

Ombudsman's Determination

Applicant	Mr T
Scheme	AJ Bell You invest Self Invested Personal Pension (the You invest SIPP)
Respondent	AJ Bell

Outcome

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

Complaint summary

2. Mr T has complained about AJ Bell's decision not to award him any of the pension benefits from Mr S' You invest SIPP following Mr S' death. Mr T has said that AJ Bell has not followed the law, provided sufficient information, or properly considered the wishes of Mr S when making its decision.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 20 November 2006, Mr T and Mr S entered into a civil partnership.
5. On 3 December 2012, Mr T and Mr S applied for a Decree Nisi. A Decree Absolute was not subsequently applied for, so the civil partnership was not formally ended.
6. On 29 June 2017, Mr S took out an Investcentre Self Invested Personal Pension (**the Investcentre SIPP**) with A J Bell. Mr S completed a nomination form and said that Miss E should receive 100% of the Investcentre SIPP value should he die.
7. On 18 January 2019, Mr S took out the You invest SIPP which was funded by an internal in-specie transfer from his Investcentre SIPP. Mr S completed a new nomination form and said that Miss E should receive 100% of the You invest SIPP benefits should he die.

8. On 21 September 2019, Mr S handwrote what purported to be a new last Will and Testament (**the Letter of Wishes**) that was not formally witnessed. Mr S said he revoked any earlier Wills and made the following bequests:-
 - £50,000 each to his nieces
 - £100,000 to Ms Y
 - £100,000 to Ms S
 - And the remainder to Miss E.
9. On 27 September 2019, Mr S died.
10. In March 2020, Mr T was contacted by the solicitors, Trowers & Hamlins, who were managing Mr S' estate. It requested that Mr T sign the Grant of Probate application as he was Mr S' civil partner and so was the appropriate person to do this.
11. In April 2020, Mr T contacted his own solicitors Judge & Priestly (**Judge & Priestly**) in order to apply for the Grant of Probate for Mr S' estate. He also asked Judge & Priestly to inform AJ Bell that he intended to make a claim as a beneficiary of Mr S' You invest SIPP.
12. In July 2020, AJ Bell corresponded with Judge & Priestly and asked for the following information:-
 - Confirmation regarding the relationship between Mr S and Mr T at the date of Mr S' death. It understood that the civil partnership may have been in the course of being dissolved and, if applicable, could it provide copies of any related court papers and correspondence.
 - Confirmation of the extent of the financial dependency of Mr T on Mr S as at the date of death.
 - Confirmation of the value of the estate of the deceased.
 - Confirmation of whether or not Mr T was the only beneficiary of the estate.
 - An update on the current status of the coroner's enquiry.
 - A copy of Letters of Administration in respect of the estate of the deceased.
13. In August 2020, Judge & Priestly sent an email to Mr T and asked for responses to AJ Bell's questions.
14. On 10 September 2020, Mr T sent an email to Judge & Priestly and set out why he and Mr S had decided not to obtain a Decree Absolute. Mr T also provided personal details about his relationship with Mr S and the difficulties Mr S had with his mental health.

15. On 23 September 2020, Judge & Priestly sent an email to AJ Bell and said in summary: -

- Mr T and Mr S were living separately at the date of Mr S' death. A Decree Nisi was granted on 3 September 2012, but no Decree Absolute or Final Order was made. Mr T and Mr S did not wish to dissolve their civil partnership, and so no Decree Absolute was applied for by either party. They remained together for eight years until Mr S' death. The reasoning and background for this was complex and highly personal but Mr T had provided an email that explained some of the issues involved that he wished to share with AJ Bell. A copy of Mr T's email of 10 September 2020 was attached.
- Mr T was not financially dependent on Mr S as at the date of death.
- The administration of the estate was previously being handled by Trowers & Hamlins solicitors, who provided a valuation of the estate. Judge & Priestly were carrying out their own due diligence and had written to organisations again to verify the figures provided. It confirmed that the value of the estate was currently £421,017.25. It was waiting for one organisation to respond but did not feel that this figure would change substantially. The expenses deductible for inheritance tax purposes were currently £7,507.25.
- Mr S died intestate and under the Rules of Intestacy, Mr T was the only beneficiary. Mr S was purported to have prepared a Letter of Wishes. The document did not comply with any of the legal requirements for a valid Will. Mr S committed suicide and was clearly not in a fit state of mind. Mr T had questioned whether the Letter of Wishes was in fact Mr S' last wishes at all.
- A death certificate had now been received, and a copy was attached.
- It was in the process of applying for Letters of Administration.

