

## Ombudsman's Determination

Applicant	Mr N
Scheme	AJ Bell Platinum SIPP ( <b>the SIPP</b> )
Respondents	A J Bell

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by A J Bell.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N is unhappy with the administration fees AJ Bell has charged the SIPP. He says that his transfer value should not be reduced to pay for the scheme sanction charges (**SSC**) plus the interest accrued. Mr N also says:-
  - Leading up to the sale of the property held within the SIPP, he was not told there were outstanding fees to be paid.
  - The statements provided did not allow him to calculate the outstanding balance of the fees.
  - He considered that the rent from the property had covered the fees and, had he known there was an outstanding balance, he would have delayed the sale until such time as the fees were paid.
4. In order to put matters right, Mr N would like AJ Bell to compensate him as follows:
  - By reducing the fees charged for the previous 14 years.
  - As a result of not having sufficient information available about the fees payable, and for believing the rent paid had cleared the outstanding balance of fees, he sold the property some 6 to 12 months earlier than he would otherwise have done. He considers the misinformation has cost him between £4,000 and £5,000, but feels that a payment of £4,500 by AJ Bell would be a fair settlement.

- He also requests a payment for the distress and inconvenience caused for his efforts in obtaining the information AJ Bell should have provided without being asked.

## Background information, including submissions from the parties

5. Mr N's SIPP was set up on 28 November 2002, and he signed a Terms of Business Agreement (the **Agreement**), which included the following term:

"A schedule of fees is attached to this letter and fees will be deducted in accordance with this schedule unless advised otherwise. The fee schedule will be updated, normally on an annual basis".

Mr N also signed the following declaration:

"I hereby agree to abide at all times by the above terms and conditions which will remain in force until superseded in writing. I also agree to abide by any reasonable requirements imposed on me in my capacity as a trustee of the [x] SIPP".

6. On 18 July 2003, Mr N purchased a property, to be held within the SIPP. By 1 January 2004, a connected party tenant occupied the property.
7. Section 7 of the 'SIPP Property Notes' included the following terms:

"The property manager chosen by you will be responsible on behalf of the trustees for the management of the property and in particular for the collection of rent and ensuring that the terms of the lease are being adhered to. We strongly suggest that unless you have specialist property knowledge that you appoint a third party property management company to carry out these duties.

...

We have an obligation to HMRC to monitor that all rent is received when due and the trustees must enforce the terms of the lease at all times, particularly if the tenant is connected. If rent is in arrears then we will be obliged to seek recovery on behalf of the trustees by whatever methods are deemed appropriate.

Unless we specifically appoint an agent to collect the rent on the trustees' behalf then the rent must be paid directly into the main trustees' bank account.

Where the landlord and the tenant are connected and rent is not being paid in accordance with the terms of the lease, this will be an unauthorised payment as defined in the Finance Act 2004. If an unauthorised payment is made by your SIPP, HMRC will impose a tax charge on you personally of between 40% and 55% of the unauthorised payment. In addition, a scheme sanction charge of between 15% and 40% will be imposed on your SIPP by HMRC. As Administrator of your SIPP we are required to report to HMRC any unauthorised payments made."

8. Under Section 1.3 'Application and membership' of the Terms and Conditions, it reads:

"On becoming a member you agree to be bound by the terms of the Agreement and the Scheme Rules, as amended from time to time... In the event that an Unauthorised Payment is made in respect of your SIPP, you agree to us deducting from your SIPP the amount of any scheme sanction charge, or other charge, levied by HMRC on AJ Bell in order that we may pay that charge to HMRC. If there are insufficient funds held in your SIPP, you agree to pay to us the amount by which the charge exceeds that value of your SIPP in the event that HMRC pursues us for this amount or to pay the outstanding amount direct to HMRC".

Section 4.1 relating to 'AJ Bell fees and adviser charges', it is advised:

"Fees will be payable as described in the terms of business letter and fee schedule attached to these terms and conditions".

Section 4.6 confirms:

"You are responsible for ensuring that there is always sufficient cash available in the SIPP Account to pay Fees, Adviser Charges and other charges due in relation to your SIPP when due..."

9. Mr N also signed a 'Resolution', on 11 August 2003, appointing himself as the nominated property manager in respect of the property held within the SIPP. The Resolution listed the duties for which Mr N was responsible as the property manager, including:

"Ensuring rent is paid within the terms of the lease or tenancy agreement.

...

