

## Ombudsman's Determination

Applicant	Mr I
Scheme	AJ Bell Self Invested Personal Pension ( <b>the SIPP</b> )
Respondent	AJ Bell

## Outcome

1. Mr I's complaint against AJ Bell is partly upheld. To put matters right, AJ Bell shall within 21 days of the date of this Determination pay Mr I £500 for the distress and inconvenience he has experienced and return the fee of £75 plus VAT that he paid.

## Complaint summary

2. Mr I's complaint against AJ Bell concerns his Pension Commencement Lump Sum (**PCLS**) entitlement. He is unhappy that AJ Bell had previously calculated his PCLS entitlement incorrectly and that it had provided incorrect information regarding his requested income payment.

## Background information, including submissions from the parties

3. In January 2012 Mr I transferred his pension funds into the SIPP, administered by AJ Bell.
4. On 16 May 2016 Mr I's adviser, Tilney Financial Planning (**Tilney**), emailed AJ Bell to ask if Mr I would be able to take a PCLS payment from the SIPP, and to confirm the amount available.
5. AJ Bell calculated Mr I's PCLS in June 2016 as £149,448.69, based on the value of his SIPP at the time, which was £1,557,000. It had received information in 2012 regarding Mr I's Paribas London Pension Scheme (**the Towers Watson pension**) to support an application for Flexi-Access drawdown.
6. On 6 August 2018 AJ Bell received from Mr I a SIPP benefit form requesting the crystallisation of £120,000 from his fund, taking £30,000 as a PCLS.
7. On 13 August 2018 AJ Bell identified that Mr I had the Towers Watson pension which he had used to apply for Flexi-Access drawdown in 2012. AJ Bell had been informed of the Towers Watson pension in 2016 when Mr I applied to convert the SIPP to flexi-

access. AJ Bell therefore contacted Tilney to establish the amount of Lifetime Allowance (**LTA**) used.

8. On 16 August 2018 Tilney emailed AJ Bell and confirmed that Mr I had two pensions with Standard Life that were crystallised in June 2007. The total amount of LTA used in respect of the Standard Life pensions was 12.14%. Also, the Towers Watson pension had used up 17.56% of the LTA.
9. Following receipt of the above information, AJ Bell carried out a review of all of Mr I's previous Benefit Crystallisation Events (**BCEs**). AJ Bell said that Mr I had £90,774.14 of LTA remaining and a maximum PCLS entitlement of £22,693.59. On 20 August 2018 AJ Bell informed Tilney of the position.
10. On 28 August 2018 Tilney confirmed to AJ Bell that Mr I wished to crystallise the remaining LTA of £90,774.18 and take the maximum PCLS of £22,693.59. This was paid to Mr I on 30 August 2018.
11. On 29 August 2018 Tilney emailed A J Bell and said Mr I was unhappy that the amount of PCLS he was entitled to had decreased, and wanted to know how this had happened. He believed AJ Bell had been notified of the previous BCEs and had failed to check these prior to confirming the amount of PCLS in June 2016.
12. On 17 September 2018 Tilney emailed AJ Bell and asked it to contact Mr I directly about the reduction in the PCLS. Following some further correspondence AJ Bell agreed to carry out an investigation and report back to Tilney.
13. On 2 October 2018 AJ Bell emailed Tilney with the result of its investigation. It explained that in June 2016 it had not taken into account all of Mr I's pensions that had entered drawdown. It had only taken into account one of the Standard Life pensions crystallised in 2007. Information on the second Standard Life pension had only been received in August 2016 after AJ Bell had sent its calculations to Tilney.
14. AJ Bell explained that following receipt of the benefit form it had carried out a review of all previous BCEs which identified the missing figures and the reduction in the PCLS. AJ Bell had rechecked its figures and found that the maximum PCLS was £21,772.16 and not £22,693.54 as previously stated. AJ Bell asked for the overpayment to be repaid to the SIPP to avoid any tax charges. Mr I agreed to repay the overpaid amount.

### **Mr I's Position**

15. Mr I says that he views his pension as a crucially important asset and on which he has taken paid professional advice. Constant government changes to what is clearly a long-term asset ensure that individuals are unable to undertake the administration of their own funds. It is more than disappointing to discover that an experienced professional firm was unable to undertake these tasks on a client's behalf. It shines no credit on the organisation nor gives the client any confidence for the future.