16. On 19 November 2020, the Discretions Committee, who had delegated authority from the You invest SIPP Administrator made its decision regarding the payment of the benefits following Mr S' death. In the Scheme Rules AJ Bell is the Scheme Administrator and is the decision maker in relation to benefits payable on death. The Discretions Committee decided that Mr T was not entitled to any benefits from the You invest SIPP as, amongst other reasons, he would be adequately provided for as the sole beneficiary of Mr S' estate.

17. On 7 December 2020, AJ Bell sent an email to Judge & Priestly and said it could confirm that it had now exercised its discretions in relation to the distribution of death benefits. It had been determined that no award of death benefits from the You invest SIPP would be made to Mr T. AJ Bell considered that adequate provision had already been made for him. This was as a consequence of the operation of intestacy rules in relation to the deceased's estate and the absence of any actual dependency.

18. On 10 December 2020, Judge & Priestly sent an email to AJ Bell and requested details of any appeal procedure for the decision regarding the death benefits.
19. On 11 December 2020, AJ Bell sent an email to Judge & Priestly (**the Appeal Process email**) and said should Mr T wish to contest the decision his reasons for this could be put forward to AJ Bell. He should confirm why he felt that a reasonable decision had not been made, and how he felt the distribution should have been made with any supporting evidence for his reasons. Once this information had been reviewed and AJ Bell had confirmed this, assuming the decision was unchanged a formal complaint could be raised in line with its complaint procedure.
20. On 4 February 2021, Mr T sent an email to AJ Bell and said he wished to contest AJ Bell's decision regarding the distribution of his civil partner's death benefits. He said in summary:-
 - It was difficult to appeal against the distribution of his partner's death benefits when AJ Bell had not provided him with the criteria or procedure used to make the decision.

The civil partnership

- AJ Bell seemed to be under the impression that he and Mr S were in the process of dissolving their civil partnership, which resulted in requests for proof of the personal and private details of their relationship.
- Despite Judge & Priestly submitting written proof from the Family Court in London showing no Decree Absolute. AJ Bell appeared to have disregarded this, as well as his personal explanation of their private relationship which was painful to revisit and to share with strangers.
- The death benefits team that he dealt with at AJ Bell seemed unaware of the legal and current practice, as decreed by the Family Court of England and Wales. The annulment of a civil partnership must take place within one year of the Decree Nisi being granted. If this did not occur, both parties must explain to a Judge, in court, the reasons for any such delay.
- The death benefits team's assumptions showed a biased decision making process. This led to him receiving no part of his partner's You invest SIPP and there had been a flagrant disregard of the facts. The onus was now on AJ Bell to provide reasons for their lack of legal knowledge, pertaining to the annulment of a civil partnership. An institution which had existed since 2006, a total of over 14 years. Or perhaps AJ Bell needed to investigate whether those in charge of making such decisions were homophobic.

Adequate provision

- The death benefits team said that he was to receive no death benefits from the You invest SIPP which was in total worth in the region of £489,000 and gave the reason that it considered that adequate provision had already been made for him.

