

## Ombudsman's Determination

Applicant	Mr S
Scheme	AJ Bell SIPP ( <b>the SIPP</b> )
Respondents	AJ Bell Management Limited ( <b>AJ Bell</b> )

## Outcome

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

## Complaint summary

3. Mr S's complaint against AJ Bell is about its poor service, negligence, maladministration and misconduct.

## Background information, including submissions from the parties

4. As a member of the SIPP, Mr S had a SIPP account and a dealing account with different reference numbers. On 20 July 2016 Mr S sent AJ Bell a cheque for £8,640 "to be paid into my account". His covering letter had a heading which read "Pension payment £8,640 net" and quoted the account reference for his dealing account, not his SIPP account.
5. The following day AJ Bell confirmed to Mr S that it had banked the cheque and asked him to complete a "Dealing Account Additional Payment Form".
6. On 25 and 28 July 2016 Mr S queried this request, and said that the money had not been received by the SIPP as required. AJ Bell replied that the funds would be cleared to the dealing account, as mentioned in his instructions, but would then be re-credited to the SIPP account; in the circumstances AJ Bell would allow him to place deals in the SIPP before then.
7. Mr S complained on 3 August 2016 that the funds were still not in the SIPP. AJ Bell replied that the funds would be available in the next two or three working days. Mr S contacted AJ Bell again to confirm the deals he wished to place, but he ended the telephone call before the deals could be executed.

8. On 4 August 2016 AJ Bell told Mr S that the dealing account withdrawal had been processed. The contribution was correctly credited to the SIPP on 5 August 2016.
9. On the same day Mr S raised a complaint about the payment into the dealing account and being unable to make any deals on 3 August 2016. He requested compensation.
10. AJ Bell's acknowledgment letters of 9 August and 2 September 2016 were incorrectly addressed, so Mr S did not receive them.
11. AJ Bell offered Mr S seven trades free of its normal dealing charges as an apology for any inconvenience caused, but Mr S rejected the offer and requested £150 to be paid to his dealing account to settle his complaint.
12. In September 2016 AJ Bell re-sent to Mr S the two letters that had been addressed wrongly.
13. AJ Bell's formal response to Mr S's initial complaint was sent to him on 23 September 2016. It apologised for not seeking clarification of his contribution instructions in July 2016 and repeated its offer of seven deals free of dealing charges.
14. On 11 October 2016 Mr S sent a complaint to AJ Bell's chief executive officer. Mr S asked for a payment of £250 "for my time and unnecessary wasted time dealing with your untrained employees".
15. On 9 November 2016 Mr S asked AJ Bell to refund his contribution of £8,640, and said he was arranging to transfer to another pension provider. He asked to be unsubscribed from AJ Bell's email communications.
16. On 11 November 2016 AJ Bell explained that it was unable to refund the contribution made to the SIPP, because that would breach HMRC's strict rules about refunds of contributions: it was not an excess contribution or a genuine error. AJ Bell confirmed that it had turned off all email notifications apart from those relating to corporate actions and product updates.
17. Mr S asked for AJ Bell's future correspondence to be sent to him by post.
18. On 17 November 2016 AJ Bell said it did not uphold Mr S's latest complaint, repeating that it could not make a refund of his contribution.
19. On 3 January 2017 Mr S complained to AJ Bell that it had refused to agree to the compensation offer he had suggested, and he repeated his request for a refund of his contribution, citing the rules of the Financial Conduct Authority (**FCA**) on "Treating Customers Fairly" and alleging gross negligence and maladministration by AJ Bell.
20. On 27 January 2017 AJ Bell's customer services manager emailed Mr S to say that due to the wording of Mr S's recent complaint and his previous correspondence it had become clear that its investment platform was no longer suitable for Mr S's needs. AJ Bell asked Mr S to transfer his business to an alternative provider, saying that it would waive its usual transfer-out charges.

