Ombudsman's Determination

Applicant	Mr Y
Scheme	AJ Bell Youinvest SIPP (**the SIPP**)
Respondent	AJ Bell Investcentre (**AJ Bell**)

Outcome

1. Mr Y's complaint is upheld. To put matters right AJ Bell shall pay Mr Y a sum equivalent to the loss arising from its mistake. The financial loss has been established at £10,488.94. To this sum should be added interest at the applicable Bank of England Base Rate between the date the transaction should have taken place, being 1 August 2019 and the date of settlement of this complaint. AJ Bell shall also pay Mr Y the sum of £500 for the distress and inconvenience he has suffered in pursuit of his complaint.

Complaint summary

2. Mr Y's complaint is that he has suffered a financial loss due to AJ Bell's mistake in sending incorrect transfer instructions to Nucleus. This mistake resulted in a delay, during which time the stocks he held fell in value, meaning Mr Y incurred a financial loss. Mr Y wants AJ Bell to make good his loss.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. On 24 July 2019, AJ Bell received Mr Y's SIPP Cash Transfer-in Form on which he had requested a full cash transfer from Nucleus to AJ Bell. On the form, Mr Y stated that £1,340,652 of the transfer value represented crystalised funds with the balance of £710,054 being uncrystallised funds. Mr Y had written on the form that his Nucleus pension reference number was '100240506'.

5. On 25 July 2019, AJ Bell emailed Mr Y to confirm that it had initiated the transfer process on Origo, an electronic transferring system.

6. On 29 July 2019, Nucleus rejected the Origo transfer request, informing AJ Bell that the reject was because the pension was held in two separate accounts. Further, that both their plan numbers began with an 'N'.

7. That same day, AJ Bell emailed Mr Y to relay this information to him, whereupon he telephoned AJ Bell and provided the correct reference numbers for each account.

8. Also on 29 July 2019, AJ Bell re-initiated the transfer process on Origo, providing the correct value for the crystallised funds. Nucleus accepted the crystallised funds transfer that day, disinvested that holding and placed sell trades for it on 1 August 2019.

9. However, in error, AJ Bell had provided Nucleus with the value of the uncrystallised funds as £71,054 rather than £710,054.

10. On 30 July 2019, Nucleus rejected the uncrystallised funds transfer.

11. On 1 August 2019, three business days later, AJ Bell identified the problem and re-initiated the transfer of the uncrystallised funds using the correct sum of £710,054.

12. Nucleus disinvested the uncrystallised funds holding on 1 August 2019 and placed sell trades for it on 6 August 2019. Although both tranches of funds were invested in the same assets, the value of these assets had dropped in the interval between 1 August 2019 and 6 August 2019, causing a loss to Mr Y.

13. On 19 August 2019, Mr Y complained to AJ Bell saying its error had caused him the loss and that it should put him in the position he would have been in had it transmitted correct information to Nucleus on 29 July 2019.

14. Both transfers completed on 20 August 2019 and were available to invest from 21 August 2019.

15. Mr Y subsequently reinvested his funds on 27 August 2019.

16. On 18 September 2019, AJ Bell issued its final response to Mr Y in which it set out the reasons why it was unwilling to make good his losses as follows:-

    - It acknowledged that, due to human error, it had initiated the transfer of his uncrystallised funds incorrectly, causing a delay of three working days to his transfer.

    - Its standard level of service aimed to initiate transfers within three working days of receipt. It had received the appropriate information from Mr Y on 29 July 2019 and the transfer was correctly initiated on 1 August 2019, within the three working day period expected for such a transfer. It therefore did not accept that it had caused a material delay.

    - It did not send a disinvestment instruction to Nucleus. Rather, it had sent a cash transfer instruction, since it did not have the authority to request disinvestment. Nucleus could have disinvested Mr Y's holdings at any time during the transfer process and did not require AJ Bell's transfer instruction to proceed with disinvestment.

- Accordingly, AJ Bell did not accept that it was accountable for any loss caused to Mr Y.

17. Some further correspondence ensued between the parties but AJ Bell continued to maintain its position that it was not responsible for any losses Mr Y had suffered.

Adjudicator's Opinion

18. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by AJ Bell. The Adjudicator's findings are summarised below:-

