

The complaint

Ms L complains that AJ Bell Management Limited has unfairly restricted her access to, and use of, her SIPP and ISA. She also complains about incorrect information she was given whilst attempting to trade over the phone.

What happened

In February 2023 Ms L opened her accounts with AJ Bell. In April 2023 AJ Bell wrote to Ms L to tell them that her accounts were being restricted. AJ Bell explained that Article 5f of Council Regulation (EU) No 833/2014 meant they were prohibited from selling certain securities denominated in a currency of an EU member state, and funds containing those securities, to Ms L. I'll be referring to these investments as 'EU securities' below. AJ Bell said they'd restricted Ms L's accounts because she was a Russian national, and the sanction applied to Russian nationals who are not also residents or citizens of an EU member state. AJ Bell said that she would still be able to buy non-EU securities, but would have to do so by phone rather than online.

Ms L complained about the restriction, in summary because:

- She felt AJ Bell has misinterpreted the EU regulation as she read it as only applying to those who reside in Russia.
- AJ Bell should have told her about the restriction upon opening the account, as she wouldn't have opened it had she known she'd only be able to trade over the phone.
- She pointed to UK regulations and said they expressly repealed the EU regulations.
- She felt the use of a phone line to trade, rather than being able to trade online, was not an equivalent alternative, as it was inconvenient and time-consuming.
- The restriction amounted to discrimination.
- When she called on 14 August 2023 to buy three non-EU funds, Ms L was incorrectly prevented from buying them, and the call handler said the only one she could buy was an AJ Bell fund. This fund included EU securities and she felt that everything else AJ Bell had said was a lie to force the sale of their own funds.

AJ Bell didn't uphold the part of the complaint about the restriction, but upheld the part of the complaint about the call in August 2023 and offered £100 for the distress and inconvenience caused. Ms L remained unhappy and so asked our service to look into the concerns. An investigator at our service explained that she thought Ms L's complaint about the restriction itself would be better dealt with by a court, and so she dismissed it. With regards to the second complaint about the call, the investigator found the offer made by AJ Bell was fair.

Ms L didn't agree as she felt the outcome supported the restriction of her account and that AJ Bell were using the restriction purely as an excuse to sell their own funds. As the investigator wasn't persuaded to change her mind, the complaint has been passed to me for a decision.

What I've decided – and why

Similarly to the investigator, I consider that Ms L's complaint can be broken down into two main areas as follows:

1. The application of the restriction, including AJ Bell's interpretation of the sanction, the timing of the restriction soon after Ms L opened the accounts, and how the restriction interacts with UK law.
2. The service Ms L was provided with when attempting to trade in August 2023.

I've considered these two issues separately for clarity.

Issue 1 – the restriction

Our service, and the way we look into complaints, is bound by the Dispute Resolution (DISP) rules set out in the Financial Conduct Authority's Handbook. The DISP rules set out the circumstances where our service may decide not to give an opinion on whether a firm has treated a complainant fairly and reasonably. These are known as the dismissal rules. Specifically, the rule at DISP 3.3.4AR says:

"The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that:

...

- (5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service."*

The guidance at DISP 3.3.4BG says:

"Examples of a type of complaint that would otherwise seriously impair the effective operation of the Financial Ombudsman Service may include:

- (1) where it would be more suitable for the complaint to be dealt with by a court or a comparable ADR entity;"*

AJ Bell has said that they applied the restriction to Ms L's SIPP and ISA, due to Article 5f of Council Regulation (EU) No 833/2014, which at the time it came into force in April 2022 said:

- 1. "It shall be prohibited to sell transferable securities denominated in any official currency of a Member State issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia.*
- 2. Paragraph 1 shall not apply to nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State."*

Because Ms L is a Russian national who is not also a national of, or resident in, an EU Member State, AJ Bell considers that the EU sanction affects the nature of the business they can conduct with her and that the restrictions they've imposed are justifiable because of it. This is regardless of the fact Ms L is also a UK citizen and resident.

Having reviewed the investigator's reasoning, I agree that Ms L's complaint raises questions about: (1) the interaction between the EU sanction (in particular, how it impacts the business that AJ Bell conducts with individuals who hold Russian nationality) and the UK's legislation

prohibiting discrimination on the grounds of nationality (in particular, the Equality Act 2010); and (2) how any tension that arises between them should be resolved.

I understand that Ms L is unhappy with the wider restrictions that AJ Bell has applied to the account, which restricted access or provided different functionality in relation to other features of the account – for instance having to call instead of trade online, even for non-EU securities. I consider that Ms L's complaint points about these wider issues are still fundamentally about the actions AJ Bell took in response to the EU sanction, and the interaction between the EU sanction and Equality Act 2010 (including its provisions prohibiting discrimination on the grounds of nationality).

In my view, the questions for determination in this complaint are ones which give rise to important or novel points of law with potentially significant consequences, which could have wider implications. I'm satisfied this means this complaint is of a type that would be more suitable to be dealt with by a court, and that dealing with such a type of a complaint would seriously impair the effective operation of the Financial Ombudsman Service under DISP 3.3.4AR(5), when read with DISP 3.3.4BG(1), which I have referred to above.

I understand this outcome will come as a disappointment to Ms L, as she feels strongly that our service ought to be looking into the complaint. But as an informal service, we aren't always the most appropriate venue to deal with a complaint and for the reasons set out above, under DISP 3.3.4AR(5) (read with DISP 3.3.4BG(1)), I'm dismissing the complaint, without considering its merits.

It is open to Ms L to consider pursuing this matter against AJ Bell through court proceedings if she is so minded, although that is not something that the Financial Ombudsman Service can advise on.

Issue 2 – the service provided in the call in August 2023

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm glad to see that AJ Bell has already recognised that they ought to have provided a better service in the call on 14 August 2023. So, my role is to decide whether their offer is a fair and reasonable one, to put things right. I've considered the position Ms L would have been in, but for AJ Bell's error, and whether she's been caused any financial loss because of their actions.

During the call, I understand Ms L was attempting to purchase three funds and was told she couldn't as they contained EU securities – which was incorrect. AJ Bell admitted their error the following day. I've considered the price of the funds on that date and in the days following and am satisfied that they would have been cheaper for Ms L to buy them after 14 August. It follows that although AJ Bell gave her incorrect information, this didn't cause Ms L any financial loss.

I can see that Ms L feels strongly that AJ Bell used the restrictions they'd imposed due to the EU regulation, as an excuse to sell their own funds and not others. From what I've seen this appears to have been a single occasion of human error, rather than a systemic issue.

However, it clearly caused confusion and distress to Ms L. She had to research the situation and contact AJ Bell further to get clarification, which she shouldn't have had to do. In considering a fair amount of compensation for this, I've thought about how quickly AJ Bell put things right – they corrected themselves the next day. This minimised the impact of their actions and gave Ms L the ability to buy the funds she wanted to quickly, with minimum

impact on the price movement of the assets. Overall, I'm satisfied the £100 offered by AJ Bell is fair and reasonable to make up for the impact of their error.

My final decision

AJ Bell Management Limited has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that AJ Bell Management Limited should pay Ms L £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 25 October 2024.

Katie Haywood
Ombudsman