- He would like to know, how they could be so certain that his needs would be met. Did the death benefits team have some concrete knowledge from the Probate Office of England and Wales, which had currently not been shared with Judge & Priestly? To date there was no information received as to whether the Grant of Probate would be in his favour.
- It looked for all intents and purposes, that AJ Bell had no regard whatsoever for his “adequate provision”. Perhaps when reviewing its decision, at this stage of the appeal process, AJ Bell would explain to him its reasoning and exactly how it intended to provide adequate and fair provision to him as Mr S’s next of kin and civil partner.
- Could the death benefits team also confirm that he had secured the same benefits for him, as it had for the other applicants? While he had no idea who was to receive the funds from the You invest SIPP, he presumed they were the person(s) mentioned in Mr S’ hastily written Expression of Wishes.
- As he informed AJ Bell in his letter sent by his solicitors, Judge & Priestly, Mr S suffered from a long history of mental illness. This began several years before Mr T met him. Mr S was no longer part of an employer’s pension scheme, so it was incumbent upon Mr T to ensure they had sufficient funds, once they retired to provide them with a comfortable lifestyle, by continuing to be part of a final salary pension scheme.
- He also stated in his letter about his relationship, Mr S remained as the sole beneficiary of Mr T’s pension benefits in the Teacher’s Pension Scheme. This was known to Mr S and there was a mutual agreement that Mr S would make the same decision with his pension pot. He stated this because he wanted AJ Bell to note that he and Mr S were a team.
- Mr S did not officially nominate via AJ Bell’s own nomination form any of the persons mentioned in his hastily prepared note. This together with his decision not to annul their civil partnership, should have indicated to AJ Bell how inaccurate its current decision really was.

The Letter of Wishes

- AJ Bell completely ignored Mr S’s mental state, at the time of writing, literally a day or so before committing suicide. If Mr S’ intentions had been known, this would have undoubtedly resulted in him being sectioned. Would a sane person plan and follow through the taking of their own life by a long and distressing method?
- AJ Bell also failed to understand that Mr S had experience of writing a Will. They had previously both made Wills in 2002. Had he wished to Mr S could have easily accessed a pro forma and instructions on writing a Will from the internet. It would also have been possible, had he intended to write a legally valid Will, to have had it witnessed by people he knew.

AJ Bell's remit and Mr T's alternative distribution of the death benefits

- His understanding of AJ Bell's remit was that it was to make decisions on the allocation of Mr S' You invest SIPP. It was not to concern itself in matters relating to Mr S' estate, over which AJ Bell has no authority. Who benefited from Mr S' estate should not have been a factor used by AJ Bell in its decision making process. Boundaries had been crossed resulting in an unfair decision.
 - He had been asked to explain what he would consider to be a fair and equitable distribution of Mr S' You invest SIPP. His suggestion for AJ Bell to consider was:-
 - Offer Mr S' two nieces the £50,000 each.
 - Make an allocation of £50,000 to Ms L. A further £50,000 should be awarded to her with the caveat that she allocates the funds to charities of her choice, but which specifically target those in need.
 - £100,000 to Ms Y, he did not know this person, so he had to go with Mr S' instincts.
 - Miss E (the daughter of a kind friend of Mr S) had already benefited from a large amount of money, from Mr S' Legal and General Pension fund, via his personal nomination. He would suggest that the remaining £189,000 from the You invest SIPP, should be divided equally between Miss E and himself. Each being awarded £94,500. This would show AJ Bell had kept to its remit of only considering Mr S' You invest SIPP and had not, intentionally, or otherwise, penalised him should Probate not be granted.
21. On 8 March 2021, Letters of Administration were issued in the High Court of Justice England and Wales. It said that Mr S died Intestate and Mr T had been appointed as administrator. The application had stated that the gross value of the estate in England and Wales amounted to £560,198.00 and the net value amounted to £549,558.00
22. On 23 April 2021 AJ Bell sent a letter to Mr T in response to his complaint. It said in summary:-
- Under the You invest SIPP rules (**the Rules**) AJ Bell as the Scheme Administrator had full discretion in relation to the award of death benefits:

“9.3 The Scheme Administrator may pay or apply such lump sum (and any payments of the Member's pension payable after his death under a guarantee) to or for the benefit of one or more Eligible Recipients”

“Eligible Recipients” in relation to a person are, on the basis of reasonable enquiries made by the Scheme Administrator, his Spouse, his grandparents, such grandparents' descendants such descendants' Spouses, his Dependants, his Nominees, his Successors, persons interested in his estate, any other Member and any charity and persons or unincorporated associations whom or that he nominated to the Scheme Trustee or Scheme Administrator in

writing or the trustees or any trust established for the purposes of receiving benefits under the Scheme or such other person or trust as the Scheme Administrator believes the person would have wished to have considered as such;"

