

Ombudsman's Determination

Applicant	Mr M
Scheme	AJ Bell Self Invested Personal Pension (the SIPP)
Respondent	AJ Bell

Outcome

1. I do not uphold Mr M's complaint and no further action is required by AJ Bell.

Complaint summary

2. Mr M has complained about AJ Bell's procedure to separate his funds, within the SIPP, into crystallised and uncrystallised funds. He argues that this leads to a lengthy, bureaucratic, and frustrating process to access his money.

Background information, including submissions from the parties

3. In 2015, Mr M completed a form to convert the SIPP to a flexi-access drawdown arrangement. The notes on the form said:

"Taking benefits from your pension is an important decision. We recommend that you take advice from a regulated financial adviser before making your decision".
4. Mr M confirmed that he did not take regulated financial advice. Since converting to a flexi-access drawdown arrangement, Mr M had requested multiple one-off income payments. Mr M also continued to make occasional small contributions into the SIPP.
5. In February 2017, Mr M requested an income payment of £6,000 gross from the SIPP.
6. In response, AJ Bell confirmed that Mr M's income payment of £6,000 gross would include a tax refund of £219.40. Mr M questioned this as he had already received a tax refund for this amount from Her Majesty's Revenue and Customs (**HMRC**).
7. AJ Bell said that, based on the information provided by HMRC, Mr M was due a tax refund of £219.40. Because of data protection rulings, AJ Bell could not inform HMRC that the refund had already been paid to Mr M; this was Mr M's responsibility. It

assured Mr M that it had followed HMRC regulations. AJ Bell confirmed that an income payment request for £6,000 gross had been raised.

8. On 24 February 2017, AJ Bell confirmed to Mr M that the income payment of £6,000 gross had been paid to him, in addition to the tax refund of £219.40.
9. Mr M raised a complaint as he believed AJ Bell had provided him with incorrect information in relation to the tax refund of £219.40. On 21 April 2017, AJ Bell responded and said:-
 - When it was notified by HMRC that a tax refund was due, it was required to pay this directly to Mr M.
 - The tax refund was not paid from the funds in Mr M's SIPP.
 - If Mr M remained unhappy with the level of service he had received, it would waive the transfer out charge of £75 plus VAT.
10. While there were other exchanges of communication after this time, the next relevant correspondence took place in March 2019.
11. On 14 March 2019, Mr M requested an income payment of £4,550. AJ Bell emailed Mr M on the same day and said that he did not have sufficient funds in the SIPP cash account to facilitate the payment. It said that, if Mr M had sold assets in preparation of this income payment, he would have to wait for this to complete. AJ Bell reminded Mr M that it charged £25 plus VAT to make one-off income payments.
12. In response, Mr M said that his asset sale was due to complete on 18 March 2019. As a result of the charge, Mr M requested a lower income payment of £4,539.
13. On 21 March 2019, AJ Bell emailed Mr M and said that the income payment of £4,539 had been paid to his nominated account.
14. On 22 March 2019, AJ Bell informed Mr M that the payment had not been made as he held insufficient funds in his drawdown account. It provided Mr M with a link to his online account so he could crystallise additional funds to be designated to his drawdown account. AJ Bell confirmed that Mr M could view the split between uncrystallised and crystallised funds in his online account.
15. Mr M told AJ Bell that, he fully converted the SIPP to a flexi-access drawdown arrangement in March 2015. So, he questioned why additional funds had to be allocated to his drawdown account. Mr M also queried the difference between crystallised and uncrystallised funds and why his money could not simply be transferred to him.
16. AJ Bell emailed Mr M and said the process of putting funds into drawdown is known as crystallising. To ensure it is done correctly, this process can take up to 10 working days. AJ Bell requested confirmation on how Mr M wanted to proceed with the most

recent income payment request, as the crystallisation process would entitle Mr M to an additional tax-free lump sum.

17. Mr M confirmed he wanted a total income payment, including the tax-free lump sum, of £4,539 and he sent the completed application form for this on 27 March 2019. AJ Bell made the payment of £4,539 to Mr M on 17 April 2019.
18. In between sending the completed application form and receiving payment, Mr M raised further questions with AJ Bell. On 16 April 2019, AJ Bell responded and said that:-
 - It apologised that Mr M was not told immediately that he had insufficient funds in his drawdown account.
 - All contributions into the SIPP are treated as uncrystallised funds, as this gives Mr M the opportunity to take a further tax-free lump sum.
 - The uncrystallised funds had to be converted into the flexible access drawdown fund before Mr M could receive an income payment from these funds.
 - When Mr M requested a payment of £4,539, Mr M only had £771.15 remaining in his drawdown fund. So, in order to take additional income, further funds needed to be crystallised.
 - Once the payment had been made, all funds in the SIPP were crystallised. If further contributions are made into the SIPP, these would be treated as uncrystallised and could be crystallised at a later date.

Mr M's position

19. Based on his research, the Financial Conduct Authority (**the FCA**) told him that:

“There are no specific rules outlining what the process should be when making income withdrawals from a SIPP. However, when a firm carries out this business, we expect it to clearly provide the relevant information that you need in order to make an informed decision. This may includes (sic) being clear, fair and not misleading about the fees charged, how long it may take, what you can expect/what the process is. If they're referencing the FCA rules, then please ask the firm specifically what rules they're referring to and I can look into that further.”
20. Despite AJ Bell denying that the SIPP is in effect two SIPPs in one, it is operated in such a way; split between crystallised and uncrystallised.

