

The complaint

Mr O complains that St James's Place Wealth Management plc knowingly charged him for services it had not provided.

What happened

Mr O has a personal pension with SJP. He transferred his pension to SJP in 2021. He says he'd been in contact with an appointed representative of SJP (I'll refer to the appointed representative as "X"). He says he did not attend any face to face meetings with X at the time - nor subsequently.

In April 2023, Mr O says he became aware that a claims management company had been acting for a number of persons who had brought complaints about SJP. He asked X to comment on this. X dismissed the activities of the claims management company. Mr O responded to X with the following email:

"Yes but can you refund me all my money you stole."

Mr O says he considered himself to be a friend of X at the time and his email was intended to be light-hearted, humorous banter. X responded to say that he hadn't stolen any of Mr O's money and asked him to explain what he meant. Mr O says he found this response extraordinary and as a result he decided to ask further questions about the charges he'd had to pay since his pension was transferred to SJP. He was not satisfied with the responses he received and so he complained to SJP.

SJP investigated his complaint. It acknowledged that whilst it had taken longer than it would have liked for X to provide Mr O with the charges information he'd requested, the necessary information had been provided. It offered to pay him £100, as a gesture of goodwill, for any trouble and upset he'd been caused as a result of the delay. Mr O wasn't satisfied with this response. He said there'd not been any meetings with X and he queried why an initial advice charge and ongoing advice charges had been applied to his account.

SJP said it was satisfied that X had provided advice to Mr O in 2021 concerning the transfer of his pension to it. SJP referred to the documentation which had been issued to Mr O at that time and the fact that Mr O had signed the documentation authorising the transfer.

SJP didn't think it was appropriate to review or refund the initial advice charge. However, SJP said it had not found any evidence that Mr O had received ongoing service or advice since 2021. It said it would refund any ongoing advice charges that'd been applied to his account and it would add simple interest (after deduction of basic rate tax) calculated at 8% per annum. It also said it would waive any early withdrawal charge should Mr O decide to withdraw his funds from SJP within six months.

Mr O said that, in light of the response from SJP, he believed certain criminal offences may have been committed. SJP did not accept this. Mr O referred his complaint to our Service.

Mr O says that in addition to refunding the ongoing advice charges, SJP should refund any part of the initial advice fee which was for advice. He thought that taking money from his account for services which had not been provided amounted to theft and fraud. SJP had tried to gloss over this as being merely an administration error. He did not think that was acceptable.

Our investigator looked into Mr O's complaint. She said that whilst she could not be sure that the initial fee was discussed in any detail prior to the documentation being sent to Mr O, she was satisfied that the fee was contingent upon Mr O proceeding to transfer his pension. Before he transferred his pension he had been provided with full details of the fee in the Illustration, the Client Agreement he'd signed and the Key Facts document. In these circumstances, she thought SJP had acted fairly when it applied the initial advice fee.

Our investigator then considered what SJP had offered to do to put things right. She noted that it had agreed to refund the ongoing advice fees (together with 8% simple interest) and it had offered to pay £100 for trouble and upset. She thought this was fair and reasonable and in line with what we'd usually recommend a business to pay where there'd been an error. She didn't think SJP should have to do anything further to resolve the complaint.

Mr O did not agree. So, the complaint has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

At the outset I'd just point out that our role is to resolve complaints about financial businesses. If we think a consumer has been treated unfairly or unreasonably we have the power to put things right.

In his complaint to our Service, Mr O has made various allegations of criminality including theft and fraud. Those are not matters for our Service and we have no power to investigate those allegations. We are also not the Regulator. That means it is not our role to fine or punish a firm when things go wrong. If Mr O wants to progress aspects of his complaint which we cannot assist with then he needs to refer those points to the appropriate authority.

In this decision, I will be looking at what happened here and whether SJP has acted fairly and reasonably in all the circumstances that apply.

The initial advice charge

Mr O doesn't think he should have to pay for advice when he didn't have a meeting with X. He says he would be willing to pay for any element of the initial fee which related to administration charges only. He's also told us recently that he did not contact X for advice and never received advice. He says there was "discussion" about whether SJP would take his pension over.

X accepts that he did not meet Mr O at any time in the period under review. However he says he was in contact with Mr O, prior to the date when the client agreement was signed, to discuss his requirements. He says he also sent various documents to Mr O which included details of the advice he was providing and the charges that would apply. So, I've looked at the available information that's been provided.