- There were however, underlying legal principles which governed the exercise of that discretion being that the persons exercising the discretions must:-
 - Ask themselves the correct questions; that is who the legitimate beneficiaries were and how should the death benefits be distributed between them;
 - Be directed properly in law; that is adopt a correct interpretation of the Rules;
 - Consider all relevant factors and ignore any irrelevant factors; and
 - Make a decision that is not perverse; that is one which is within the range which a reasonable decision maker could make in the particular circumstances.

Identification of beneficiaries

- Before the discretions were exercised the death benefits team made reasonable enquiries in order to identify all of the potential eligible beneficiaries and any other relevant circumstances, including any nomination made by a deceased member in relation to the award. While a nomination was not binding it was one of the factors and often an important factor which is taken into account when the discretions are exercised.
- Under the Rules there were three potential classes of beneficiaries in relation to an award of death benefits under the You invest SIPP:-
 - A 'dependant' which includes a civil partner;
 - A 'nominee' being a person who was nominated by the deceased member under an expression of wishes made prior to the date of death; and
 - An 'eligible recipient' which is broadly family members, persons interested in the deceased member's estate, his dependants and nominees, the trustees of any trust established for the purposes of receiving benefits under the Scheme or such other person or trust as AJ Bell believed the person would have wished to have been considered.
- Once the related investigation had been completed it then exercised the discretions in relation to the award of the death benefits. This involved a number of stages:-

- Firstly, it decided who were the eligible beneficiaries within each class from the potential beneficiaries who had been identified during the course of the investigation;
- Secondly, it determined which of those eligible beneficiaries within each class should be considered for an award of death benefits; and
- Finally, it decided whether to award a dependant or nominee's pension and/or lump sum payment to any or all of the relevant eligible beneficiaries within each class who are being considered for an award.
- After it had been informed of Mr S' death in November 2019 it undertook reasonable enquiries in order to identify all the potential beneficiaries and the background circumstances. This included making enquiries to Judge & Priestly, other potential beneficiaries and their representatives as part of an iterative process. Given the relatively complex background circumstances the extent of the investigations undertaken was relatively detailed and took just over 12 months to complete.

The exercise of discretions in relation to the death benefits

- Once it had completed its investigations the discretions in relation to the award of the death benefits under the You invest SIPP were exercised under delegated authority on behalf of AJ Bell in accordance with its internal procedures. In the course of the exercise of the discretions:-
 - After consideration had been given to the capacity of the deceased at the time it was made, it was concluded that the invalid Will [the Letter of Wishes] which was made by the deceased shortly before his death represented a valid expression of his wishes as at the date of death which superseded his previous nomination. For completeness Mr T was not named in the nomination which was superseded or any earlier nomination.
 - Account was taken of the fact that under the intestacy rules Mr T would receive the whole of the deceased's estate which it had been indicated would be valued at around £421,000 gross. In light of the fact that Judge & Priestly had indicated that Mr T was not as a matter of fact financially dependent on the deceased, it was considered that this would result in adequate provision being made for Mr T. Consideration of the extent to which other provision had been made for Mr T was a valid factor which could properly be taken into account in relation to the award of the death benefits.
 - Consideration was also given to the extent to which other financial provision had been made for other potential beneficiaries and this included the distribution of the death benefits in respect of Mr S Legal and General pension.

- Although in accordance with the Rules Mr T was identified as being both the sole dependant of Mr S as at the date of death, by virtue of being his civil partner and as such he was also an eligible recipient, it was determined that he should not receive an award of either a dependant's pension or a lump sum payment.
- It appreciated that this was a difficult time for Mr T, and it was sorry that he remained unhappy with the decision. It did however note that the wording of the Appeal Process email implied that it might change its decision if it wished to contest it and requested details of how it considered the benefits should have been distributed.
- It apologised for that error and any related distress and inconvenience it may have caused as once the discretions had been exercised it could not as a matter of law have changed the decision without being ordered to do so by an Ombudsman or Court. As a gesture of goodwill, it would like to offer him a payment of £150 for any related distress or inconvenience it had caused.

