

## Ombudsman's Determination

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| Applicant  | Mr N  |
| Scheme     | AJ Bell Investcentre SIPP ( <b>the SIPP</b> ) |
| Respondent | AJ Bell                                       |

### Complaint Summary

1. Mr N has complained that AJ Bell caused a delay in processing his investment instruction, which has caused him a financial loss.

### Summary of the Ombudsman's Determination and reasons

2. The complaint should be upheld against AJ Bell, because it made an error that caused Mr N significant distress and inconvenience.

### Detailed Determination

#### Material facts

3. On 8 March 2016, AJ Bell emailed Mr N's financial planning advisers, Smith and Williamson Financial Services (**SWFS**), and said:

"I can confirm that in order to begin the in-specie transfer of assets from Raymond James to Smith and Williamson we will require the attached form to be completed and returned to us.

If you could please arrange for the client's details to be completed, along with the Re-registration of investments section and adviser declaration, I will get the application form back over to you as soon as possible. We can accept the document back by email and do not require the original to follow.

Once we have confirmation that the account is open, we can contact Raymond James to start the transfer process."

4. On the same date, SWFS completed a 'SIPP Additional Contribution' form for £55,794.96.
5. On the same date, SWFS called AJ Bell with questions about completing AJ Bell's 'SIPP off-panel investment instruction' form (**the original investment instruction**),

specifically raising the question of which section to fill in to deal with a new contribution. This form contains multiple sections, one headed 'New investment' and one 'Reregistration of investments'.

6. While on the call, SWFS completed both sections. Under the heading 'New investment', SWFS wrote 'Smith and Williamson' and under the heading 'Amount to be invested £', the Adviser wrote '100%'. Under the heading 'Form enclosed', there were two boxes to tick, either yes or no. Here SWFS wrote, "Contribution app already sent". SWFS' transcript of the call is quoted in the Appendix. AJ Bell has confirmed that the transcript is an accurate record of the conversation.
7. On 10 March 2016, Mr N's additional contribution of £55,794.96 (**the new contribution amount**) was received by AJ Bell and applied to the SIPP.
8. On 5 April 2016, SWFS contacted AJ Bell for an update on the transfer. AJ Bell acknowledged that, due to human error, it had not processed the investment instruction but had instead archived it. AJ Bell asked SWFS to complete a new form.
9. On the same day, SWFS completed and signed a second off-panel investment form (**the second investment instruction form**). The 'New investment' section was left blank. The 'Re-registration' section instructed the transfer of all investments from Cumberland Place to Smith and Williamson (Cumberland Place was Mr N's former financial adviser, but his investments within the SIPP were held with Raymond James).
10. On 11 April 2016, AJ Bell received the second investment instruction form.
11. On 27 May 2016, £76,539.27 was received from Raymond James and paid into the SIPP cash account held by AJ Bell. On 31 May 2016, Raymond James confirmed to AJ Bell that the in-specie transfer of the assets had been transferred to Smith and Williamson Investment Management (**SWIM**) on 21 April 2016.
12. On 2 June 2016, SWIM emailed AJ Bell and said:

"As previously advised £76,539.27 was transferred from the previous broker to yourselves and that figure includes sale proceeds for one holding on our valuation. If possible can these funds please be sent on to allow us to issue a fresh updated valuation."
13. On 16 March 2017, SWIM contacted AJ Bell to ask why the new contribution amount was not sent to SWIM along with the Raymond James funds. AJ Bell responded to say that it had followed the instructions on 2 June 2016 to transfer £76,539.27, received from Raymond James, to SWIM.
14. SWFS complained on Mr N's behalf as it felt that AJ Bell's failure to transfer the new contribution amount had caused Mr N an investment loss.
15. AJ Bell did not uphold the complaint, as it considered that there had been no instruction to transfer the new contribution amount from the SIPP cash account.

16. SWFS argues that, 'Contribution app already sent', which it wrote on the 'New investment' section of the original investment instruction form, along with '100%' was sufficient instruction for the new contribution amount to be transferred. SWFS argues that, had AJ Bell found this to be unclear, it should have queried this.

