it expected to receive and transfer to Mr L’s new SIPP on or around 25 May 2023.

Having not received the tax relief payment in his SIPP by July 2023, Mr L contacted AJ Bell to complain. AJ Bell apologised, saying that while it had attempted to make the payment on 23 May 2023 via its automated process, this hadn’t been successful. It reassured Mr L that the payment had now been sent to his new provider.

Mr L confirmed he still wished to complain, saying two payments should’ve been sent to his new SIPP – one for the tax relief amount and the other for interest accrued during the delay.

AJ Bell contacted Provider N, to establish what, if any, investment growth Mr L had missed out on by his tax relief payment not being sent to his new SIPP when it should’ve been. Provider N confirmed that if the payment had been received on 23 May 2023, it would’ve been invested on 25 May 2023 and Mr L would’ve benefited from an additional £418.54 in growth.

On 29 August 2023, AJ Bell sent Mr L its final response to his complaint. In summary it said:

- It apologised for any inconvenience caused by delaying the application of the tax relief payment to Mr L’s SIPP.*
- It had established that Mr L would’ve achieved additional growth amounting to £418.54 if his tax relief payment had been sent to Provider N on time. So, it was offering him £550 for lost investment growth and any distress caused.*
- It noted Mr L’s request to be paid any interest accrued between May and July 2023 while waiting for the tax relief payment to be sent to his new SIPP. However, as its aim in putting things right was to return Mr L to the position he would’ve been in but for its delay, this wasn’t appropriate as no delay would’ve occurred and no interest would’ve accrued.*

Having discussed the matter with AJ Bell, Mr L asked it to review its offer. In summary, AJ Bell’s response was as follows:

- *It disagreed that Mr L had been financially disadvantaged by how it intended to put things right, explaining that if the compensation payment for lost growth was made directly into his SIPP, when he came to take benefits, he would be taxed on this. Instead, AJ Bell was providing the compensation tax free, allowing Mr L to contribute the compensation to his pension if he wished, depending on his available contribution allowance.*
- *It understood Mr L wasn't happy to lose any contribution allowance because of its compensation payment, but the additional compensation provided on top of the lost growth amount accounted for inconvenience, including a perceived lost contribution allowance.*
- *Its offer remained the same.*

Mr L rejected AJ Bell's offer and referred the matter to our Service. One of our investigators considered the matter and, in summary, said:

- *While she broadly agreed with AJ Bell's approach to compensate Mr L for loss of investment growth, she explained that our Service would normally say the compensation should, if possible, be paid into Mr L's pension. If this wasn't possible or it had protection or allowance implications, paying the compensation direct to Mr L was fair.*
- *In line with our Service's approach, AJ Bell should apply a notional reduction to Mr L's compensation for lost growth to account for future income tax that would otherwise have been paid.*
- *AJ Bell's compensation offer of £131.46 for distress and inconvenience caused was fair.*

Mr L responded. In summary, he said:

- *He didn't understand why any reduction should be made to the compensation amount if it wasn't being paid into his pension.*
- *By delaying the tax relief payment, AJ Bell should pay any interest accrued until the payment was transferred to his new SIPP.*
- *AJ Bell and the investigator's compensation proposals would leave him financially out of pocket.*
- *AJ Bell continuing to avoid paying appropriate compensation was distressing.*

AJ Bell responded. In summary, it said:

- *It wasn't aware of its customers full financial circumstances and couldn't take responsibility for a decision to pay compensation into a SIPP which, amongst other things, might impact someone's annual allowance. Because of this, its stance as a business was usually to make redress payments direct to customers.*
- *While it had the facility to pay compensation into a pension upon request, Her Majesty's Revenue & Customs ("HMRC") considered redress payments tax-relievable member contributions. Because of this it had taken the decision to pay redress direct to customers to allow them the flexibility to pay the redress into their pension if they wished. It didn't think this was unreasonable.*

As no agreement could be reached, the matter was passed to me for decision. And my provisional findings were as follows:

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'm not intending to uphold it. I'll explain why. But before I do, I should emphasise that while I've taken note of the arguments made by all the parties involved, I've limited my response to the issues I consider to be central to this complaint.

The parties in this case agree that AJ Bell took too long to send Mr L's tax relief to his new SIPP. So, I need to determine whether the way AJ Bell has proposed to put things right is fair.

Given the delay which occurred in this case, our Service would normally expect AJ Bell to, as a starting point, obtain a notional value from Provider N, reflecting the level of investment growth Mr L missed out on due to his tax relief not being invested in his new SIPP when it should've been. Based on what I've seen, I'm satisfied AJ Bell took appropriate steps to do this.

Provider N confirmed that if it had received Mr L's tax relief when it should've (on 23 May 2023) and invested it in line with its service standards (on 25 May 2023), he would've achieved investment growth totalling £418.54.

Where it's clear that a consumer has suffered a financial loss because of a business' error, as Mr L has here, our Service would usually say AJ Bell should, if possible, pay the compensation into Mr L's pension. The intention here being to put Mr L back into the position he would've been in (or as close as possible) but for AJ Bell's error.