23. On 24 April 2021, Mr T sent an email to AJ Bell and said in summary:-

- It had accepted that Mr S' Letter of Wishes was written by someone who had the mental capacity to determine who should receive his You invest SIPP benefits. Did it have a psychiatrist's report, or Mr S' medical records to support its conclusion?
- AJ Bell had failed to respond to the fact that Mr S' Letter of Wishes, was not in any way regarded as a legal document. The manner in which it was written posed all sorts of anomalies, as to whether it was written under duress, or in a state of heightened anxiety.
- AJ Bell had failed to recognise the difference between what was within their remit to consider.
- For its information the Letters of Administration had been awarded to him and the final figure would certainly not be anywhere near £421,000.
- AJ Bell had failed to respond regarding its total lack of understanding of what constituted an annulment of a civil partnership under English Family Law. It had put the interests of other parties, over those of the inheritance rights a legal civil partner and next of kin.
- Finally, he would like to address how AJ Bell had accessed Mr S' Letter of Wishes. Was it aware that any such information should not have legally been in the public domain at the time it made its decision? The contents of Mr S' Letter of Wishes could be shared, at the discretion of the Administrator of the estate, after the Letters of Administration had been granted by Probate. Which in this case was not until 2 March 2021. As such, AJ Bell's decisions were based on

information which was illegally obtained. This made all AJ Bell's judgements invalid.

24. On 16 June 2021, AJ Bell sent an email to Mr T and said in summary:-

- Regarding the Letter of Wishes, in the particular circumstances, AJ Bell considered that it was reasonable to conclude that it constituted a valid expression of the deceased's wishes and that there was no need for any supporting medical evidence about the deceased's state of mind. The wishes of the deceased were in any event only one of the factors which were taken into account in relation to the exercise of the discretions. The deceased had made two earlier nominations, neither of which named Mr T as a beneficiary.
- It had provided him with details of the rational for its decision in relation to the exercise of its discretions in respect of the award of the death benefits. As he was aware, as part of its investigations into the affairs of the deceased it made enquiry of him and gave him the opportunity to make representations. These were taken into account, and it also afforded the other potential beneficiaries an equal opportunity to do so.
- When exercising its discretions it was appropriate for it to take account of a range of different factors depending upon the particular circumstances. In this particular case, it was reasonable for it to take account of whether the potential beneficiaries had been provided for financially by Mr S in another way, which included the extent to which they would benefit from his estate. The figure of £421,000 was provided by Judge & Priestley in response to its enquiries.
- It identified Mr T as being a dependant of the deceased by virtue of being in a civil partnership with Mr S as at the date of his death, and by virtue of being such, also as an eligible recipient under the Rules. As such it did not believe it demonstrated any such lack of understanding of the legal position. As the deceased's You invest SIPP did not form part of his estate, inheritance rights did not apply in relation to the distribution of the death benefits.
- It was provided with a copy of the Letter of Wishes during the course of its investigations into the affairs of the deceased. Mr T referred to it in an email of 10 September 2020 which was forwarded to AJ Bell by Judge & Priestly as part of the representations made on his behalf. As it had no reason to believe that the document had been illegally obtained, it did not believe that had any impact on the validity of the exercise of its discretions.

25. Following the complaint being referred to the Pensions Ombudsman AJ Bell and Mr T made the following submissions.

AJ Bell's submissions

26. During the course of its investigations, it sought representations from all relevant parties about the distribution of the death benefits. Based on the representations

which it received, it concluded that both Mr T and Mr S did not intend to dissolve their civil partnership and that they still had a functional relationship despite not cohabitating with each other. This was consistent with Mr T's account of their relationship, so it did not consider it necessary to make any further enquiries, nor would it have impacted on how it exercised its discretions in this case.

