

Ombudsman's Determination

Applicant	Mr N
Scheme	AJ Bell Youinvest SIPP A84327S (the SIPP)
Respondent	AJ Bell Management Limited (AJ Bell)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by AJ Bell.

Complaint summary

2. Mr N has complained that:-
 - AJ Bell failed to exercise a duty of care and, as a result, he has incurred a large tax charge that could have been avoided.
 - AJ Bell provided misleading figures regarding his Lifetime Allowance (**LTA**)
 - AJ Bell's complaints procedure was not impartial.
3. Mr N says he has incurred an unwarranted tax charge of £23,156 which AJ Bell wants him to pay from his SIPP. He argues that AJ Bell should pay this charge in its entirety as it has made mistakes and mishandled his affairs.

Background information, including submissions from the parties.

4. Mr N's date of birth is 19 July 1943. He therefore reached age 75 on 19 July 2018.
5. His SIPP was initially established with Barclays in 2008.
6. In December 2017, Mr N opened a SIPP with AJ Bell online and transferred funds from his Barclays SIPP into it. Once his SIPP was established, AJ Bell sent him a welcome letter and an application summary, together with the AJ Bell Youinvest Key Features document (**KFD**) and Terms and Conditions (**T&Cs**), which Mr N confirmed that he had read and understood.

7. On the application summary Mr N declared the following:
- “I confirm that I have been recommended to read and given the opportunity to read, ensure that I understand and keep copies of the SIPP Key Features, Charges and Rates and Terms and Conditions. I agree to be bound by the SIPP Terms and Conditions as may be amended from time to time, I also agree to be bound by the trust deed and rules of the scheme (as amended from time to time), which I have had the opportunity to consider.”
8. AJ Bell say these documents were always available on its website for Mr N to read and query, if necessary.
9. Mr N makes the point that, as it provided administration services for Barclays SIPP, the administrator of his SIPP at all times was AJ Bell.
10. Legislation specifies the occasions when a scheme administrator must check whether the pension benefits arising (**crystallising**) at that point exceed a member's available LTA. These occasions are known as benefit crystallisation events (**BCE**).
11. Mr N says that in 2012, before his first BCE, he had informed Barclays of his State Pension and provided details of a Phoenix Life annuity (**the annuity**).
12. The annuity was classed as a pre-commencement pension which exists at the first BCE and the value of which must be considered by adjusting downwards the LTA available at the first BCE.
13. When a BCE occurs, the scheme administrator compares the value of the member's pension benefits to the member's lifetime allowance that is still available. Any crystallising amount that exceeds the level of lifetime allowance available is subject to tax under the LTA.
14. A BCE test applies when a member, who is taking drawdown, reaches age 75 (**the Age 75 test**) or uses their funds to buy an annuity before then. It tests any increase in the value of their drawdown fund since the first BCE, ignoring any tax-free cash paid.
15. A Certificate of Benefits (**the Certificate**) provided to Mr N showed the final BCE that took place before the transfer to AJ Bell, on 9 October 2017. The value of the funds being crystallised at that time was £160,000, of which £40,000 was to be taken as tax-free cash. The Certificate shows the LTA used at all BCEs up to that point as being 40.04%. However, there is no mention of the annuity.
16. On 5 July 2018, after the transfer to AJ Bell, Mr N took a further BCE totalling £400,000, of which £100,000 was paid as a tax-free lump sum with the remainder being placed into income drawdown. Mr N elected not to receive any drawdown income payments. A Schedule of Benefits, issued at the time, showed the fund value of the SIPP prior to the BCE and that this BCE utilised 32% of Mr N's LTA.
17. On 25 July 2018, AJ Bell emailed Mr N to say it was completing the Age 75 test and asked for details of the annuity. He provided information the same day.