21. When AJ Bell received another cheque from Mr S on 6 February 2017 it told him that the cheque would be returned. AJ Bell asked Mr S to make arrangements to transfer elsewhere.
22. On 21 February 2017 AJ Bell wrote again to Mr S, itemising their main correspondence since August 2016 and not upholding his further complaint.
23. In a letter dated 2 March 2017 AJ Bell confirmed its request that within 30 days Mr S should initiate a transfer of his account to another provider. The letter quoted AJ Bell's terms and conditions on termination and suspension (see Appendix hereto).
24. On 29 March 2017 Mr S wrote to AJ Bell's chief executive officer (**CEO**), refusing to transfer out until a full transfer audit was carried out, which he said the FCA required.
25. On 30 March 2017 Mr S sent AJ Bell a company cheque for £2,000 to be paid into the SIPP.
26. AJ Bell wrote back to Mr S on 3 April 2017, referring to its letter of 2 March 2017 and stating that it would return the latest cheque as it had already asked Mr S to transfer his account elsewhere. AJ Bell returned the cheque and extended the 30 days' notice period to 28 April 2017.
27. Mr S complained again about AJ Bell's service, and on 20 April 2017 AJ Bell replied that:

"Having reviewed your further comments, it is clear that the relationship between you and AJ Bell has reached the point where it would be in the best interests of both parties for you to transfer your pension to another provider. In light of which, if you have not commenced that process by the deadline we previously set of 28 April, we will then need to impose restrictions on your access to your account."

AJ Bell explained that this was permitted under its terms and conditions (see Appendix hereto).

28. AJ Bell also sent a letter to Mr S on 24 April 2017, to explain why it had not accepted the company cheque.
29. On 26 April 2017 AJ Bell's CEO wrote to Mr S to remind him of the letters dated 2 March and 3 April 2017, saying that all the complaints had been investigated. The letter also said:

"You have over the years complained about our service on more occasions than I can care to remember. Whilst I have never reached this point before with any of our customers, I have reluctantly concluded that it would be best all-round if you transferred your benefits to another provider who can service your needs as you require."

If you have not commenced a transfer out process by 28 April we will contact you again with the action which we will be forced to take. You mention that you have spent much time on this issue, I have been aghast at the amount of time that my teams have been working on this and this needs to stop. It is not good for you or us.

As we have requested, please arrange to transfer to a new provider as we cannot continue supporting this effort.”

30. On 8 May 2017 AJ Bell’s managing director wrote to Mr S to say that in accordance with its terms and conditions it would be suspending online access to his account on 15 June 2017 if by then it had not received his instruction to transfer out.
31. In a letter dated 31 May 2017 AJ Bell’s chief risk officer told Mr S that his formal complaints had been thoroughly investigated and answered, and appropriate compensation had been offered to him. The letter concluded:

“As referred to in Mr Bell’s letter to you of 26 April 2017, you have complained about our service on numerous occasions. Whilst we have never reached this point before with any of our customers, we have reluctantly concluded that it would be best all round if you transferred your benefits to another provider who can service your needs as you require. Therefore, please provide us with details of your new SIPP provider by 15 June and we will then arrange to complete the transfer to them as soon as possible and will waive our usual transfer charges.”
32. On 6 June 2017 Mr S sent AJ Bell a form requesting an income drawdown of £10,500. AJ Bell replied on 8 June 2017 that it could not accept the form as Mr S had completed the tick boxes to say that he had not considered the risks of making that withdrawal, and wrote on the form that he was being advised by a director of AJ Bell to find another provider. AJ Bell also said:

“To reiterate, we are not encouraging you to remove money from your SIPP. We are insisting that you move your SIPP to another provider, and I must remind you that if you do not initiate a transfer to another provider by 15 June 2017, we will suspend all access to your account. This means that you will not be able to log in, place deals either online or over the phone, or otherwise manage your account.”
33. Mr S sent another complaint letter to AJ Bell’s chief executive officer on 11 June 2017, saying that AJ Bell employees were unable to follow instructions.
34. AJ Bell’s customer relationship director replied in a letter dated 16 June 2017, saying that he had confirmed to Mr S by email the day before that access to Mr S’s account had been suspended, in accordance with notice given under clause 17.2 of AJ Bell’s terms and conditions (see Appendix hereto), and he should transfer to another SIPP provider without delay. An up to date valuation was attached, to assist Mr S in making a transfer out.