However, our Service is conscious that paying compensation into a pension isn't always straightforward and without consequence. A payment into a pension from any source other than an employer is usually treated as if it were a personal contribution. So, a business' compensation payment, if paid into a consumer's pension, is normally caught by the same limits a consumer is subject to when paying into this pension. In Mr L's case, this means that if AJ Bell's compensation was paid into his new SIPP, it would count towards his yearly pension contributions limit and impact his annual allowance.

There are also other considerations when paying compensation into a pension, including the potential implications on a consumer's lifetime allowance as well as any protections they may have associated with this. Because of this, we take care with how we direct businesses to pay compensation. While we say the compensation should, if possible, be paid into a consumer's pension, this is on the proviso that it doesn't conflict with a consumer's existing allowances or protections. But we wouldn't typically expect a pension provider to consider the impact of a compensation payment on a consumer's specific situation; or to advise consumers on what they should do. This would likely stray into giving advice and that's not something we'd expect a provider to do. And that's why our approach to complaints like Mr L's includes provision for a business to pay compensation direct to a consumer.

AJ Bell has offered to pay compensation for lost investment growth direct to Mr L. Based on the potential risks associated paying compensation into a pension, I don't find AJ Bell's position unreasonable. Mr L will then have the freedom to pay the compensation into his pension if he wishes.

Our investigator agreed with AJ Bell's approach to establishing the financial loss Mr L had suffered and its proposal to pay compensation to Mr L direct. However, she said that AJ Bell should also make a notional reduction to the compensation payment to allow for future income tax Mr L would otherwise have paid on the funds when he came to take retirement benefits. Mr L doesn't understand why any reduction would be made to the compensation when it isn't going into his pension.

Although AJ Bell's compensation payment won't be going into Mr L's pension, the payment still originates from financial loss Mr L sustained on investments made through his SIPP. Pensions like Mr L's SIPP benefit from favourable tax treatment in return for certain restrictions, such as the inability to access the funds before a certain age. Those same restrictions impact how we award redress.

Even though the compensation isn't being added to Mr L's pension, it still represents additional pension benefits that would otherwise be taxed in the future and so it's right to treat it accordingly. Putting Mr L, as closely as possible, in the position he would be in but for AJ Bell's error involves ensuring he isn't over-compensated. And that's why when we make awards in cases like Mr L's, we typically direct businesses to adjust compensation. Any personal contributions paid into Mr L's SIPP will have benefited from income tax relief. In return, income tax must be paid on the eventual proceeds of the SIPP. As 25% of Mr L's compensation payment would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%, making a notional reduction of 15% overall from AJ Bell's compensation for investment loss is appropriate.

However, instead of applying the notional reduction, AJ Bell has decided not to reduce the compensation payment at all – It's offering the compensation gross. In doing so, AJ Bell has offered Mr L more than I would be directing it to make if it had made no offer at all.

Turning now to the interest Mr L would like AJ Bell to pay in addition to the compensation it's offered. In his submissions to this Service, Mr L has asked for any interest accrued on his tax relief payment before it was sent to his new SIPP to be paid to him. Without this, Mr L says he won't have been sufficiently compensated for the financial loss he's suffered. I'm afraid I don't agree.

As explained above (and by AJ Bell and the investigator previously), the purpose of compensation in this case is to (as closely as possible) put Mr L in the position he'd be in but for AJ Bell delaying sending the tax relief payment to his SIPP. This involves consideration of the difference between what actually happened when Mr L's tax relief was invested and what would've happened if it had been invested when it should've been. AJ Bell's compensation reflects the loss of investment growth Mr L suffered during this period. To award compensation for this and any perceived gains (such as interest accrued during the delay) would result in Mr L being overcompensated. Therefore, I'm not intending to direct AJ Bell to make the payment Mr L is seeking in this respect.

Finally, I've considered the compensation AJ Bell has offered Mr L what happened. It's clear to me that AJ Bell's error and resulting delay caused Mr L some inconvenience, especially as he had to chase AJ Bell for updates on the tax relief payment when it wasn't received as expected. And I think the fact that a sizeable amount of Mr L's money remained unallocated for a period will have caused Mr L some distress which could've been avoided. I'm also mindful that Mr L was also taking care of his elderly parents – both of whom are vulnerable – while trying to finalise his transfer. Having thought about the overall impact of what happened, I think AJ Bell's apology, decision not to apply a notional reduction to the compensation for investment loss, and offer of £131.46 for distress and inconvenience is fair and reasonable.

While I haven't found in Mr L's favour, in that I don't think AJ Bell should pay him the compensation he's seeking, I should say that I do think it's entirely reasonable for him to have expected his transfer to have been completed without incident. And it's unfortunate that this didn't happen on this occasion. Mr L has my sympathy.

I leave it to Mr L to decide whether he wishes to accept AJ Bell's offer. As I've explained, it's award goes beyond what our Service would usually recommend given the circumstances.

I invited Mr L and AJ Bell to respond to my provisional decision, but no comments were provided.

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, my decision remains the same as before (and as set out above). That means I'm not upholding Mr L's complaint for the reasons I've previously given.

My final decision

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 April 2024.

Chillel Bailey
Ombudsman