Ensuring at all times that there is sufficient cash in the Trustee bank account to service any loans and meet administration and professional expenses"

10. AJ Bell said that rent was not paid in accordance with the Agreement, and the non-payment of rent from a connected party tenant is classified as a payment that does not meet conditions of authorised payments. Therefore it is considered an Unauthorised Payment (**UAP**).
11. On 29 March 2007, AJ Bell held a meeting with Mr N to discuss the potential UAP for the unpaid rent. As a follow up to the meeting, AJ Bell confirmed to Mr N that a tax charge of 40% of the value of the unpaid rent would be payable by Mr N via his self-assessment tax return. As the scheme administrator, AJ Bell would also be liable to a 15% charge which would be recovered from the SIPP's assets.
12. On 18 February 2008, AJ Bell wrote to Mr N confirming that the UAP had been reported to HMRC, in light of rent not being paid since December 2004. I shall refer to this as the **06/07 UAP**. AJ Bell also confirmed that due to the additional administration

work involved in the reporting the 06/07 UAP and rental arrears, an additional fee of £1,000 plus VAT had been applied. At this time, the total outstanding fees amounted to £5,834.98 including VAT.

13. On 21 July 2008, the outstanding fees had increased to in excess of £6,600.
14. On 11 December 2008, AJ Bell wrote to Mr N, regarding a potential UAP for the tax year 6 April 2007 and 5 April 2008 (the **07/08 UAP**). AJ Bell requested that the rent be paid otherwise it would be required to report the 07/08 UAP to HMRC by no later than 31 January 2009. Because the outstanding rent had not been paid, the 07/08 UAP was reported to HMRC on 24 February 2009.
15. By 9 February 2010, some rent began to be paid but it was not sufficient to cover all of the outstanding fees.
16. On 28 November 2011, AJ Bell confirmed the outstanding balance was £4,887.20 plus VAT.
17. On 6 December 2011, AJ Bell emailed Mr N in respect of the outstanding UAPs, and the options going forward. In summary, the email stated:
  - The UAP for the tax year ending 5/4/2007 was £14,583 and the UAP for the tax year ending 5/4/2008 was £5,000.
  - “..the SIPP has been unable to settle its SSC (between 15% and 40% of the Unauthorised Payments together with late payment interest)”.
  - He should let AJ Bell know whether the present tax liabilities had been resolved, and if so, to present evidence supporting this.
  - There were a number of business companies connected to Mr N which had use of the property.
  - Mr N was personally liable for the UAPs.
18. On 11 January 2012, AJ Bell asked Mr N to confirm whether he had settled the outstanding UAP charges via his self-assessment tax return. It also confirmed the rent being received was sufficient to pay fees in some months, but not others. There was a further detailed explanation from AJ Bell confirming how the outstanding fees against the actual rental income received had been calculated.
19. By 25 October 2012, the outstanding balance of fees totalled £6,357.90 including VAT.
20. A meeting took place on 12 July 2013 between AJ Bell’s property consultants and Mr N. It was later confirmed the outstanding fees were around £6,500 plus VAT, and the consultancy fees were £3,000 plus VAT. At this time, AJ Bell offered to reduce the ongoing administration fees by £27.60 plus VAT per month. A comparison of the previous and revised monthly fees are shown below:

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<b>Fee</b>	<b>Previous</b>	<b>Revised</b>
SIPP Administration	£53.20 + VAT	£40.00 + VAT
Property Administration	£39.80 + VAT	£30.00 + VAT
Income Drawdown	£19.60 + VAT	£15.00 + VAT
<b>Total</b>	<b>£112.60 + VAT</b>	<b>£85.00 + VAT</b>

21. A further meeting took place, where Mr N met with a SIPP consultant on 20 May 2015. A follow up email was sent on the same day to Mr N, confirming that as a gesture of goodwill, the fees had been reduced by a total of £27.60 a month, backdated to June 2013, which amounted to a saving of nearly £1,000 plus VAT over the last three years. AJ Bell also confirmed the rate of fees and wrote “all of the above are subject to VAT, and are being cleared by the ongoing rental payments...”
22. The file note produced following the meeting, dated 1 June 2015, confirms that:-
- Mr N was unhappy with the service he had received from AJ Bell, and the administration and property teams were not aware of ‘grumbles or known issues’.
  - He appeared generally unhappy with the situation as a whole, and commented that if he were able to turn back time, he would not have set up a SIPP or purchased the property.
  - The role of AJ Bell as a Trustee and Administrator of the SIPP was explained, and that AJ Bell were not financial advisors or property managers.
  - Mr N gave a brief background to the property purchase and the ‘run of bad luck’ with tenants and issues regarding the property. However, for the past 18 months, there was an unconnected tenant paying rent at £450 per calendar month.
  - The only assets within the SIPP were the property and a nominal cash balance of £100, and the rent was being used to cover outstanding fees owed to AJ Bell.
  - Mr N enquired why fees were being charged although there had not been a tenant for several years. AJ Bell confirmed that fees would continue to accrue during periods where there was no tenant.
  - There was a discussion around lower cost products and Mr N was advised to seek guidance on his options with a financial advisor.
23. On 16 October 2015, the property within Mr N’s SIPP was sold, and proceeds of £84,483.96 were paid into the SIPP’s cash account.

