

Ombudsman's Determination

Applicant	Mr E
Scheme	AJ Bell Investcentre SIPP (the SIPP)
Respondent	AJ Bell Investcentre (AJ Bell)

Outcome

1. Mr E's complaint is upheld and to put matters right AJ Bell shall carry out a financial loss calculation in order to provide Mr E with fair redress. AJ Bell shall also pay Mr E £500 in recognition of the significant distress and inconvenience he has experienced.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E complains that AJ Bell did not properly process a contribution he made to the SIPP, resulting in a loss of investment opportunity.

Background information, including submissions from the parties

Background

4. Mr E has a self-invested personal pension (**SIPP**) which is provided and administered by AJ Bell.
5. Funds within the SIPP are actively managed on a discretionary basis by a third party discretionary fund manager (**DFM**).
6. In March 2016, Mr E elected to make a personal contribution to the SIPP of £50,000.
7. On 21 March 2016, Mr E deposited £50,000 with AJ Bell by way of electronic transfer. The same day, Mr E's financial adviser (**the IFA**), made an online instruction that the £50,000 was to be processed as a personal contribution.
8. On 22 March 2016, AJ Bell credited the £50,000 contribution to Mr E's SIPP. This was invested by the DFM later the same day.

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9. However, AJ Bell applied the £50,000 as an employer's contribution, as though it had been made from the partnership Mr E operates, as opposed to processing this as a personal contribution.
10. Consequently tax relief at source (**RAS**), at Mr E's marginal rate of 20%, was not correctly added to the SIPP. Had the contribution been processed in accordance with Mr E's instructions, the RAS rebate would have been expected to be credited to the SIPP by HM Revenue and Customs (**HMRC**) on 25 May 2016.
11. On 24 January 2017, The IFA identified that the contribution had not been processed correctly. The IFA contacted AJ Bell to query this.
12. AJ Bell initially concluded that there had been no error. However, it subsequently accepted that, due to a technical error, the contribution had been applied as a gross employer contribution.
13. Further correspondence between the IFA and AJ Bell followed which ultimately culminated in Mr E complaining that he had been deprived of investment growth on the additional £12,500 RAS which should have been added to the SIPP.
14. On 13 February 2017, AJ Bell credited £12,500 to Mr E's SIPP, from its own account, to reflect the RAS rebate which ought to have been added to the SIPP in May 2016. This was done to prevent further delay while AJ Bell awaited the rebate from HMRC.

AJ Bell's position

15. AJ Bell has accepted that it did not process the contribution correctly. It also conceded that Mr E had suffered an investment loss.
16. However, because Mr E's SIPP was managed on a discretionary basis, AJ Bell said, "it is not possible to confirm exactly how the additional funds would have been invested had there been no delay reclaiming the tax relief." Consequently AJ Bell considered that calculating Mr E's loss based on an interest rate of 2.5% was appropriate.
17. AJ Bell calculated that between 25 May 2016, when the RAS rebate should have been credited to the SIPP, and 13 February 2017, when the SIPP balance was adjusted, the additional £12,500 would have yielded £226.03 based on an interest rate of 2.5%. As a gesture of goodwill, AJ Bell increased its offer to Mr E, to £300.

Mr E's position

18. Mr E rejected AJ Bell's offer saying that during the period in question, his portfolio, managed by the DFM, had increased by 16.22%. As such he considered his loss to be £2,027.50

Adjudicator's Opinion

19. Mr E's complaint was considered by one of our Adjudicators who concluded that AJ Bell needed to do more to put matters right. The Adjudicator's findings are summarised briefly below:-

- AJ Bell agreed that it failed to process the contribution properly resulting in a loss of tax relief between 25 May 2016 and 13 February 2017. So there is no dispute that Mr E has been disadvantaged as a result of AJ Bell's error.
- In relation to the DFM arrangement Mr E has, the IFA has said:-