18. Mr N says that the first he knew of his loss was when AJ Bell wrote to him 'out of the blue' on 26 July 2018 to tell him that he owed HMRC £41,937. He says the letter is incorrect in that it states the Post A-Day drawdown figure was 72.04%, which ignored the Fixed Protection he had in place. The charge was subsequently reduced to £23,156.
19. This letter said, "I wrote to you recently to make you aware that, under legislation, a Benefit Crystallisation Event (BCE) is carried out at your 75th birthday."
20. It went on to set out a table showing AJ Bell's LTA calculation based on Mr N's standard LTA of £1,250,000. This showed that, in total, Mr N's benefits in the Scheme had used 113.42% of his LTA. This included 15.46% attributable to the annuity with a note referring to this as a 'deemed reduction' in available LTA.
21. Under the heading "Information about the Table" it said:

"Please note that the figures in the third column show only the LTA used in this scheme at age 75. They do not consider any LTA that has been used at age 75 under any other pension schemes you may have."
22. The letter said the tax charge would be taken from the SIPP when sufficient cash was available.
23. Mr N says this was the first time AJ Bell had introduced the concept of a 'deemed reduction' in his available LTA. He says this should have reduced the remaining LTA from his first BCE with Barclays and then been carried forward when he transferred to AJ Bell. He says that if he had been provided with relevant, timely information the tax charge could have been eliminated entirely. He complains that this information was held by AJ Bell, but not revealed to him until after the Age 75 test.
24. Mr N queried the figures on 29 July and said they were different to figures quoted on 5 July 2018.
25. AJ Bell emailed Mr N on 31 July 2018, to say the previous calculation had been incorrect. A revised table showed four BCEs taking place between 8 March 2012 and 9 October 2017, resulting in a total amount crystallised of £460,000 which represented 34.84% of Mr N's LTA. A further BCE had taken place on 25 June 2018, since the Scheme had transferred to AJ Bell. The amount crystallised was £400,000 which represented 32.0% of Mr N's LTA.
26. The email also explained the calculation of the deemed reduction figure. As this represented 15.46% of Mr N's LTA, the total he had used before age 75 was 34.84% + 32.0% + 15.46% = 82.30%.
27. The value of Mr N's uncrystallised funds at age 75 was £304,960.40, which represented 24.30% of his LTA.
28. Therefore, at age 75 he was deemed to have used 82.30% + 24.30% + 0.81% = 107.41% of his LTA. The 0.81% was based on the growth of his crystallised fund less

the amount designated into drawdown. The email explained that the earlier calculation had not used a fund split to establish the most recent value of the SIPP. This had now been corrected and, as a result, the tax charge had reduced to £23,156.

29. On 3 September 2018, Mr N complained that the figures provided on 5 July 2018 had led him to believe LTA would not be exceeded.
30. AJ Bell sent its response to his complaint on 25 October 2018. It set out the exchange of correspondence in detail and concluded that the revised calculation was correct and that the amount of tax owing was £23,156. AJ Bell did acknowledge it had initially quoted an incorrect tax charge and offered Mr N an ex-gratia payment of £100, with its sincerest apologies, in recognition of the distress and inconvenience this had caused. Mr N rejected this offer.
31. AJ Bell has confirmed it is an execution only platform and it does not offer financial or investment advice.

Adjudicator's Opinion

32. Mr N'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 below:-

- Whether there was maladministration by AJ Bell in failing to advise Mr N before he reached age 75, that he faced a potential tax liability, depended on the scope of AJ Bell's duties as administrators.
- Mr N confirmed that he had read the T&Cs when he established the SIPP with AJ Bell. These say under the heading "Services":

"We provide the services on a non-advised basis. Neither we nor our associates give, nor is anything on the website or any linked website to be construed as financial, investment or tax advice of any kind. You are therefore responsible for selecting the product and any investments.

We warrant that we will provide the services with reasonable skill and care but, because we do not offer advice, we cannot warrant that they will meet your particular requirements."

- The KFD says on page 9:

"A further lifetime allowance check will also be carried out on your drawdown pension fund at your 75th birthday..."

- On page 10 it says:

"When you reach your 75th birthday any uncrystallised funds will also use up a portion of your lifetime allowance..."