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24. On 2 November 2015, £4,584.64 was deducted from the SIPP to cover the outstanding administration fees and property sale fees.
25. In February 2016, Mr N emailed AJ Bell to query why the balance of his SIPP was lower than he expected, and requested a review of the fees because he felt that they were too high. AJ Bell responded that the fees had been reduced in 2013, and had not been increased in 2014 as per the Terms of Business. AJ Bell's position remained that the rent received did not cover all outstanding fees, and were paid once the funds became available.
26. On 10 March 2016, AJ Bell wrote to Mr N regarding the 06/07 and 07/08 UAPs which remained outstanding, due to there being insufficient funds available to cover these until the property had been sold. AJ Bell asked Mr N to confirm whether he had reported the UAPs on his self-assessment tax return.
27. On 12 March 2016, Mr N asked for clarification of the fees charged on 4 September 2011. It later transpired AJ Bell had, in error, duplicated the property administration fee on 4 September 2011. On 4 April 2016, the monthly administration fee for March 2016 was reduced to £19.56 to account for the duplicated fee from 4 September 2011.
28. Between 17 March 2016 and 23 March 2016, further communications were exchanged between Mr N and AJ Bell. An agreement could not be reached, and Mr N's concerns were reviewed under AJ Bell's formal complaints procedure.
29. AJ Bell responded with its final response letter dated 24 April 2016. In short, it explained:
  - The fee schedule of 28 November 2002 stated "the basic annual administration fee is payable monthly in advance and unless otherwise agreed, will be deducted directly from the Trustee's bank account".
  - Fees would be reviewed annually to reflect changes in National Average Earnings and fees for additional services would be taken from the Trustee's bank account directly.
  - It acknowledged that the communications regarding the outstanding fees could have been more frequent in recent years, but said that AJ Bell had made Mr N aware that outstanding fees were due on his account.
  - AJ Bell asked Mr N to confirm whether the 06/07 and 07/08 UAPs had been reported to HMRC via his self-assessment tax return.
30. Mr N's position is:
  - There was no mechanism to calculate outstanding fees, as he had no regular information available to him upon which to base the figures on.

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- In the fourteen years the SIPP had been operating, there have been only five occasions where AJ Bell mention the amount of outstanding fees.
- In the email from the property consultant of 20 May 2015, he confirms the fees were being 'cleared off'.
- Had he been able to estimate the amount of outstanding fees, he could have delayed the sale of the property to ensure the fees were settled, but the correct information was only sent to him after the sale had taken place. This information should have been available before the sale of the property.
- He asked for a reduction in fees because there was little activity on AJ Bell's part when no rental payments were being received.

31. During the investigation, a significant amount of information and supporting documents, other than those mentioned above, were exchanged between all parties. The Adjudicator had been provided with copies of all fee schedules dating back to 2002, an explanation of how both UAP's were calculated, emails chains and various account statements.

32. AJ Bell confirmed the UAP's as:

### 2006/07

- Unauthorised payment - £14,583
- Tax charge payable by Mr N personally - £5,833.20 (40%)
- Scheme Sanction Charge payable by the SIPP - £2,187.45 or £5,833.20 (15% or 40%). The scheme sanction charge is reduced from 40% to 15% once Mr N has paid his personal tax charge.

### 2007/08

- Unauthorised payment - £5,000
- Tax charge payable by Mr N personally - £2,000 (40%)
- Scheme Sanction Charge payable by the SIPP - £750 or £2,000 (15% or 40%). The scheme sanction charge is reduced from 40% to 15% once Mr N has paid his personal tax charge.

AJ Bell confirmed that interest would continue to accrue on the outstanding SSCs.