- It was noted that AJ Bell had agreed that it made an error which caused a three-day delay before the transfer of the uncrystallised funds could take place. It also acknowledged that this had caused Mr Y's financial loss. However, despite acknowledging it had caused the problem, AJ Bell contended it had no responsibility for making good any financial loss because:-
  - It had met its service level agreement by turning around the corrected transfer information within three working days;
  - It had not instructed the disinvestment and had no control over when Nucleus would place the sell trades.
- AJ Bell accepted it had caused Mr Y some distress and inconvenience, for which it was prepared to pay the sum of £500.
- The Adjudicator did not accept that AJ Bell could avoid responsibility for causing the loss on the basis that it had not breached its standard service level. The Adjudicator noted AJ Bell's point about disinvestment and subsequent sell order being the responsibility of Nucleus. However, she remained of the view that, but for AJ Bell's mistake, both tranches of funds would, more likely than not, have been disinvested and sold on the same day. She could see no material reason that would have prevented the sale of both crystallised and uncrystallised funds simultaneously, except for AJ Bell's mistake.
- She concluded that AJ Bell should calculate what the tranche of uncrystallised funds would have realised had it been sold at the same time as the crystallised funds were sold. It should subtract what was actually achieved from the nominal sum that the calculation would produce, and pay Mr Y the difference, together with interest at the current Bank of England Base Rate between the assumed date of sale, 1 August 2019, and the date of settlement of this complaint.
- The Adjudicator's view was that Mr Y was subjected to a significant amount of distress regarding his financial loss. He was also subjected to inconvenience in

the pursuit of his complaint about the manner. She concluded that AJ Bell should pay Mr Y the sum of £500 in recognition of his distress and inconvenience.

19. AJ Bell did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. AJ Bell provided its further comments which do not change the outcome. Mr Y also submitted further points in support of his position. I agree with the Adjudicator's Opinion and note the additional points raised both by AJ Bell and by Mr Y, and have summarised both parties' responses below.

20. AJ Bell responded to the Adjudicator's Opinion as follows:-

- It accepted it should pay Mr Y the sum of £500 in acknowledgement of the distress and inconvenience it had caused him. It had undertaken a calculation to understand the consequences of the delay in disinvestment which demonstrated that Mr Y had not made an overall loss.

- The net proceeds of sale on disinvestment were £10,283.50 (rounded to two decimal points for each line of stock). However, the same downwards market movements which had caused that loss was more than offset by the corresponding decrease in the cost of the investments Mr Y had purchased when he reinvested. Consequently, Mr Y had gained £6,331.71 due to the delay.

- AJ Bell concluded that Mr Y had suffered no financial loss as a result of its error. It was of the view that it was appropriate for Mr Y to have mitigated his loss by the amount of the gain that he made and disagreed with the Adjudicator's Opinion that it should compensate him for the initial financial loss.

21. The Adjudicator asked Mr Y for a fully detailed breakdown of the transactions which had been effected using the uncrystallised funds. She also asked him to further explain his position, and to demonstrate that his crystallised loss was not mitigated by a drop in the price of the new stock in the same timeframe, in the light of AJ Bell's response.

22. Mr Y responded as follows:-

- He noted that AJ Bell had finally accepted that its error had caused a loss, and that the amount of loss was "more or less agreed", his calculation being £10,488.94 using actual prices, while AJ Bell had produced a figure of £10,283.50 by rounding the fund prices to two decimal points on all lines of stock.

- He did not accept AJ Bell's argument that there was a total gain of £6,331.71 because:-

    - Had AJ Bell not made the error, there would have been a further £10,488.94 of cash available from the Nucleus transfer for him to use to purchase his new investments. This error meant that his new AJ Bell account started with £10,488.94 less than it would otherwise have done. Therefore, the loss was crystallised at the point when the transferred cash arrived with AJ Bell.

- The new investments he had made are not a directly linked set of transactions, nor are they a mirror image, either in scale or indeed in fund name as the funds in AJ Bell's error calculation. Rather, they are a result of a separate set of investment decisions made by him from the cash transferred to his new AJ Bell account. This cash should have been £10,488.94 greater and AJ Bell should not be allowed to utilise his non-connected investment gain to mitigate their error.

23. Following these responses from the parties, the Adjudicator reviewed the matter again, and informed Mr Y that mitigation of financial loss was a well-established concept and that an Ombudsman might consider an award for the financial loss would represent over-enrichment, which was not an outcome the Pensions Ombudsman Service would normally endorse.

24. Mr Y wrote again to the Adjudicator and said:-

- He had always intended to liquidate his Nucleus holdings when he set up the SIPP because of market volatility, hoping prices would continue to fall, and he would be in a position to invest from cash and thus would gain from market volatility.

- If he had stayed in cash longer, and not reinvested, AJ Bell would have no mitigation to contend, and would therefore have to compensate him for their error. He was never going to stay in cash forever, and is struggling to understand why good investment timing is counting against him.

- No-one disputes that the value of the cash transferred from Nucleus should have been in excess of £10,000 higher but for AJ Bell's error. AJ Bell's argument for mitigation is based on the fact that there was a delay which prevented him from investing on the 22nd August 2019 and that he had to wait until 27 August 2019 before investing. AJ Bell's contention is that having to wait until that date meant prices had moved in his favour and therefore wiped out the loss and generated a profit of around £6,000. However, there was no such delay preventing him from trading until 27 August 2019. He could have traded from any point after the cash arrived in his account. He chose to wait until 27 August as he decided that was the most propitious time to effect the trades.

- He also asked why AJ Bell was using the arbitrary comparison starting point of 22 August 2019, when the cash was actually received on 20 August 2019.