- And on page 11 under the heading “Can you give me advice?” it says:
“No, we are not authorised to provide any advice on tax or financial services related matters”.
- So, it would have been clear to Mr N that AJ Bell was not providing him with tax or any other financial advice.
- It would also have been clear to him that there would be a BCE when he reached age 75, and that any uncrystallised funds would be considered in assessing his position against the LTA.
- While Mr N had provided AJ Bell with details of the annuity, and AJ Bell acknowledged it held this information, it was not AJ Bell’s responsibility to maintain a record of this or to advise Mr N with regards to it. Its responsibility extended only as far as providing information about the SIPP and not about any other pension benefits held by Mr N.
- And while AJ Bell accepted that its initial LTA calculation was incorrect, there was no question that the crystallised and uncrystallised fund values it had provided to Mr N prior to his 75th birthday were correct.
- Mr N clearly knew of the existence of the annuity. He had told Barclays about it. So, he would have been aware that it was not included in the benefits shown on the Certificate. There was no reason for it to be shown as the Certificate was intended to show only the position of his SIPP, but regardless Mr N did not question this at the time.
- AJ Bell had no duty, as administrators of the SIPP, to advise Mr N generally in relation to his pension or other financial matters. That would be a role for any personal financial adviser he chose to instruct. The kind of advice that Mr N appeared to have expected from AJ Bell went beyond the role of an administrator.
- Mr N pointed out that he was a qualified IFA and current trustee of a company pension scheme. He said he did know a little bit about pension schemes. It was therefore not unreasonable to assume that he would have been aware that the value of the annuity, and indeed any other pension benefits he held, would have to be considered in assessing any tax liability.
- Mr N was also unhappy that when he complained to AJ Bell it failed to carry out an impartial review. He said it seemed his complaints were completely ignored, and that AJ Bell simply listed the correspondence between them, most of which had nothing to do with his complaint.
- AJ Bell’s response of 25 October 2018 ran to six pages and did set out in some detail the various correspondence between AJ Bell and Mr N. His complaint was noted as being that he was unhappy that a tax charge had accrued, and that AJ Bell had provided him with incorrect figures. The response explained how the

calculations were arrived at and detailed the relevant legislation. AJ Bell accepted that it provided incorrect figures initially, apologised and offered Mr N an ex-gratia payment of £100. The Adjudicator considered that Mr N's complaint had been adequately dealt with. If Mr N considered that AJ Bell had not captured the essence of his complaint it had been open to him to say so at the time.

33. AJ Bell accepted the Adjudicator's Opinion, but Mr N did not and his complaint was passed to me to consider.
34. Mr N has provided further detailed comments which are summarised below. These do not change the outcome. He says that:-

- The FCA in their Principles for Businesses, Principle 7 states;

“A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.”
- He also refers to the Pensions Tax Manual (**PTM**) which explains the inter-relationship between BCE's and LTA's.
- He says his LTA was never reduced following his first BCE, as the PTM prescribes. There was no mention of his LTA in any annual statement or after three months, as required. All this was while his SIPP was with Barclays, but AJ Bell was responsible as scheme administrators.
- In retrospect a calculation showing how the annuity reduced the LTA available had not happened which AJ Bell did not acknowledge until after the Age 75 test. Its letter dated 10 August 2018 said:

“I have reviewed the Barclays files and note that you did indeed provide details of this scheme [the annuity] when you first accessed your benefits ... Please accept my apologies for this oversight”.
- He never sought advice from AJ Bell. He was fully aware that AJ Bell provided an execution only platform and would or could not provide advice on tax or other financial services related matters.
- He could find no reference in the KDFs and T&Cs to what happens if the BCE certificate itself, was wrong or inaccurate. For example, the final AJ Bell BCE schedule for his Barclays SIPP was wrong.
- His complaint is about the failure of AJ Bell to adjust downwards his remaining LTA after the first BCE. Because AJ Bell failed to adjust the LTA downwards, all its subsequent references to LTA on Benefit Statements were low and misleading. Not knowing that, had led him to believe that the last line on all their Statements - 'Lifetime Allowance used at all BCEs for this member and from this scheme' was indeed inclusive and accurate.