I can see that towards the end of 2020 there were emails between X and Mr O. In November 2020 Mr O emailed X and said he thought that X was "the best option for some good and

free advice” about his pension. There were further emails in December where X was trying to make an appointment to have a phone call discussion with Mr O about this matter – although there’s no record that a phone call did take place subsequently.

At that time it also appears that Mr O sent certain documents providing details about his pension to X. I’ve been provided with an email sent by Mr O to X dated 11 December 2020 in which Mr O said he was expecting the original documents to be returned to him after X had scanned them. And, X has been able to provide copies of a document dated 12 June 2020 which had been sent to Mr O from his previous pension provider.

On 2 March 2021 X prepared a Suitability Report. In this document he set out his understanding of Mr O’s objectives, needs and circumstances, his attitude to risk and X’s recommendations concerning the transfer of Mr O’s pension to SJP.

The Suitability Report refers to a meeting that took place on 26 February 2021. Apart from that there’s no further evidence, such as call recordings or notes, about a meeting between X and Mr O. Having said that, it is the case that the Suitability Report included personal information about Mr O’s circumstances, such as his income, emergency cash fund and health. On balance, I don’t think X would’ve had this information if there hadn’t been a conversation with Mr O. And, as mentioned above, there is also earlier evidence to show that Mr O had shared information about his pension with X. Mr O doesn’t appear to have challenged any of the information contained in the Suitability Report at the time.

So, having considered all of the information available to me, I’m satisfied, on balance, that Mr O had sought advice. I’m also satisfied on balance that both Mr O and X believed that advice would be provided concerning the transfer of Mr O’s pension. The advice provided was set out in the Suitability Report.

As mentioned above, Mr O had told X he was looking for “free” advice. That’s what he’d mentioned in his email dated November 2020. So, I’ve then considered whether X did enough to bring to Mr O’s attention that the advice he was providing would not be free.

The Suitability Report indicated that certain documents had already been provided to Mr O including a disclosure document setting out service costs and charges, a key features document and an illustration. I’ve no evidence that these documents had already been provided to Mr O – apart from the statement in the Suitability Report. I’ll comment further about that below.

I can see that the Suitability Report was emailed to Mr O on 5 March 2021. The email provided to our Service also shows that there were certain other enclosures attached to that email. These were the Illustration, a Key Features document and a Risk and Reward document. So, I’m satisfied, on balance, that Mr O did receive these documents on that date.

I’ve looked at each of these documents and I’ve noted that details of the initial advice fee was set out in several places:

The Key Features document:

*“When you invest with us you pay us charges for our advice....
Our advice is not free. The cost of initial advice and our services will be 4.5% of the amount you invest.”*

The Illustration:

“What are the charges?

...

Initial charge

4.5% (under the heading Advice)

Ongoing charge per annum 0.5% (under the heading Advice)

How much will the advice cost?

Our advice is not free.

The cost of the initial advice and our services will be £[amount stated in figures]*

This is 4.5% of the investment shown...

**This information was set out in bold.*

There's no evidence to indicate that Mr O queried the charges set out in these documents at the time.

On 9 March 2021 Mr O signed the client agreement with SJP. I can see that immediately above his signature the Declaration included the following words:

"I understand that the advice I receive is not free and I agree to the payment of the advice charges from my investment as referred to above."

The client agreement also included details about the charges. Under the heading "Advice charges" the following information was set out

"Our advice is not free....Details of the charges we make for our advice and how it is paid for are set out in the "Key facts..." The advice charges will also be discussed with you and the specific amount charged will be provided on the personalised illustration you receive each time you make an investment."

So, having looked at the information on the documentation provided to Mr O prior to the date when he signed the client agreement, I'm satisfied X took reasonable steps to make him aware that the advice was not free and the initial advice fee would be 4.5% of the investment. If Mr O did not accept that I think it's reasonable to have expected him to query it before he signed the client agreement. There's no evidence that he did raise any query or challenge at the time.

I've then considered what the regulatory rules said about disclosure of costs and charges where a personal recommendation is provided in relation to a personal pension. The relevant rule is set out in the Financial Conduct Authority (FCA) Handbook in the Conduct of Business Sourcebook (COBS) (available online).

COBS 6.1.A.17 R states that an adviser must disclose the charging structure "in writing" to the consumer, and "in good time before making a personal recommendation" about a personal pension. The FCA Handbook also states that where a business has breached certain Rules in the Handbook (which includes the Rule mentioned here) that may give rise to a right of action - where the consumer suffers a loss as a result of the contravention of the Rule.

