

Ombudsman's Determination

Applicant	Mr N
Scheme	AJ Bell Sippcentre SIPP (the SIPP)
Respondent	AJ Bell Ltd (AJ Bell)

Outcome

1. Mr N's complaint is upheld and, to put matters right AJ Bell should compensate Mr N for the difference between what his SIPP was worth when it crystallised and what it would have been worth, had his SIPP transfer not been delayed.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N is unhappy because AJ Bell refused to allow him to transfer his SIPP fund to another provider for over a year. By the time Mr N's fund was transferred, he believes he had suffered a significant financial loss. In particular, his SIPP was invested in cash-only funds throughout the time his transfer was refused.
4. Mr N says, if he had been able to transfer earlier, he would have invested in a range of funds and the value of his SIPP would have grown. As a result of the transfer being delayed, his SIPP was worth considerably less when it crystallised in May 2016 and he started drawing down income.

Background information, including submissions from the parties

5. This case has a long and complex background. Whilst I have noted all information and evidence provided by both parties, I have only referred to the material facts which have led me to my conclusions.
6. Between July and October 2012, Mr N transferred approximately £265,000 into the SIPP in four stages. Previously, his benefits were invested with Scottish Widows and Deutsche Bank. The evidence indicates that Mr N had a history of making medium-risk investments and maintaining a well-balanced portfolio.
7. Mr N states he transferred his funds into the SIPP with AJ Bell, as he was advised that the management fees would be lower. He placed the full value of the SIPP

temporarily into cash-only funds, as at that time he was in the process of considering various investment opportunities.

8. In November 2012, AJ Bell was contacted by Lothain and Borders Police (**the Police**) in relation to the SIPP. The Police stated they were investigating a suspected fraud and asked that AJ Bell seek the Police's consent first before approving any transfer or withdrawals.
9. On 21 February 2013, Henderson Loggie (**the Trustee**) contacted AJ Bell to inform it that Mr N had entered sequestration. In particular, it confirmed that it was the Trustee in the sequestration and asked AJ Bell to note its interest in the SIPP.
10. On 26 March 2013, AJ Bell provided the Trustee with various details of the SIPP. However, it also highlighted that the SIPP funds fell outside of Mr N's estate for sequestration purposes.
11. On 1 May 2013, the Trustee agreed that the SIPP funds fell outside of Mr N's estate for sequestration purposes. However, it said it was investigating whether any excessive contributions had been made towards the SIPP.
12. On 25 June 2013, AJ Bell received a request from Mr N for his funds to be transferred to a SIPP with Hargreaves Lansdown. The Police confirmed that its investigation had come to an end around this time. However, when AJ Bell highlighted the request with the Trustee, the Trustee said it would not authorise the transfer.
13. On 4 July 2013, Mr N emailed the Trustee directly to explain why he wanted to transfer his SIPP funds. In particular, he said that his fund was invested in cash-only, and as such it was not growing. He went on to state that:

“My thinking behind the transfer to Hargreaves Lansdown is that I can transfer the funds to a more active model i.e. a balance between equities, bonds, property and cash...”
14. Mr N's email also explained that his current SIPP with AJ Bell was an advisor-led product, which was not suitable as he no longer had a financial advisor.
15. On 29 July 2013, AJ Bell has confirmed that Mr N telephoned it to explain why he felt the SIPP was not suitable for him. AJ Bell has said it then spoke to the Trustee further, who confirmed they did not want Mr N to transfer his SIPP to a more appropriate SIPP with AJ Bell, or even invest the funds in his existing SIPP. AJ Bell understood the Trustee was going to contact Mr N directly to confirm this with him, but it is unclear whether this ever happened.
16. AJ Bell states that Mr N requested to transfer his funds to a different SIPP within AJ Bell in May 2014. However, again, this was refused by the Trustee and so AJ Bell did not allow it.
17. On 20 June 2014 the Trustee confirmed that its investigation was complete, and Mr N's transfer to Hargreaves Lansdown was completed on 3 July 2014.