- In addition, after adjusting the LTA downwards, there is the further requirement that the member must be notified. This is covered at PTM164400. This did not occur either.
- After the LTA is properly reduced downwards it should never need to be considered again because all subsequent BCEs would automatically carry forward the adjusted LTA. After he transferred and opened a new SIPP with AJ Bell it had no need to know about Barclays or any other SIPP he may have had unless it considered the BCE may have incurred an excess tax charge when details can be requested and kept on file.
- When his first BCE with AJ Bell took place the Benefits Statements it issued only contained information pertaining to its SIPP, nothing involving Barclays even though AJ Bell had details through being the same Administrator. That is how it should be, two separate individual schemes, kept separate until the Age 75 test.
- When it came to the Age 75 test, it was his responsibility to provide details of previous schemes to the then current administrator. He would have LTA usage from each previous scheme, one of which should have had an adjusted downward LTA. It is then simple arithmetic to add together all those LTAs with the current LTA. Factor in the uncrystallised funds plus an allowance for growth and it is easy to calculate whether any tax is due.
- The 113.42% was arithmetically correct but factually wrong. It mentioned, but was not based upon, his standard LTA of £1,250,000(**SLTA**). This was also the first time the 15.46% 'deemed reduction' had ever been mentioned, and that was not until after his 75th birthday.
- He had complained to AJ Bell about the calculations and the figures were re-worked based on his SLTA. This reduced the excess LTA to 7.41%. However, based on the formula provided for 'deemed reduction' which had never been provided before, he again complained saying that the answer should be 12.37%. The response was to change the formula so that the original 15.46% reduction was maintained.
- On 25 June 2018, just before his 75th birthday, he had initiated a BCE event. At that point it was necessary for AJ Bell to ensure that this LTA together with all LTA's from other schemes were checked to establish whether a lifetime chargeable amount had arisen. AJ Bell later confirmed that he had used 82.30%, which was within the standard LTA amount, so there was no charge.
- However, this check was carried out only using all previous LTAs and did not include uncrystallised funds. His uncrystallised funds at the time were clearly identified as £694,950.79 before the BCE, which then used £400,000, leaving £294,950.79 which would be valued at 23.59% of his LTA. If crystallised at that time, or at age 75, it would result in an LTA usage figure of $82.30\% + 23.59\% = 105.89\%$.

- It would therefore have been clear to whoever carried out this BCE check that he would exceed the standard limit and incur a substantial lifetime charge.
- AJ Bell claims it had no obligation to reveal this calculation prior to the Age 75 test. This obligation is not expunged by saying 'We are not required to report this ...'

The FCA is clear that in these circumstances it is incumbent on the provider to notify the customer. This is a clear breach of duty by AJ Bell.

- It is AJ Bell's responsibility to maintain a record of information given about other pension benefits he held. Without this AJ Bell cannot compute accurate tax charges that may arise from BCE and Age 75 tests. That is its responsibility and Mr N's to dispute if AJ Bell gets it wrong.
- To enable the Age 75 test, it is clearly his responsibility to provide AJ Bell with details of all the LTAs from all his other schemes, whether from actual BCEs or deemed BCEs. He was the only one in possession of all that information (and could do an unofficial Age 75 test himself) but can only do so if all the administrators of previous schemes have provided accurate LTA usage.

35. With regard to the final response from AJ Bell, Mr N says that:-

- AJ Bell failed to give a proper summary of his complaint, mentioning that he was unhappy. A crucial area of his complaint was omitted altogether.
- There followed a multi-page synopsis of the correspondence between both parties. The incorrect figures he referred to were essentially those related to the LTA figures. The calculations that occupy a lot of AJ Bell's response referred to prior discussions involved in how a share portfolio should be calculated which have nothing to do with his complaint.
- AJ Bell seem deliberately to have ignored his clearly documented complaint and produced an extraordinarily long response covering issues that just were not relevant.
- In conclusion, the respondent simply noted: 'I am sorry that you are unhappy...' replicating his opening complaint summary and offered an ex-gratia payment of £100 with sincerest apologies. The complaint has now been passed to me to consider. I have noted the additional points made by Mr N; however, I agree with the Adjudicator's Opinion.

Ombudsman's decision

36. AJ Bell's responsibility to Mr N extends only as far as the administration of the SIPP. While I acknowledge that it was aware of the existence of the annuity, it was under no obligation to advise or deal with it in any way. That remained the responsibility of Phoenix Life.