35. On 20 June 2017 Mr S sent AJ Bell a subject access request regarding its transaction costs and expenses. AJ Bell replied that it would not be able to provide much of the information requested because it did not fall within the subject access requirements and his account had been suspended. AJ Bell repeated that it required him to transfer out.
36. On 6 July 2017 we accepted Mr S's complaint for investigation.
37. AJ Bell accepted Mr S's telephone instructions on 25 July 2017 to sell some of the SIPP investments.
38. On 1 August 2017 Mr S made a request to transfer £25,000 to Point on York, another SIPP provider. AJ Bell replied that in the circumstances it could only accept a full transfer instruction.
39. AJ Bell provided its formal response to the complaint to us on 15 August 2017. It said that its terms and conditions permitted the withdrawal of services and refusal of contributions; some of Mr S's allegations about AJ Bell were similar to those he had made in 2015 when he was working as a financial adviser ; the company had acted fairly and reasonably to attempt to resolve his complaints; it had made a decision that it had never had to make before, to require Mr S to find an alternative SIPP provider, as it was clear that the service it offered him was not suitable for his needs; Mr S was given ample opportunity to terminate the relationship amicably; instead of seven free trades (which Mr S had not accepted) the company would be willing to pay him the monetary equivalent; Mr S's comments had become increasingly derisory and confrontational when communicating with AJ Bell's staff, and this prohibited restoring a working relationship.
40. Mr S said that in refusing to accept his instructions AJ Bell was acting petulantly and incompetently.
41. Mr S then had some further correspondence with AJ Bell. On 23 August 2017 AJ Bell sent him his portfolio valuation and a cash statement. On 14 September 2017 AJ Bell sent him an annual statement and a transfer discharge form with a prepaid return envelope.

### **Adjudicator's Opinion**

42. Mr S'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 briefly below:-
  - It was clear from the correspondence that the relationship between AJ Bell and Mr S had irretrievably broken down. The problem started when Mr S's cheque was applied to his dealing account instead of his SIPP account. Mr S was partly responsible for this as he quoted the wrong account reference in the heading, and AJ Bell was partly responsible for not seeking clarification of unclear instructions.

The matter was rectified on 5 August 2016. Mr S had not shown that he suffered any financial loss in the meantime. As compensation for his inconvenience, AJ Bell initially offered Mr S seven deals free of its usual charges, and later the monetary equivalent. The Adjudicator's view was that, if the Pensions Ombudsman were required to determine the matter, he would not make a larger award.

- AJ Bell had addressed two letters to Mr S incorrectly, so had to re-send them. In the Adjudicator's view the Pensions Ombudsman would consider that to be maladministration but would not consider it to be significant enough to justify an award.
- AJ Bell said that it could not refund the cheque for £8,640 once it had been paid into the SIPP. That was correct, because such a refund would have constituted an unauthorised payment for tax purposes under the Finance Act 2004.
- It was at Mr S's request that AJ Bell stopped emailing him. However, this only protracted their dispute.
- Mr S wrote to AJ Bell on numerous occasions to make complaints, and AJ Bell responded to each complaint. In January 2017 AJ Bell asked Mr S to take his business elsewhere, offering to waive its usual transfer-out charges. It was an unusual step for a company to turn away business, but it demonstrated how badly the relationship between them had deteriorated. Under AJ Bell's terms and conditions (see Appendix hereto) it was entitled to terminate or suspend its services, and in the circumstances it acted reasonably.
- It was unfortunate that Mr S chose to ignore AJ Bell's letters, despite receiving several reminders, and later tried to make another contribution to the SIPP and then requested a withdrawal from the SIPP. AJ Bell was entitled to refuse to process these requests because it had already reminded Mr S of its terms and conditions and had given him fair warning that his accounts would be frozen pending his required transfer-out. Having been a financial adviser, Mr S should have been aware of the SIPP terms and conditions. A transfer to another pension arrangement could have been implemented much more quickly, to draw a line under the matter for both parties, if Mr S had not refused to listen to what AJ Bell was saying.
- Mr S had also alleged that AJ Bell had infringed the rules of the FCA, did not manage its staff properly and had acted fraudulently, but these matters were outside the Pensions Ombudsman's statutory jurisdiction.
- It was therefore the Adjudicator's view that this complaint should not be upheld.