33. During the investigation, Mr N provided evidence from HMRC that his tax liabilities in respect of the UAP's had been settled. On that basis, AJ Bell agreed that the SSC for the:

- 06/07 UAP would be reduced from 40% to 15% - £2,187.45
- 07/08 UAP would be reduced from 40% to 15% - £750.

34. Therefore, the outstanding SSC Mr N needed to pay to settle the matter was £2,937.45, plus interest. AJ Bell confirmed that “a scheme sanction charge is always due in the event of a UAP. The scheme sanction charge is a scheme liability paid by the scheme in addition to the personal tax charge a customer must pay, and as per our Terms and Conditions the amount of scheme sanction charge is deducted from the customer’s SIPP. The maximum, scheme sanction charge is 40% of the UAP, and is reduced to 15% if the customer resolves their personal tax liability”.
35. Mr N disputes that any further monies are due in respect of the 06/07 and 07/08 UAPs.

## **Adjudicator’s Opinion**

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

### **Fees**

- Setting the tariff of fees for the administration of the SIPP is a commercial decision which AJ Bell is legitimately able to take.
- The statements could have highlighted the total outstanding balance of fees due, to provide absolute clarity on what remained to be paid by Mr N.
- In signing the Terms and Conditions, Mr N agreed to be bound by the terms set out and therefore pay the fees charged by AJ Bell as shown on the fee schedule, which was updated periodically.
- AJ Bell has generally charged Mr N the correct fees for activities undertaken for the SIPP in accordance with those specified on the appropriate fee schedules. AJ Bell was entitled to charge additional fees for the work carried out in relation to the non-payment of rent and reporting the UAP’s. AJ Bell is not obliged to meet Mr N’s request to reduce the fees where there was no rent being paid because it continued to administer the SIPP and undertake activities connected to the non-payment of rent.
- There was no obligation for AJ Bell, as a gesture of goodwill, to have previously reduced the fees, backdated to June 2013, saving Mr N around £27 a month.

### **Mr N’s responsibilities in relation to the SIPP**

- By signing the Resolution agreement, Mr N consented to being appointed as the property manager and to carry out all the duties associated with managing the property and tenants, including collecting rent, ensuring the terms of the leases or tenancy agreement are followed and ensuring sufficient cash was available in the SIPP to cover ongoing fees.



- Section 7 of the SIPP Property Notes clarified the duties for which the property manager would be responsible.
- AJ Bell stated that unless the member had specialist property knowledge, a third party or professional property management company ought to be appointed to carry out the duties on the member's behalf.
- Mr N did not appoint a third party as the property manager, and therefore the onus to carry out the duties as a property manager fell on him. The rent arrears, and the subsequent UAPs, cannot therefore be attributable to maladministration on AJ Bell's behalf. The responsibility of carrying out the duties for ensuring regular rental income from tenants of the property and ensuring sufficient funds in the SIPP lay with Mr N.

**Mr N's liability to pay the 15% SSC on the 06/07 and 07/08 UAPs**

- HMRC allows for commercial properties to be held within SIPPs, providing advantages from both a tax and retirement savings perspective. In Mr N's case, the property was occupied by a 'connected' party, his son, in respect of a business he managed from the property.
- The holding of the property within the SIPP will only be a suitable investment if rent is paid, thus providing an investment return. The non-payment of rent is considered as an unauthorised payment and incurs a number of tax charges payable to HMRC.
- The first of the charges is the unauthorised payment charge, which is 40% of the unauthorised payment itself, i.e. the total value of the rent not paid. Mr N has produced sufficient evidence to show that his personal liability for the 40% unauthorised payment charge has been settled with HMRC.
- The SSC charge has been reduced to 15% of the total unauthorised payment, to reflect that the unauthorised payment charge has been settled.
- In accordance with the Terms and Conditions of the SIPP, the collection of rent was a duty for which Mr N was responsible as the nominated property manager. The level of responsibility attached to Mr N's role in connection with his SIPP including ensuring there was a sufficient level of funds available to cover fees was paramount. There was an issue in that the occupiers of the property were unable to pay rent. However, the non-payment of the rent, and the associated tax charges incurred, were not caused by errors or maladministration by AJ Bell.
- The outstanding arrears should be deducted from the funds available in the SIPP, following the sale of the property.

36. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.
37. In response to the Adjudicator's Opinion Mr N says:-
- AJ Bell has charged in excess of £18,000 fees for providing a service. The fees have now been paid but the service provided was lacking. It is correct that the issue with tenants paying rent or the state of the property was never AJ Bell's responsibility but it was charging high fees to provide a service which lacked basic information. The statements he received did not reflect the true financial position and did not allow him to calculate the outstanding balance due.
  - There was no responsibility for AJ Bell to collect the rent but it did have a duty to advise when rent was not paid and equally when it was paid. In 12 years AJ Bell only mentioned overdue fees when rent was not paid but never when the rent was paid.
  - The AJ Bell property consultant said that an arrangement had been made with HMRC in relation to the 06/07 and 07/08 UAP's. HMRC have made it clear there is nothing further due and have informed AJ Bell via its letter dated 18 May 2017 that the matter is time barred.

### **Ombudsman's decision**

38. Mr N's complaint is essentially about the administration fees AJ Bell has charged the SIPP. There are three distinct strands to this complaint. The first being that Mr N is of the view that AJ Bell have not provided the level of service he would expect for the amount that have been charged. He says that AJ Bell have charged in excess of £18,000 of fees to provide a service which, he says, lacked even basic information. He says that at no time since the start of the SIPP have AJ Bell produced a statement that reflected the true financial situation.
39. Mr N considers that AJ Bell ought to have provided more information regarding the tariff of fees in relation to the SIPP. It is unclear what more information Mr N might have required. The fee schedules provided by AJ Bell clearly set out the amount that will be charged in relation to the establishment and administration of the SIPP, the charge for income withdrawal and the costs associated with the purchase, administration and sale of a property purchased by the SIPP. In the notes to the fee schedules it is stated that "The above fees do not include any allowance for consultancy services or attendance at meetings. Such additional services will be subject to our prevailing hourly charge our rates that can be provided upon request."
40. Had any of the information in the fees schedules been unclear to Mr N he could, and should, have requested clarification. Likewise, Mr N could have contacted AJ Bell for further information at any point since 2004 if the statements he received did not

provide sufficient information to be able to assess the current financial position of the SIPP. AJ Bell cannot be expected to answer questions that have yet to be asked.

41. Mr N considers that fees amounting to £18,000 is excessive. I have seen no evidence to support this argument. £18,000 over the lifetime of the SIPP averages at around £1500 a year. The basic administration fees in 2003 amounted to around £840 per year, rising to around £1300 a year by 2011. Taking into consideration the additional fees for the work carried out in relation to the non-payment of rent and reporting the UAP's I do not consider the fees to be excessive.
42. The second issue concerns Mr N's responsibilities in relation to the SIPP. Mr N consented to being appointed as the property manager and to carry out all the duties associated with managing the property and tenants. This included collecting rent, ensuring the terms of the leases or tenancy agreements were followed and ensuring sufficient cash was available in the SIPP to cover ongoing fees.
43. Although Mr N accepts he was responsible for collecting the rent from the property he says that AJ Bell should have mentioned the overdue fees as a result of non-payment of rent more often. Whilst I agree that AJ Bell should have been in regular contact with Mr N over the non-payment of fees I cannot see that any failure to do so necessarily caused Mr N any loss or harm. Mr N was responsible for ensuring regular income from the tenants of the property and ensuring sufficient funds were in the SIPP to meet the fees due to AJ Bell.
44. The third issue is whether Mr N is liable to pay the 15% SSC, plus interest, on both the 06/07 and 07/08 UAPs. Mr N submits that HMRC has made it clear that there is nothing further to be paid and AJ Bell have been informed of this.
45. UAP's have to be reported to HMRC by the scheme administrator of a registered pension scheme. Where a UAP arises, the member is required to declare the payment on his/her personal tax return and a charge equal to 40% of the payment will be payable as a freestanding tax charge as part of his/her personal tax liability. In addition, a SSC equivalent to 40% of the UAP will also be payable from the member's scheme. This can be reduced to 15% if the member can provide evidence to the scheme administrator that he/she has paid the personal liability himself/herself.
46. The letter, dated 18 May 2017, from HMRC provides the evidence to show that Mr N's personal liability for the 40% unauthorised payment charge has been settled. However, that letter relates only to Mr N's personal liability. The SSC still remains to be paid. The scheme administrator, in this case AJ Bell, must report an unauthorised payment to HMRC. HMRC will work out the amount of tax due and will then send the scheme administrator an assessment of the tax due. The payment date for the tax is 30 days following the issue of the assessment notice. Late payment penalties become payable if the tax still has not been paid 30 days after the due date. Interest will be charged if the SSC is not paid by 31 January following the tax year in which

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the charge arose. AJ Bell is therefore permitted to deduct the SSC, plus interest from the remaining funds within the SIPP.

47. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
6 October 2017