37. Similarly, AJ Bell was not responsible for having to deal with, or take account of, any other pension arrangements that Mr N might have. Again, that was his responsibility alone and he was accountable for any tax implications which arose. From his comments, Mr N appears to acknowledge this.
38. Mr N says that he assumed the last line on all the Statements issued by AJ Bell – “Lifetime Allowance used at all BCEs for this member and from this scheme” led him to believe this was inclusive and accurate. But this statement made clear that it referred to “this scheme” alone, that is the SIPP and not the annuity or any other pensions for which AJ Bell was not responsible.
39. The requirement for the scheme administrator to provide a statement to the member following a BCE is contained in Regulation 14 of The Registered Pension Schemes (Provision of Information) Regulations 2006. This is referred to in PTM164400 - Information and administration: requirement to provide a BCE statement to the member, as Mr N points out. This says:
- “Whenever a benefit crystallisation event (BCE) occurs the member must be given a statement telling them how much lifetime allowance has been used up by the BCE. This information will enable the member to:
- work out if they have any lifetime allowance available at subsequent BCEs, and
 - correctly complete any tax return.”
40. This requirement makes clear three points: firstly, the statement is issued after the BCE has taken place, not before; secondly, it relates only to the LTA taken up by that BCE; and, finally, that the responsibility for working out what LTA might be available at subsequent BCEs rests with the member.
41. Mr N would have been aware, from the schedule issued on 5 July 2018, that a sizeable portion of his SIPP fund remained uncrystallised. He was also aware that when he reached age 75, two weeks later, or beforehand depending on what action he took, there would be a BCE at which time this uncrystallised fund would need to be crystallised or considered in determining his position against the LTA and the assessment of any tax due. This was unavoidable. However, it appears that Mr N did not ask any questions or seek any financial advice regarding his options prior to the age 75 BCE. AJ Bell was not responsible for the fact that he took no action.
42. It was not for AJ Bell to advise, or in any way anticipate, what Mr N should do with regard to his uncrystallised fund. As I have explained in Paragraphs 41 and 42 above, information regarding the impact of a BCE on the LTA is given after the event. Furthermore, it was Mr N’s responsibility to work out if he had any LTA available at subsequent BCEs.

43. The question for me to consider, therefore, is whether any action that AJ Bell took prior to this would have led Mr N to understand that he would not have incurred a charge at age 75.
44. The Certificate issued prior to the transfer of the Barclays SIPP to AJ Bell in October 2017 showed that Mr N had crystallised £160,000 of his fund and had used up 40.04% of his LTA. This appeared to relate to the SIPP only as there was no mention of the annuity. On the other hand, it does seem to be a high percentage, though Mr N does not seem to have questioned this at the time.
45. In 2018, Mr N crystallised a further £400,000 of his SIPP fund. AJ Bell told him that this had used up a further 32% of his LTA. Mr N would therefore have been aware, to the best of his knowledge, that he had used at least 72.04% of his LTA to date. This was two weeks before his 75th birthday.
46. As became clear later, these figures were incorrect, as they did not consider the Fixed Protection Mr N had in place. But the effect of this was to overstate the amount of LTA taken up by the two BCEs, so there was even more reason why Mr N should have been on alert.
47. I acknowledge that AJ Bell made an error in the calculation of Mr N's tax liability. But this was after his 75th birthday and therefore had no effect on his planning or the tax liability.
48. While AJ Bell has made errors in the calculation of Mr N's LTA position, I do not consider this to have caused Mr N a loss. AJ Bell was not responsible for monitoring his tax position. He would have been liable for a tax charge anyway, either at age 75 or at some point beforehand. He could possibly have mitigated some of this charge, for example by taking more of his fund as a tax-free lump sum, but the fact he did not do so was his decision alone. He was aware of the potential for a tax charge before his 75th birthday and yet took no action to clarify the position or obtain advice.
49. And although there were errors, in my view AJ Bell's communications to Mr N met the FCA's requirement of being clear, fair and not misleading. It would be nice to think that mistakes never happen, but inevitably sometimes they do, as in this case. As I have explained, these did not in themselves cause Mr N a loss and I do not consider them to amount to maladministration.
50. With regard to Mr N's complaint concerning AJ Bell's formal response dated 25 October 2018, I have reviewed this letter and I do not agree with Mr N's view of it. The writer has set out in some detail the exchange of information between Mr N and AJ Bell, by way of background. This included an explanation of why AJ Bell had been unable to provide an LTA assessment prior to Mr N's 75th birthday.
51. The question of how the portfolio was valued was clearly relevant as this is laid down in legislation and can have a material impact on the eventual outcome and consequent tax calculation. I would certainly not criticise AJ Bell for that.

52. The conclusion is not unreasonable. The writer acknowledged that, although AJ Bell had correctly valued Mr N's fund, it had made an error in the calculation of the tax charge. It had been overstated initially, for which the writer apologised and offered £100 for any distress caused. I consider this is reasonable in the circumstances and Mr N should contact AJ Bell should he wish to accept the offer.
53. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
30 March 2021