- If the aim is to put him back in the position he would have been in but for AJ Bell's error, then he should be paid the sum of £10,488.94. AJ Bell's argument was "convenient" but there was no delay in reinvesting, as it was always going to be his choice of when to go back into the market. His situation was not enriched because he should have had the £10,488.94 in the first place. Instead, he has suffered a loss of that amount due to AJ Bell's error.

25. AJ Bell's further points in response to the Adjudicator:-

- AJ Bell says that but for its error, Mr Y would have carried out his trades on 22 August 2019 when unit prices would have been higher than they were on 27 August 2019, the date Mr Y purchased his new holdings. AJ Bell contends that these dates were the inevitable dates on which Mr Y would have had to carry out his trades. The unit prices were lower on 27 August 2019, meaning that, although he had around £10,000 less with which to make his new stock purchases, Mr Y benefitted from the price movements to the extent of covering the loss and of gaining an additional £6,331.71.

- AJ Bell agrees that it did cause a loss through the mistake regarding the disinvestment but it contends that the loss was a consequence of market movements and that had these market movements not been in play there would be no loss to consider. Therefore the market movements are central to the discussion about whether or not detriment has occurred.

- It agrees that its error caused a delay in disinvestment and therefore less cash was available to invest. It strongly disagrees with Mr Y’s contention that the investments subsequently made by Mr Y are irrelevant. AJ Bell is of the view that it is not reasonable to say that only the sale of the assets and not the subsequent purchases should be considered.

- Further, it contends this methodology of determining financial impact upon an Applicant is commonplace in the financial services industry, and is recognised to be a fair method of calculation by both the Pensions Ombudsman Service and the Financial Ombudsman Service. AJ Bell does not accept it should make good the initial loss of £10,488.94 because Mr Y’s subsequent actions have more than mitigated the loss.

Ombudsman’s decision

26. My role is to consider complaints of maladministration causing the Applicant financial injustice. Where maladministration is found my objective would be to put the Applicant, as far as possible, into the position they would have been had the maladministration not occurred. Both sides agree that AJ Bell made an error, and that this error resulted in the SIPP receiving approximately £10,000 less than it would have done had the error not been made.

27. The question then becomes, was the extent of loss crystallised when the cash went into the SIPP? Alternatively, was that only the first step in a pre-planned disinvestment and reinvestment exercise at a fixed point in time, thus providing an opportunity for mitigation of any loss?

28. Mr Y believes the loss was crystallised when the cash arrived in his new AJ Bell account and anything he did after that does nothing to mitigate this loss. He would have started out with £10,488.94 more with which to buy his new stock, had AJ Bell not made the error that caused the problem in the first place.

29. I have carefully considered what both sides have to say on the matter of whether AJ Bell should compensate Mr Y for a loss it agrees it created, or whether the loss has been fully mitigated by Mr Y's subsequent investment decisions. I have also considered whether AJ Bell's calculation or that of Mr Y should be used in relation to making good any financial losses.

30. Having done so, I conclude that, while it is appropriate to consider mitigation in many cases, in this case, it should not be used to absolve AJ Bell of responsibility for its mistake. Further, the sum that should be used in reckoning the amount of financial compensation that is due should be the actual figures as calculated by Mr Y, rather than the rounded figures produced by AJ Bell.

31. As Mr Y has explained, he was not bound to trade on any specific day, and I find that AJ Bell's mistake did not influence the date he selected, as it has suggested in its submissions. Rather, his purpose in disinvesting and going into cash prior to transfer was a deliberate move so that he could take advantage of the prevailing investment conditions. That would have involved leaving the funds in cash until such time as Mr Y adjudged the time to be most advantageous for entering the market again. Further, he was not planning to disinvest and then reinvest in the same funds. Rather, he was always planning to invest in new stock following the transfer from Nucleus to AJ Bell.

32. I agree with Mr Y's contention that, but for AJ Bell's error, he would have started out with £10,488.94 more in his AJ Bell cash account with which to acquire his new stocks. Regardless of the price of stock that he then acquired, nothing mitigates that loss. It is the case that, with unit prices being lower on the date Mr Y purchased his new lines of stock, he gained more units overall. Nevertheless, if the loss created by the mistake had not occurred, Mr Y would have had a further £10,488.94 with which to purchase stocks, and would therefore have obtained an extra £10,488.94's worth of units, had AJ Bell not made the initial error.

33. Having considered the issues in this matter, I uphold Mr Y's complaint.

Directions

34. Within 28 days of the date of this Determination, AJ Bell shall pay Mr Y the sum of £10,448.94 together with interest at the applicable Bank of England interest rate between the date the transaction should have occurred, being 1 August 2019, and the date of settlement. Additionally, also within 28 days of the date of this Determination, AJ Bell shall pay Mr Y the sum of £500 in respect of the distress and inconvenience he has suffered in the pursuit of his complaint.

Anthony Arter CBE
Deputy Pensions Ombudsman
13 March 2023