16. On the original form in December 2018, he wrote in answer to the question, 'How would you like the matter put right?' that he would like the fees paid since 1st January 2012 refunded and placed back in his pension fund. These consisted of AJ Bell's fee of £3,450 and the Tilney fee of £7,960, a total of £11,388. Why should he be expected to pay for gross errors? He understands that it is hard to put a figure on the opportunity cost of being able to take tax free cash in the way he had planned, but the offer of £150 that AJ Bell had made in December 2018 was insulting.
17. The latest offer of £500 is described as generous by AJ Bell. In his view these offers are merely a delaying tactic. On 9 January 2020 an Adjudicator at TPO agreed that he had experienced disappointment, loss of expectation, distress and inconvenience as a result of his LTA being incorrectly accounted for. This has happened on seven occasions.
18. On 8 November 2018 he received a four-page letter from AJ Bell which offered apologies and the offer of an ex-gratia payment of £100. Two paragraphs from this extensive letter say:

“We had received information in 2012 regarding your [Towers Watson pension] to support an application for Flexi-Access drawdown. However, when a customer has completed an application to enter Flexi-Access drawdown our responsibility is only to find out if the pension is suitable to meet the minimum income requirements. As a result, we did not consider your [Towers Watson pension] when calculating your PCLS in 2016. Whilst I appreciate it could have been useful to request the LTA information at this time we were not obliged to do so. As a result, I am satisfied that the information provided in 2016 was appropriate.”
19. Surely the importance for accurate information is triggered by the 2012 Flexi-Access drawdown. Four years later AJ Bell argue it is not obliged to provide accurate information. So, AJ Bell think it is right to send false and misleading information. Why was the review carried out on 6 August 2018 not carried out at the appropriate time in 2012? How is it possible to calculate the sum without the information? Surely this is gross maladministration and is no way to address a reasonable complaint. Where is the duty of care? How reasonable was the offer of £100 slowly increased to five or six-and-a-half times?
20. In addition, the letter goes on to say “I note your comments regarding the charges you paid to your adviser for services they have provided. I do not believe it would be appropriate to offer you any recompense in respect of this as the information provided was done in good faith based on the information available to us at this time”.
21. Mr I says he interprets the above as meaning: “We as a professional organisation do not need to provide accurate information on which you may choose to make important financial decisions and are not responsible if we send this misleading information to your financial adviser.” Mr I says he does not recall this being mentioned when he signed up in 2005.

22. Mr I says that a figure of £500 totally underestimates the loss suffered. Indeed, the financial loss consists of two elements. The figure of £11,388 could be described as an amount taken under false pretences from his pension fund. In addition, it is harder to quantify the opportunity cost of arranging the tax-free element on his own terms. Secondly, the non-financial element involving distress and inconvenience as a result of this. It is Mr I's view that this case should be judged as exceptional and he would like the fees he has paid since 1 January 2012 refunded and placed back in his pension fund.
23. Finally, Mr I has pointed out that he would like to move his pension fund from AJ Bell, but the cost of this appears prohibitive. So, he appears to be stuck with a provider he has no confidence in.

### **Adjudicator's Opinion**

24. Mr I'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.
25. The origins of the complaint go back to 2016 when Mr I, through his advisers, Tilney, asked AJ Bell to calculate the PCLS available. AJ Bell informed Mr I that he could take £149,448.69 as a PCLS. Mr I had no reason to doubt that the figures quoted by AJ Bell were correct, and he had a reasonable expectation that he could take up to approximately £150,000 as a PCLS.
26. AJ Bell say that it received information on the Towers Watson pension in 2012 but this was to support an application for flexi-access drawdown, and its responsibility at that time was only to ensure that the pension was suitable to meet the minimum income requirement. As a result, it did not consider the Towers Watson pension when calculating the PCLS in 2016. It appreciates that it would have been useful to request the LTA information at that time, but argues it was not obligated to do so.
27. The Adjudicator asked AJ Bell why it considered that it was not obligated to take the LTA information into account in 2016 when carrying out the PCLS calculations. AJ Bell has said that there are regulatory requirements that also fall on scheme members, or their representatives, to provide information to scheme administrators when benefits are requested. AJ Bell has referred to Regulation 11B of SI2006/567 The Registered Pension Schemes (Provision of Information) Regulations 2006 which says:

“the member shall provide such information as will enable the scheme administrator to calculate the available portion of the member's lump sum allowance”.
28. The Adjudicator accepted that there is a requirement for the member or his adviser to provide information before payment of a PCLS. But it was his opinion that it is implicit

in the regulations that an administrator should ask for and ensure that all the information has been provided before carrying out the calculation.