43. Mr S did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr S and AJ Bell provided their 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 S for completeness.

44. Mr S said that AJ Bell had ignored his income withdrawal and transfer requests and was refusing to disclose the SIPP charges; the company was involved in criminal activity including fraud, and was lacking competent senior management and was failing in its corporate governance, customer care and regulatory compliance. Mr S also said that the CEO of AJ Bell had infringed the rules of both the FCA and the

Prudential Regulation Authority (**PRA**). Lastly, Mr S complained that the financial value of AJ Bell's free trade offer was unclear.

### **Ombudsman's decision**

45. AJ Bell explained to Mr S in January 2017 and on several subsequent occasions that, in accordance with its published terms and conditions, it required him to transfer his business elsewhere. That was because, after a series of complaints which it had answered, AJ Bell reluctantly came to the view that its working relationship with Mr S had broken down and could not be mended.
46. In AJ Bell's terms and conditions, Rule 2.9 stated that AJ Bell could decline any payment or contribution, and Rule 17 empowered AJ Bell to terminate or suspend its services. Therefore, having given the requisite notice, AJ Bell was not obliged to act upon Mr S's subsequent income drawdown and partial transfer requests. It explained its position to Mr S in clear terms, but Mr S chose to ignore it. The sooner that Mr S instructs AJ Bell to transfer all his SIPP assets to another pension provider, the sooner that Mr S will be able to take income drawdown.
47. The tone of the written correspondence between the parties in 2017 shows that AJ Bell's unprecedented decision to terminate business with Mr S was not a premature one, and in my view it was not unreasonable.
48. Mr S also said that AJ Bell had refused to disclose its charges for the SIPP. However, those charges are shown on the cash statements sent to Mr S, and its tariff of charges is listed on its website.
49. Mr S alleged that AJ Bell was involved in various forms of criminal activity, but I have seen no evidence of that. In any event, my statutory jurisdiction is restricted to investigating and making findings on alleged pension scheme maladministration. Mr S will need to contact other organisations if he wishes to pursue those points.
50. Mr S also commented that the conduct of AJ Bell's CEO and staff infringed FCA and PRA rules. However, the complaint we have accepted for investigation is against AJ Bell as a company, not against any of its officers or employees, and Mr S will need to contact those regulatory bodies if he wishes to pursue those aspects of his complaint.
51. Lastly, Mr S complained that the financial value to him of AJ Bell's compensation offer (seven trades without normal dealing charges) was unclear. Mr S would have known that this was a comparatively small amount because when he rejected AJ Bell's offer in 2016 he asked for a payment of £150 instead. AJ Bell have clarified in recent correspondence that based on a normal trading charge of £9.95 the seven free trades are worth £69.65. In the circumstances I do not consider that AJ Bell should be required to make a more generous offer to Mr S.

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52. Therefore, as I consider that AJ Bell's conduct in this matter was not unreasonable, I do not uphold Mr S's complaint.

**Anthony Arter**

Pensions Ombudsman  
17 January 2018



## Appendix

### **Extracts from AJ Bell's terms and conditions for the SIPP**

"2.9 We may decline any payment or contribution or subscription or transfer entirely at our discretion."

"17.1 We or you may terminate your SIPP and your membership in accordance with the scheme rules and HMRC requirements.

17.2 We shall be entitled at our discretion to terminate or suspend provision of the services [meaning any one or more of the administration services, the custody services and the dealing services] on giving you no less than 30 days' notice (except in an emergency, when we may not be able to give you any notice or if in our opinion you have persistently abused the services, e.g. by submitting multiple orders in order to circumvent market rules in relation to orders exceeding available market size). We will not exercise this right unreasonably.

17.3 We reserve the right in the event of termination or suspension of the services to sell your investments and hold the proceeds in your account until you give us instructions to transfer out or withdraw (as applicable) the investments from your account."