27. It also noted that Mr T had referred to his belief that AJ Bell had disregarded Mr S' mental state and that Mr S was incapable of making decisions about his estate. In its communication with Mr T, it had made it clear that it had not relied solely on the Letter of Wishes which was made shortly before Mr S' death. As part of its review, it noted that Mr S had made two earlier nominations, neither of which named Mr T as a beneficiary.

Mr T's submissions

28. When he was first informed that if he did not agree with AJ Bell's decision, he could inform it why. He was not given any criteria as to the rules AJ Bell used to come to its decision. Only in the last letter sent to him had AJ Bell outlined why his application and appeal did not meet its requirements.
29. The most important question in his opinion is whether Mr S was in sound mind when he wrote his Letter of Wishes. AJ Bell has said it represented his wishes at the time of his death. He had said that Mr S was under severe stress, suffering from several serious illnesses which rendered him deeply depressed and led him to take his own life by a planned and what can only be termed an unusual method. He thought that any medical practitioner or psychiatrist would agree with him.
30. He did not think that AJ Bell had only taken account of relevant factors. The main factor that AJ Bell had relied on was the Letter of Wishes. According to the rules of Probate, this should not have been presented to AJ Bell until Probate had been granted and then only with his permission as the administrator. Mr S' brother had assumed he was the next of kin and had taken all the paperwork in Mr S' flat. The rules of Probate were completely ignored by Mr S' brother and his solicitor. AJ Bell's decision was based on factors which had no legal weight and were given to them against the rules set out in law.
31. He also thought that AJ Bell had not complied with its obligations to not reach a decision that no reasonable person making the same decision would reach. Mr S' mental state has been dismissed by AJ Bell, and he did not believe it had sought the counsel of a medical practitioner. AJ Bell had used a document which had no legal standing, and which should never have received until he was granted Letters of Administration. On these two factors alone "a reasonable person" would dismiss AJ Bell's decision as flawed.

Adjudicator's Opinion

32. Mr T's complaint was considered by one of our Adjudicator's who concluded that no further action was required by AJ Bell. The Adjudicator's findings are set out in paragraphs 33 to 42.
33. The role of the Pensions Ombudsman was to consider whether the procedure that AJ Bell followed in exercising its discretion was reasonable. There were some well-established principles which a decision-maker was expected to follow in exercising its discretion. The Ombudsman may only interfere with the exercise of discretion if AJ Bell had acted improperly in reaching its decision in that:
- it failed to take into account all relevant factors or took into account irrelevant factors;
 - it asked itself the wrong questions;
 - it misdirected itself on a point of law, for example, by adopting an incorrect interpretation of the relevant rule; or
 - it arrived at a perverse decision, that it is, a decision no reasonable decision maker properly advising himself of all the relevant circumstances, could reach.
34. If the Pensions Ombudsman was not satisfied that the decision had been taken properly, he could ask the decision-maker to look at the matter again. However, the Pensions Ombudsman would not usually replace the decision with a decision of his own or say what the subsequent decision should be.
35. The Rules set out the definition of an Eligible Recipient. The Rules also set out that AJ Bell had discretion to decide what factors it gave weight to in deciding if an individual met the relevant definition. For the decision to be properly made, it must have been made by AJ Bell as the decision maker. The Discretions Committee could act on behalf of AJ Bell in relation to discretionary benefits in accordance with its Terms of Reference. In this case, the decision not to award Mr T any of the benefits death benefit was made by the Discretions Committee so the decision could not be challenged on this basis.
36. A decision maker must consider and weigh all the relevant evidence, but the weight attached to any piece of evidence is for the decision maker to decide. In fact, a decision maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement was that the evidence was considered. The Discretions Committee decided that Mr T was an Eligible Recipient, but no amounts were payable to him as, amongst other factors, he was adequately provided for from Mr S' estate. The fact that Mr T did not agree with the Discretions Committee's decision did not make the decision improper. To show the decision was improper Mr T would have needed to provide evidence that the decision was made in consideration of irrelevant, irrational,

or improper factors. From the information provided the Adjudicator could not see that this had happened.