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18. Mr N has said he was therefore refused a transfer between 25 June 2013 and 3 July 2014. He has told our Office he would have invested in “high performing/adventurous funds through Hargreaves Lansdown” and highlighted six equity funds he says he was interested in at the time. He believes the performance of these six funds means his SIPP value would have grown by approximately £150,000 if it had been invested in them for the extra year.
19. Mr N has also provided a recent statement from Hargreaves Lansdown, which evidences his SIPP fund has grown significantly since it has been with them. This statement also shows, however, that his investments with Hargreaves Lansdown have been in a variety of funds – not just equity funds. Mr N has said that this is because the market has changed since his original transfer request.
20. AJ Bell has emphasised that the transfer was refused by the Trustee. It has added that the Trustee had the authority to reclaim excessive contributions under section 36A and 36B of the Bankruptcy (Scotland) Act 1985. AJ Bell was therefore concerned that, if it allowed the transfer, the Trustee may later bring legal action against it. AJ Bell has stated that SIPP providers are increasingly finding themselves in a position where a scheme member wishes to make a transfer, but a trustee has sought an undertaking from it to refuse such a transfer.
21. Lastly, AJ Bell has argued that Mr N’s email from 4 July 2013 contrasts with his statement to our Office that he wanted to invest in adventurous, high-performing funds.

Adjudicator’s Opinion

22. Mr N’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 briefly below:-
 - Mr N has a right to transfer his pension fund, and at the time he requested a transfer the Police were no longer investigating him. The Trustee had requested that a transfer be refused; however, the Trustee was responsible for Mr N’s estate and Mr N’s pension did not form part of his estate.
 - AJ Bell has shown that the Trustee had authority to reclaim excessive contributions from Mr N’s pension arrangement. However, Mr N was only transferring his funds, not accessing them. Therefore, if there were excessive contributions for the Trustee to claim, these would be available from Mr N’s fund and the Adjudicator could not see that AJ Bell would be held responsible.
 - The Adjudicator noted that AJ Bell had also not allowed Mr N to change his investments directly through them either. AJ Bell had therefore frozen Mr N’s fund for approximately a year, and the Adjudicator felt there was insufficient reason for it to do this.

- The Adjudicator did not, however, believe there was sufficient evidence to show that Mr N would have invested in the six equity funds he says he was interested in at the time. Instead, the Adjudicator felt that his previous investment history, his email dated 4 July 2013, and his portfolio with Hargreaves Lansdown indicates he would have invested in a well-balanced portfolio of mixed and medium-risk investments.
 - The Adjudicator felt AJ Bell ought to compensate Mr N for the difference between what his SIPP was worth when it was crystallised, and what it would have been worth had he been able to transfer it on 25 June 2013.
23. AJ Bell did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. AJ Bell provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by AJ Bell for completeness.
24. In particular, AJ Bell has emphasised that it had reason to be cautious or suspicious of any transfer requests from Mr N. This was because he was not only a convicted fraudster, but he had previously submitted fraudulent transfer requests to AJ Bell itself.
25. Lastly, AJ Bell has highlighted that, when the transfer did take place, it took six days for it to be completed. It therefore does not feel 25 June 2013 is a reasonable start date for any redress. It has added that, if Mr N's funds had been transferred sooner and the value of his fund with Hargreaves Lansdown had been higher, he also would have been subject to additional fees. AJ Bell feels all of this ought to be taken into account if any redress is instructed.