29. It was the Adjudicator's opinion that AJ Bell's failure to consider the LTA position when carrying out the PCLS calculation in 2016 amounted to maladministration. As a professional pension company it should have been aware of the necessity to consider all previous BCEs when calculating a PCLS, and its failure to take these into account, or ask for the information at the time, amounted to maladministration. It was illogical to issue a statement saying that Mr I could take nearly £150,000 as a PCLS without ensuring the veracity of this statement.
30. Mr I has experienced some inconvenience as he has not been able to phase the withdrawals of his tax free cash in the way he had originally planned due to the incorrect information being provided. But he has not suffered financially, as he is only entitled to receive the PCLS to which he is entitled under HMRC's regulations.
31. Mr I has been frustrated and distressed by AJ Bell's unwillingness to offer what he believes is a reasonable level of compensation. The Adjudicator was of the view that AJ Bell should reimburse Mr I for fees it levied for the calculations carried out in 2016. The fees charged by AJ Bell for the calculations were £75 plus VAT. In addition, an ad hoc adviser remuneration charge was deducted from the SIPP totalling £1,750 and paid to his adviser. AJ Bell have pointed out that any adviser remuneration charges deducted from a customer's account are agreed between the adviser and the customer, and it does not have any involvement in this process.
32. The Adjudicator was of the view that Mr I had experienced some distress over this complaint and that AJ Bell should compensate him for this. AJ Bell have made an offer of £500 which Mr I believes should be more. The Adjudicator had some sympathy with Mr I's viewpoint but was of the view that an offer of £500, plus a return of the fee of £75 plus VAT, that he had paid for the incorrect calculation, was reasonable.
33. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I 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 I.
34. Mr I says the complaint revolves around the fact that he has paid for inaccurate and misleading information. Since 1 January 2012 he has paid A J Bell £3,450. This information misled Tilney who charged a further £7,960, a total fee of £11,410. It should be clear from this that the two organisations are inextricably linked. One could say they are in a symbiotic relationship. He drew attention to this in his first submission, but it seems to have been overlooked.
35. He receives an annual report from Tilney for which he pays approximately £1,750 which is debited from the SIPP. This report uses A J Bell's figures to calculate the PCLS. A J Bell charge him quarterly fees and an annual drawdown fee. He thought the annual discussions he had with Tilney would allow him to smooth his tax-free

payments until he was 75, and he would have been able to do this until the shock of August 2018.

36. The SIPP was set up in 2005 and various pension funds placed into it. Mention is made of the Standard Life pensions placed in the SIPP in 2007. The crucial date is 2012 when the fund went into flexible drawdown. This was the time when correct calculation became essential. Given that the starting date is 2012, the maladministration has occurred on seven occasions which the Adjudicator recognised in paragraph 22 of his Opinion. Nevertheless, the Adjudicator appears to consider only the year 2016 worthy of recompense. Surely, there are seven years in which these fees are charged.
37. Mr I says it was his original assertion that the fees paid to Tilney and A J Bell should be returned to the SIPP. The information provided was harmful, they have supplied shoddy goods, and a repayment of fees is warranted by both organisations for seven years, a total of £11,410. He has also mentioned that because of prohibitive switching costs he is stuck with a provider with whom he has no confidence.

### **Ombudsman's decision**

38. Mr I has argued that AJ Bell should reimburse the fees that he has paid to both Tilney and AJ Bell over the seven years from 2012 to 2018, because of the error in calculations in 2016 and the non-collection of information in 2012. I do not agree.
39. When Mr I applied for flexi-access drawdown in 2012 AJ Bell requested details of Mr I's other pensions, but this was primarily to ensure that the pension was sufficient to meet the minimum income requirement. Although, it would have been helpful to collect all the pension information at this time, it was, as AJ Bell has said, not obligated to do so. It was, however, important to have all the information available when it carried out the calculations in 2016. I find it would be inequitable to expect AJ Bell to reimburse all of its fees for the error in calculation carried out in 2016.
40. It is also important to point out that AJ Bell's fees include its charges for the operation and maintenance of the SIPP and to which Mr I agreed when the arrangement was set up. AJ Bell has confirmed that it charged a fee of £75 plus VAT for the incorrect calculation and it would be disproportionate to expect it to reimburse a larger fee than it incurred for this element of its work on Mr I's arrangement.
41. Similarly, I do not find that AJ Bell should be responsible for reimbursing the fees that Tilney has incurred in this matter. The work that Tilney did in collecting information on Mr I's other pension arrangements would have been required whether the calculation was carried out in 2012 or later. If Mr I believes that Tilney's fees are too high then that is a matter that he should take up with them. Tilney is not a respondent to this complaint, so I cannot make a finding that Tilney should repay Mr I.
42. Mr I has also said that because of prohibitive switching costs he is stuck with a provider in whom he has no confidence. I can sympathise with Mr I's concern, but it is

not a situation with which I can interfere. Mr I accepted the SIPP's terms and conditions when he set up the arrangement, and he will have to pay any fees which may be incurred should he decide to move away from AJ Bell.

43. Finally, I agree with the Adjudicator's opinion that Mr I has not suffered a financial loss, but he has suffered some inconvenience. AJ Bell has made an offer of £500 which I find is reasonable, and this, plus a return of the fee of £75, is a sufficient award for that inconvenience.

44. I partially uphold Mr I's complaint and make the following direction.

### **Directions**

45. To put matters right AJ Bell shall within 21 days of the date of this Determination pay Mr I £500 for the distress and inconvenience he has experienced and return the fee of £75 plus VAT, that he paid for the incorrect calculations.

**Anthony Arter**

Pensions Ombudsman  
11 November 2020