### **Summary of AJ Bell's position**

17. AJ Bell regrets that the form received on 8 March 2016 was archived without action. During the telephone call on 8 March 2016, AJ Bell asked SWFS to state the actual amount to be transferred to SWIM, but SWFS did not follow this request.
18. When Mr N opened the SIPP, he agreed to Terms and Conditions (**T&Cs**). Section 25.1 of which states that the customer and the adviser are responsible for monitoring the SIPP and informing AJ Bell if there is something wrong.
19. The contribution Mr N made to the SIPP was stated on the SIPP Cash Account balance, rather than being shown as transferred to SWIM. This information was available and very easily accessible on AJ Bell's website to both the adviser and the client. In these circumstances AJ Bell cannot be held accountable for the lack of monitoring, as this would in effect represent an open ended obligation which no business could sustain.
20. Accordingly, AJ Bell does not believe it can be held accountable for any delays to funds being invested, as it acted upon SFFA's instruction received on 11 April 2016 in good faith and was not responsible for monitoring the SIPP.

### **Summary of Mr N's position**

21. The notes written on the original investment instruction form were sufficiently clear and unambiguous in stating that Mr N's instruction was to transfer the £55,794.96 contribution amount.
22. During the phone call on 8 March 2016, AJ Bell did not correct SWFS when it asked if it could enter a percentage in the amount to transfer section.
23. AJ Bell had a duty to act in Mr N's best interests.
24. AJ Bell's failure to act on the original investment instruction form amounts to maladministration, which has caused him a significant level of inconvenience.
25. If the contribution amount had been transferred as instructed, it would have been invested in line with the rest of Mr N's investment portfolio, and he has suffered loss as a consequence of that not happening. The plan for the investments was drawn up on 19 April 2016 and agreed on 26 April 2016.
26. Mr N would like proof that the original investment instruction was in fact archived.

## Conclusions

27. On 11 April 2016, SWFS completed and returned the second investment instruction form. This form contained no instruction for Mr N's cash fund to be transferred and I am satisfied that AJ Bell actioned it appropriately.
28. On 2 June 2016, SWIM requested that AJ Bell transfer £76,539.27 from the SIPP cash fund. This was the amount received in the disinvestment and transfer from Raymond James. I am satisfied that AJ Bell actioned that request appropriately. There was no reference to the new contribution amount in this instruction, so I do not find that AJ Bell ought to have known from this instruction that it should also transfer the new contribution amount.
29. I turn now to the original investment instruction form. AJ Bell did not process that at all, which was maladministration. Mr N has requested evidence that the form was archived, however this detail is not material to the outcome of the complaint. The form was not actioned and I have made my finding on the consequences of that inaction.
30. AJ Bell denies that the original investment instruction form contained an instruction in respect of the new contribution amount. Mr N argues that 'Contribution app already sent', which was written under the new investment section along with 100%, was a clear instruction to transfer the new contribution amount, or if it was unclear what it meant then AJ Bell should have queried the instruction. I agree with Mr N. I can see only two reasonable ways to respond to the new investment instruction contained on the original investment instruction form. The first was to transfer all the cash in the account to SWIM. The second was to ask whether that was what SWFS really intended. In fact, AJ Bell did not respond to the request at all and that was what caused the new contribution amount not to be transferred until the point when SWFS chased progress on its instructions.
31. I accept that under AJ Bell's T&Cs there was a duty to monitor. I am satisfied that SWFS did in fact monitor and chase its unactioned instruction.
32. Mr N claims he has suffered a financial loss due to the contribution amount remaining in the SIPP cash account. AJ Bell maintains that the duty to monitor prevents that loss flowing from its error. I agree that the money was kept away from SWIM and the ability to invest it until 11 April 2016. Beyond 11 April 2016, I find that SWFS was aware of the problem and Mr N came under a duty to mitigate, which he did by questioning the lack of action on the investment instruction and completing the second investment instruction form when asked to do so.
33. Unfortunately, SWFS did not include any instruction in respect of the new contribution amount in the second investment instruction form. I find that from 11 April 2016, AJ Bell was actioning the second investment instruction form and any loss which may have been incurred past that point cannot properly be considered to have been caused by its original maladministration.

34. I find that AJ Bell has made an administrative error, but that error was not capable of causing financial loss beyond 11 April 2016. Mr N's new investment plan had not been drawn up at that date. Therefore, I am not satisfied that he can demonstrate that he has suffered a loss of investment return as a result of the maladministration by AJ Bell.
35. I am satisfied that Mr N has suffered significant distress and inconvenience as a result of AJ Bell's maladministration.
36. Therefore, I uphold Mr N's complaint and make the following directions with the aim of remedying the non-financial injustice.

**Directions**

37. Within 28 days of the date of this Final Determination, AJ Bell will pay £500 to Mr N to recognise the significant distress and inconvenience its error has caused him.

**Karen Johnston**

Deputy Pensions Ombudsman  
11 May 2020