Ombudsman's decision

26. It is clear that AJ Bell had reason to be cautious, even suspicious, of any transfer requests from Mr N. However, this does not mean it should necessarily deny every transfer request. The transfer request in question appeared to be legitimate and the receiving provider was a well-known, reputable pension provider.
27. Furthermore, I understand AJ Bell's hesitancy to ignore the instructions of the Trustee and allow the transfer. However, AJ Bell was not legally obliged to adhere to the Trustee's requests, and Mr N did have a statutory right of transfer. AJ Bell therefore ought only to have adhered to the Trustee's request where it was obliged to do so.
28. In this instance, the evidence indicates that the Trustee was unlikely to make a claim on Mr N's funds. Even if the Trustee did, they would have been able to do this after the transfer had gone ahead in 2013. Mr N was not accessing his funds; he was merely transferring them. Therefore, any excessive contributions the Trustee claimed would have been available from Mr N's SIPP.

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29. I also agree with the Adjudicator, however, that Mr N has not provided sufficient evidence to show he would have invested in the six high-performing equity funds that he states he would, had he been able to transfer his funds in June 2013. For the same reasons as the Adjudicator, I feel it is much more reasonable to say he would have invested in a well-balanced portfolio of mixed and medium-risk investments. This finding is consistent with the investments Mr N had previously made and those he eventually invested in with Hargreaves Lansdown.
30. However, I do believe AJ Bell has raised some valid points in relation to the redress for this matter. I consider it is reasonable to assume that it would have taken time to process the transfer. As it took six days to process the transfer in June 2014, it is reasonable to assume it would have taken six days to process in June 2013. Therefore, the starting date for any redress should be six days from 25 June 2013, which would be 1 July 2013.
31. I have also kept in mind that Mr N's funds had been transferred by 3 July 2014, and so it is known how he invested his funds after that date up until crystallisation.
32. I believe AJ Bell has made a reasonable argument about the additional fees that would have been charged to Mr N's SIPP. All pension providers charge annual and management fees, and these are usually charged at a percentage of the fund value. Therefore, if Mr N's fund had been a higher value, he would have incurred higher charges throughout the time he invested with Hargreaves Lansdown. This ought to be taken into consideration.
33. Lastly, I have considered whether it is likely Mr N has not suffered any financial loss, on the basis that it is possible Hargreaves Lansdown may have refused to allow him to invest his funds whilst the Trustee's investigation was ongoing. However, there is insufficient evidence that this is the case. Furthermore, given the strong likelihood that Mr N would have made medium-risk investments across a well-balanced portfolio, it is reasonable to assume that Hargreaves Lansdown would have allowed his investments.
34. Therefore, I uphold Mr N's complaint and I make directions as set out below.

Directions

35. AJ Bell to ascertain the value of Mr N's SIPP as at 3 July 2014, assuming it had been invested and had performed in line with returns from the FTSE WMA Stock Market Income Return Index, from 1 July 2013. If this value is greater than the actual value of Mr N's SIPP at 3 July 2014 it follows there has been a loss. The value of this loss will be referred to as 'Notional Value A'.
36. Establish the cost of any additional fees Mr N's SIPP would have reasonably incurred as a result of transferring to Hargreaves Lansdown, had the transfer gone ahead on 1 July 2013. This is 'Notional Value B'

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37. Ascertain the value of Mr N's Hargreaves Lansdown SIPP as at the date it crystallised assuming Notional Value A, less Notional Value B, had been invested in the SIPP in the same funds, in the same proportions and the SIPP actually invested. This is Notional Value C.
38. If Notional Value C is greater than the actual value of Mr N's Hargreaves Lansdown SIPP at the date it crystallised then there has been a loss, with the loss representing the difference in value. If this is the case, the loss should be paid into Mr N's Hargreaves Lansdown SIPP allowing for any available tax relief and charges. If it is not possible for the redress to be paid to Mr N's SIPP it should be paid to him directly. Provided that he has sufficient headroom in his life time allowance (LTA) 25% of the payment should be paid unreduced with the remaining 75% reduced by his marginal rate of tax to reflect the fact that the loss has been paid as income. If he has insufficient headroom then that should be taken into account with respect to the percentage of tax to be deducted.
39. The above calculations and any payments necessary shall be carried out within 28 days of the date of this Determination.

Anthony Arter

Pensions Ombudsman
16 May 2017