37. The Discretions Committee had considered the previous nominations made by Mr S, the Expression of Wishes and whether any of the beneficiaries identified were financial dependent on Mr S. It had also considered the relationships between Mr S and the beneficiaries and also whether Mr S had made any other nominations regarding a beneficiary and who would benefit from the distribution of Mr S' estate. In the Adjudicator's opinion the Discretions Committee had assessed the facts that had been gathered during the iterative investigative process and so had not considered improper facts when deciding to whom the death benefits should be paid.
38. One of the specific obligations on decision makers was to consider all relevant information which was available to them and to ignore irrelevant information. Mr T asserted that AJ Bell did not understand the fact that his civil partnership with Mr S was not in the process of being ended and that the Letter of Wishes was obtained inappropriately and could not be relied on due to Mr S' mental state when he wrote it. Mr T also said that AJ Bell should not have considered who would benefit from Mr S' estate.
39. In the Adjudicator's opinion, there was no indication that AJ Bell had incorrectly understood the status of Mr T's civil partnership with Mr S. It had identified Mr T as a beneficiary and Mr T had been able to provide full details of his relationship with Mr S which were taken into consideration.
40. AJ Bell had also considered the Letter of Wishes to be valid indication of Mr S' wishes but only once it had established the context of the relationships between Mr S and the individuals named in the letter. AJ Bell had also explained that the Letter of Wishes was sent to them by Judge & Priestly and that there was no indication given that it should not have been provided to it at that stage. AJ Bell had also considered who benefitted from Mr S' estate so that it was aware of the full financial picture and whether any of the identified beneficiaries would benefit from those funds. In the Adjudicator's opinion these were all reasonable sources of information that could be used to inform decision making. In the Adjudicator's view, AJ Bell had not considered any irrelevant information.
41. In the Adjudicator's opinion the decision not to award any of the death benefits from Mr S' You invest SIPP was one that a reasonable decision-maker could have made based on the facts. The decision was made by considering all the relevant information. In the Adjudicator's view there had been no maladministration.
42. The Adjudicator also noted that AJ Bell had indicated in the Appeal Process email that it would reconsider its decision and Mr T could provide what he thought the distribution of benefits should be. In the Adjudicator's opinion, AJ Bell should have explained to Mr T that he could make a complaint as opposed to the decision being reconsidered. However, in the Adjudicator's opinion the £150 that was offered to Mr T in recognition of this error was appropriate in the circumstances.

43. Mr T did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr T 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 T.

Mr T's further comments

Mr S' mental state

44. It could not be argued that Mr S was of sound mind when he wrote the letter which AJ Bell was acting on to divide his SIPP pension. It was a worthless piece of paper which should not negate Mr S' Last Will and Testament. Mr S' mental state prior to his suicide a few days after writing his Letter of Wishes met the criteria under the Mental Health Act for Sectioning:

"they have a mental disorder, are unwell enough to require hospital treatment, and their health, safety, or the safety of others is at risk."

45. When this mental state was applied to making a Will, or as in this case nominations for a SIPP pension, the law states that the testator must be of sound mind.
46. Could AJ Bell categorically affirm that Mr S was not suffering from a mental disorder or condition that impaired his ability to make rational decisions at the time of writing, given that he had already purchased the means by which he was to commit suicide?
47. He wished to have in writing from AJ Bell that it had made a decision regarding his late Civil Partner's pension without due regard of his mental state when writing the Letter of Wishes. That AJ Bell had noted that in law the document on which it was awarding a considerable amount of money, was not witnessed, and was not even written in the same pen. It was basically a worthless piece of paper.

Mr T's needs had been catered for

48. AJ Bell's decision that his needs were catered for by his inheritance of Mr S' home and funds from various bank accounts was made before Probate had made its decision. AJ Bell did not categorically know that Probate would rule in his favour and so AJ Bell should have discounted this and applied his entitlement to a share, or all of Mr S' pension, alongside and with equal weighting to the other beneficiaries.
49. He also wanted it admitted by AJ Bell that when it was making its decision AJ Bell was guessing as to the final Probate outcome.