As our investigator said, insufficient evidence has been provided to our Service to show that X complied with this Rule. However, I'm not persuaded on balance that Mr O suffered any loss as a result. I say that because SJP has confirmed that the fee was only chargeable if and when Mr O decided to proceed with the transfer. And, as stated above, I'm satisfied that at the date when he signed the client agreement he did have full details about the charges that would apply. He raised no objections to the charges at that time.

In these circumstances and having considered everything I don't think it's fair and reasonable to require SJP to refund the initial advice fee. The fee charged was in line with the fee that had been quoted in the documentation Mr O had been sent and the client agreement which he signed. So, I'm not upholding this part of Mr O's complaint.

The ongoing advice charges

There were several references to ongoing advice charges in the documents that I've referred to above. And I think the intention, as set out in those documents, was that SJP would provide an ongoing advice service and that a charge, in line with the amounts set out in the illustration and the client agreement, would be applied to Mr O's account. The Suitability Report had referred to the need for regular reviews and that as a minimum an annual review should be conducted.

I haven't been provided with any evidence which indicates that during the period after the initial advice was given SJP provided any ongoing advice to Mr O. There's no evidence of any annual review taking place in 2022 and I haven't been provided with any email exchanges (or other evidence) which would suggest that ongoing advice was offered or provided to Mr O in 2022.

I can see there were some email exchanges between Mr O and X in January 2023 where Mr O raised queries about fund switching. X sent a brief response to Mr O's query and it was agreed there'd be further discussions at a face to face meeting. A date of July 2023 was mooted for such a meeting. In the events that followed, the relationship between X and Mr O broke down and no meeting was arranged in 2023.

SJP acknowledged this in its final response letter dated 31 August 2023. It said that X had "overlooked" arranging an ongoing advice meeting in 2022 and that no advice meeting had been arranged in 2023. In these circumstances it offered to refund the ongoing advice charges applied and it said it would pay 8% simple interest on this amount.

Mr O isn't satisfied with what SJP has said. He thinks it isn't acceptable for SJP simply to apply fees it wasn't entitled to take and then offer to refund them when challenged. He doesn't think it's good enough for SJP to excuse what happened by saying there's been an administrative error.

I can understand why Mr O is not happy that charges were applied to his account for a service he didn't receive. However, it is the case that errors can sometimes happen. As I stated at the outset it's not our role to fine or punish a business when an error has been made. When a business becomes aware of an error that's been made we look to see what it's done to put things right.

In this case, SJP acknowledged the error and offered to refund the ongoing advice fees together with 8% simple interest on any such charges. It also offered to waive any early withdrawal charges should Mr O wish to move his funds to another provider within a six month period. Having considered everything I think the offer made by SJP is fair and reasonable since it seeks to put Mr O back into the position he would've been in if the error had not occurred.

So, although I'm upholding this part of Mr O's complaint, I think the offer SJP has already made to resolve this part of his complaint is fair and reasonable in all the circumstances and I don't expect it to have to do anything further.

Distress and Inconvenience

SJP also offered to pay Mr O £100 as a goodwill gesture for the distress and inconvenience he experienced as result of what happened here. Having considered everything, including

our general guidelines about awards for distress and inconvenience, I think the offer to pay Mr O £100 for the distress and inconvenience he experienced is fair and reasonable in all the circumstances of this complaint.

My final decision

For the reasons given above I uphold this complaint, in part, about St James's Place Wealth Management plc.

St James's Place Wealth Management plc has already made an offer to settle the complaint and I think its offer is fair in all the circumstances.

So my decision is that St James's Place Wealth Management plc should now:

- refund the ongoing adviser charge(s) which it applied to Mr O's account in the period since 2021 together with 8% simple interest* on any such refund calculated from the date any such ongoing adviser charge(s) was applied to his account up to the date of settlement;
- if it hasn't done so already, pay Mr O £100 (in total) for the trouble and upset he experienced as a result of what happened here; and
- waive any early withdrawal charge it might otherwise apply should Mr O decide to move his funds away from St James's Place Wealth Management plc within six months of the date of this decision.

** If St James's Place Wealth Management plc considers that it's required by HM Revenue & Customs to deduct income tax from this interest, it should tell Mr O how much it's taken off. It should also give Mr O a tax deduction certificate if he asks for one, so that he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 27 February 2024.

Irene Martin
Ombudsman