“...we monitor the cash balance for this and all of our clients regularly so that any excess cash is moved to the clients [sic] respective Discretionary Fund Manager. You will notice that all [our] clients with you have this simple structure set up. You will also see that whenever a contribution and the subsequent tax relief hits the account the cash is moved to the DFM in question. [Mr E] has used [the] DFM since he set up the SIPP, so there can be no doubt this is where the funds would have gone.”
- The Adjudicator considered this to be persuasive. In view of the arrangement Mr E has in place with the IFA and his DFM, it was more likely than not that the RAS, which ought to have been added to the SIPP would have been invested in the same funds, in the same proportions as the £50,000 contribution.
- The £50,000 contribution was invested with the DFM on the same day as it was credited to the SIPP. So, the Adjudicator considered it likely the £12,500 RAS would also have been invested by the DFM on the same day as it was received by the SIPP.
- The Adjudicator thought Mr E's investment intentions were clear. As such, it was not appropriate to use the interest rate, proposed by AJ Bell, to calculate Mr E's loss.
- AJ Bell missed numerous opportunities to provide adequate compensation to Mr E. It initially denied that the problem with the RAS was caused by its error, and it was only because of the tenacity of Mr E's adviser that AJ Bell accepted it had made an administrative mistake.
- AJ Bell's failure to process Mr E's contribution properly, and the subsequent failure to take responsibility for the complaint and offer suitable redress, will have caused Mr E significant distress and inconvenience. In view of this the Adjudicator considered that an award of £500 for non-financial injustice was warranted.

20. 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. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by AJ Bell for completeness.

Ombudsman's decision

21. It has not been disputed that AJ Bell has made an administrative error, causing Mr E financial detriment. The matter remaining for me to determine is how to provide adequate redress to Mr E.
22. AJ Bell proposes that interest, at a rate of 2.5%, provides fair compensation to Mr E. It has pointed out that this is in excess of the rate of interest typically awarded by this Office. Further, on the basis that Mr E's investments are managed by a DFM, AJ Bell considers that it is not possible to say precisely how the RAS would have been invested.
23. My power to make directions and to award interest comes from Sections 151(2) and 151A of the Pensions Schemes Act 1993. Section 151(2) is a general power enabling me to make any direction I see fit which can include, but is not limited to, the payment of interest. Section 151A deals with the specific situations where I make a direction about the late payment of benefits. Section 151A specifies that interest should be at the prescribed rate that being the base rate for the time being quoted by the reference banks.
24. It is accepted that Mr E's complaint does not concern the late payment of benefits. So I am not bound by Section 151A, to award interest at the prescribed rate.
25. In some situations an award of interest may be appropriate, for example if it is not possible to say how money might have been invested. But I do not consider that applies in Mr E's case. On the balance of probability I find that had the RAS been credited to the SIPP sooner than it was, it would have been invested by the DFM the same day. This conclusion is consistent with the arrangement Mr E had with the IFA and the DFM, and accords with Mr E's previous investment history.
26. I do accept that the DFM has considerable freedom to decide how to invest Mr E's funds, this is the nature of a discretionary arrangement. So I can accept that it is not possible to say precisely how the RAS would have been invested. But, I do not consider that it is appropriate to assess Mr E's loss against the rate of interest proposed by AJ Bell. In my view this does not accurately represent how the money was likely to have been invested, or the types of return he could expect to have achieved.
27. I find that calculating redress on the assumption that the RAS would have been invested in the same funds, in the same proportions to the original £50,000 contribution and with reference to any subsequent fund switches, provides an appropriate comparator for how Mr E's investment would have performed. Calculating redress in this way more reliably reflects how the investment would have performed, if but for AJ Bell's error, the RAS had been invested on 25 May 2016.
28. I also find that Mr E has suffered significant distress and inconvenience as a consequence of the contribution not being processed properly and for the subsequent delays in receiving fair redress.

29. Therefore, I uphold Mr E's complaint.

Directions

30. Within 21 days of the date of this Determination, AJ Bell shall establish what the additional £12,500 would have yielded in terms of investment returns, as at 13 February 2017, assuming it had been invested from 25 May 2016, in the same funds and in the same proportions as the £50,000 contribution which Mr E made. AJ Bell may need to liaise directly with the DFM to obtain the necessary information and data, in particular to establish whether there were any further fund switches made by the DFM.
31. AJ Bell shall then, forthwith, pay into Mr E's SIPP, the net additional investment return, as calculated with the assistance of the DFM. AJ Bell shall provide a copy of its calculation to Mr E.
32. AJ Bell shall, also within 21 days of the date of this Determination, pay Mr E £500 in recognition of the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
8 March 2018