Previous nominations

50. AJ Bell has stated that Mr S had made two previous nominations regarding his SIPP pension prior to the one AJ Bell had decided to act upon though it had not provided him with any proof of this.
51. He would like to know whether these proposed 'beneficiaries' had been informed that their nomination had been disregarded by AJ Bell.

52. In conclusion, AJ Bell's actions needed to be publicised through the media so that other potential investors were aware that the decisions of the Trustee were based on presumptive judgements which could be challenged in English Law.

Ombudsman's decision

53. Mr T has complained that AJ Bell has not properly considered all the available evidence when making its decision not to award him a share pension benefits from Mr S' You invest SIPP following Mr S' death.
54. The Adjudicator has set out the basis on which I will consider whether the procedure that AJ Bell followed in exercising its discretion was reasonable. That is, I will only interfere with the exercise of discretion if AJ Bell had acted improperly in reaching its decision in that:-
- It failed to take into account all relevant factors or took into account irrelevant factors;
 - It asked itself the wrong questions;
 - It misdirected itself on a point of law, for example, by adopting an incorrect interpretation of the relevant rule; or
 - It arrived at a perverse decision, that it is, a decision no reasonable decision maker properly advising himself of all the relevant circumstances, could reach.
55. In this case, the discretion to pay a lump sum death benefit to be found in Rule 9 allows it to be paid to one or more "Eligible Recipients". The definition of Eligible Recipients includes the member's 'spouse', his 'dependants' and others. Notably, it also includes "*any persons ... that he has nominated to the Scheme Trustee or Scheme Administrator in writing ... or such other persons or trust as the Scheme Administrator believes the person would have wished to have considered as such*". Although the Letter of Wishes had not been addressed to the trustees or scheme administrator, in my view the wide wording at the end of that definition ("*...or such other persons or trust as the Scheme Administrator believes the person would have wished to have considered as such*") is sufficient to allow AJ Bell to form the reasonable view that the individuals named in the Letter of Wishes were Eligible Recipients (to the extent that they were not otherwise), and could be considered as a potential beneficiary when the lump sum was distributed.
56. Mr T has asserted that AJ Bell took account of irrelevant factors and that it should not have taken into consideration the Letter of Wishes and the fact that he benefitted from Mr S' estate. AJ Bell had also not provided him with evidence of the previous nominations.
57. I understand Mr T's strength of feeling regarding the Letter of Wishes, but it was information regarding Mr S' wishes and AJ Bell did only consider it a relevant piece of

information once it had established the position regarding Mr S' relationships with the persons mentioned in it. In my view it was a relevant factor that AJ Bell was entitled to consider. It was not AJ Bell's decision that Mr S died intestate and so it did not decide that the Letter of Wishes overrode any Last Will and Testament as Mr T has stated. There is no evidence that AJ Bell ignored Mr S' mental state and this was not the only piece of information considered in AJ Bell's decision-making process (rather I am of the view that AJ Bell conducted a very thorough and proper investigation following the death of Mr S, before deciding where the lump sum should be paid). Therefore, I do not find there was any error by AJ Bell in taking into account the Letter of Wishes.

58. The fact that Mr T was the sole beneficiary of Mr S' estate was also a relevant factor for AJ Bell to consider. The information that Mr T was the sole beneficiary, and the value of the estate, was provided by Judge & Priestly who were acting on Mr T's behalf. The Grant of Probate was subsequently awarded to Mr T and so I find that this was an appropriate factor for AJ Bell to consider.
59. AJ Bell is not required to provide Mr T with evidence of Mr S' previous nominations as these involved another party. AJ Bell has taken into consideration that Mr S made a formal nomination regarding who his pension benefits should be paid to as part of its decision making process.
60. I note that Mr T has said that AJ Bell's actions should be publicised as it has acted in a way that could be challenged in English Law. I have assessed the decision making process that AJ Bell has followed, and I find that it has exercised its discretion appropriately and has not acted improperly. I do not find that AJ Bell's decision was unreasonable or perverse, and I have concluded that it took into account only relevant factors.
61. I do not uphold Mr T's complaint.

Dominic Harris

Pensions Ombudsman
14 April 2025