AJ Bell's position

21. All funds are held in the same scheme. The value of crystallised and uncrystallised arrangements within the SIPP are earmarked so it can establish Mr M's entitlement to tax-free lump sums and income payments. It is a notional split.
22. The Terms and Conditions of the SIPP state:

- “We will repay overpaid tax relief and interest on the amount of the overpayment on demand by HMRC from your SIPP without your further authority.”

23. The Key Features document for the SIPP states:

- “You can pay one-off regular contributions into the SIPP to take advantage of the generous tax privileges available.”
- “You can take, or crystallise, benefits from all, or only a part, of your SIPP. This will allow you to phase your benefits to suit your personal circumstances.”

24. The AJ Bell SIPP benefits guide states:

- “Once you have flexibly accessed your benefits the amount you can pay to money purchase pensions, including your SIPP, drops to £10,000.”
- “Once your pension payments have been set up, it is your responsibility to ensure that sufficient cash is held in your SIPP to fund the payments.”
- “As we cannot give you advice, we would recommend that you contact a financial adviser, or the guidance service providers, to discuss matters further.”

Adjudicator’s Opinion

25. Mr M’s complaint was considered by one of our Adjudicators who concluded that no further action was required by AJ Bell. The Adjudicator’s findings are summarised below:-

- Once Mr M took an income payment from the SIPP, his benefits were crystallised. All future contributions that Mr M made after receiving his lump sum, were known as uncrystallised funds. This is because Mr M would be entitled to receive a further tax-free lump sum from those funds. This is all confirmed in the Key Features document. So, AJ Bell is correct in stating that the funds are in one SIPP. However, Mr M’s SIPP has a notional split of crystallised and uncrystallised funds. This is a standard method across the SIPP industry and not unique to AJ Bell.
- This split allows Mr M to take advantage of the tax privileges available, which was referenced in the Key Features document. The split means Mr M can take a further tax-free lump sum from his uncrystallised funds should he wish. AJ Bell cannot know each person’s individual tax situation and, have split the fund value to maximise the potential benefits for its SIPP members, in this case, Mr M.
- It is clear that Mr M would prefer an alternative method, however, the process that AJ Bell uses, does not amount to maladministration. This is supported by Mr M’s own research with the FCA. Further, Mr M confirmed he did not receive financial advice before converting the SIPP to a flexi-access drawdown arrangement. If he

had, the financial adviser would likely have been able to explain the process to avoid any confusion.

- Mr M has also expressed concern regarding the repayment of the overpaid tax. As confirmed in the Terms and Conditions of the SIPP, AJ Bell will repay any overpaid tax directly to the member as directed by HMRC. The evidence supports AJ Bell's stance that it was following instruction from HMRC, and it was right to follow such instruction. The Adjudicator did not agree that this was maladministration.

26. Mr M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr M provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr M.

27. Mr M said that his complaint was not about AJ Bell splitting his funds into crystallised and uncrystallised funds, rather, the issue was the process in trying to access his crystallised funds. Each time he wants to access his uncrystallised funds, Mr M must complete a new application form and confirm his identity.

28. Mr M added that:-

- Based on his understanding, a tax-free lump sum is meant to be a one-off event. So, AJ Bell is exploiting a loophole by providing a legalised tax avoidance scheme.
- The Terms and Conditions, Key Features document and AJ Bells' SIPP benefit guide should have been taken from April 2015; not at today's date. So, it follows that the quote from the Terms and Conditions of the SIPP regarding the repayment of tax, was not relevant at the time of the complaint in 2017.
- His grievance regarding the tax refund was due to AJ Bell changing its method of deducting tax without informing him. Further, it should not have been his responsibility to contact HMRC for a repayment of overpaid tax.

Ombudsman's decision

29. I appreciate Mr M's concern regarding the relevance of the Terms and Conditions, Key Features document and AJ Bell's SIPP benefit guide if the relevant extracts were taken at today's date. However, AJ Bell has evidenced that these documents were the ones applicable at the time Mr M converted his SIPP to a flexi-access drawdown arrangement. So, I will refer to these when making my decision.

30. A key feature of a flexi-access drawdown arrangement means that a member is able to make withdrawals to meet their personal circumstances but can still also make one-off contributions into the arrangement. As Mr M was making additional contributions, he is permitted to receive a tax-free lump sum from these funds. This is standard practice across the industry and is not, as Mr M described, a legalised tax avoidance scheme.

31. Mr M has clarified that he is unhappy about the process of accessing his uncrystallised funds, rather than the notional split of crystallised and uncrystallised funds. When Mr M wants to access his uncrystallised funds, AJ Bell requires a new application form to be completed and for Mr M to reconfirm his identity. AJ Bell has a duty of care to its members, and the additional security steps are in place to protect those members. Further, as Mr M is accessing benefits that would be tested against his Lifetime Allowance, AJ Bell has a legal responsibility to ensure Mr M does not exceed this, otherwise, further tax charges could be applicable. AJ Bell is permitted to set out its own procedures. I do not find that there has been any maladministration by AJ Bell.
32. Mr M argues that AJ Bell's change in procedure led to his complaint regarding his tax refund in 2017. Mr M contends that it was not his responsibility to contact HMRC for a tax refund. I agree. This is confirmed in the Terms and Conditions of the SIPP that were applicable at the time of Mr M's complaint. As AJ Bell correctly refunded Mr M's tax refund, as directed by HMRC, I find that it has acted in accordance with the Terms and Conditions of the SIPP. With regard to Mr M believing that he had already received the tax fund it was for Mr M not AJ Bell to inform HMRC as AJ Bell has no authority to do so.
33. I do not uphold Mr M's complaint.

Anthony Arter

Pensions Ombudsman
28 April 2021